

REPRESENTATIVES FOR PETITIONER:

Richard Hursey with Stone’s Trace Historical Society

REPRESENTATIVES FOR RESPONDENT:

Delbert W. Linn, President, Noble County PTABOA

Kim Miller, Noble County Assessor

Kenneth Stump, Member, Noble County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

STONE’S TRACE HISTORICAL SOCIETY)	Petition Nos.: 57-015-02-2-8-00009; 57-015-02-2-8-0009A
)	
Petitioner)	
)	County: Noble
v.)	
)	Township: Sparta
NOBLE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	Parcel No: 04579000400; 04579000402
)	
Respondent)	Assessment Year: 2002

Appeal from the Final Determination of
Noble County Property Tax Assessment Board of Appeals

September 18, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:

Whether the Petitioner qualifies for 100% exemption from property taxation.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Stone's Trace Historical Society filed two (2) Form 132 petitions for the 2002 tax year petitioning the Board to conduct an administrative review of the above petitions. The Form 132 petitions were filed on January 8, 2003. The determination of the PTABOA was issued on December 10, 2002. The PTABOA determined that the subject improvements and personal property are 100% exempt, and the land is 60% exempt and 40% taxable.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 21, 2003 in Albion, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2. The Administrative Law Judge did not view the property.
4. The following persons were present at the hearing:

For the Petitioner:

Richard Hursey

For the Respondent:

Delbert W. Linn

Kim Miller

Kenneth Stump

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Richard Hursey

For the Respondent:

Delbert W. Linn

Kim Miller

Kenneth Stump

6. Neither the Petitioner nor the Respondent submitted exhibits.

7. The following items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 132 petition and related attachments.

Board Exhibit B – Notice of hearing on petition.

Jurisdictional Framework

8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

State Review and Petitioner's Burden

9. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

10. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230

(Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

11. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]

12. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

13. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case.’ See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.

15. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

16. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

17. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
18. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
19. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
20. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public

- purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
21. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
22. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issue

Whether the Petitioner qualifies for 100% exemption from property taxation

23. The Petitioner contends that it qualifies for an exemption for up to 50 acres of land, and that allowing only 15 acres of land is erroneous.
24. The Respondent contends that an organization’s property tax exemption is limited to 15 acres of land.
25. The applicable rules governing this Issue are:
- Ind. Code § 6-1.1-10-16(a)**
All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

Ind. Code § 6-1.1-10-16(c)¹

A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- (1) a building which is exempt under subsection (a) or (b) is situated on it; and
- (2) the tract does not exceed:
 - (A) fifty (50) acres in the case of:
 - (i) an educational institution; or
 - (ii) a tract of land that was exempt under this subsection on March 1, 1987; or
 - (B) fifteen (15) acres in all other cases.

26. Evidence and testimony considered particularly relevant to this determination include the following:

- A. The subject property has been in existence and exempt from property taxes since 1969 (Board Exhibit A, Miller testimony).
- B. The two parcels together consist of approximately 25 acres (Board Exhibit A).
- C. The PTABOA, in its determination, agrees that the subject property qualifies for property tax exemption (Board Exhibit A, Miller testimony).

Analysis of this issue

27. The PTABOA agrees that Stone's Trace Historical Society qualifies for property tax exemption. It has awarded Stone's Trace a 100% exemption for improvements and personal property. Stone's Trace also requests a 100% exemption for its land. However, the PTABOA contends that Ind. Code § 6-1.1-10-16(c) limits Stone's Trace to an exemption for only 15 of its 25 acres (60%) of land.

28. The PTABOA is incorrect. Careful reading of Ind. Code § 6-1.1-10-16(c) reveals that the exemption limitation for land belonging to an educational institution, or a tract of land exempt on or before March 1, 1987, is limited to 50 exempt acres. The subject property

¹ This version of the statute was in effect for the subject assessment year. It was subsequently amended by the General Assembly.

has been in existence and has qualified for an exemption every year since 1969. Thus, in accordance with Ind. Code § 6-1.1-10-16(c)(2)(A), its limitation for exemption is 50 acres, not 15 acres as the PTABOA contends.

29. The tract of land owned by the Petitioner consists of approximately 25 acres. Its limitation for exemption is 50 acres. Therefore, the tract of land owned by Stone's Trace Historical Society, consisting of the two parcels identified above, is determined to be 100% exempt from property taxation.

Summary of Final Determination

30. For the reason set forth, it is determined that the land owned by Stone's Trace Historical Society is 100% exempt from property tax exemption.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.