

**State of Indiana
Board of Tax Review**

TIMOTHY HAMAKER) On Appeal from the Grant County
) PTABOA
Petitioner,)
)
v.) Petition for Review of Exemption,
) Form 132
)
) Petition No. 27-001-97-2-8-00012
GRANT COUNTY PROPERTY TAX) Personal Property
ASSESSMENT BOARD OF APPEALS)
)
Respondent.)

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

Whether the personal property owned by Timothy and Dianna Hamaker qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under a claim of religious purpose.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Timothy Hamaker filed an Application for Property Tax Exemption, Form 136, with the Grant County Auditor. The Form 136 was filed on March 29, 1996. The Grant County Property Tax Assessment Board of Appeals (PTABOA) denied the application and gave the Petitioner notice on October 29, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Form 132 petition seeking a review by the State Board. The Form 132 petition was filed November 27, 1996.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was originally held on June 9, 1997, before Hearing Officer George Helton. Judith Carmichael, Grant County Auditor, was present on behalf of the PTABOA. No one was present on behalf of the Petitioner. The PTABOA presented evidence at this time.

5. On June 16, 1997, the Petitioner, via telephone, requested that the State schedule the subject Form 132 petition for another hearing. The State granted that request and a second hearing was scheduled for June 18, 1997, before Hearing Officer George Helton. Timothy Hamaker appeared at the hearing. The PTABOA did not appear. The Petitioner presented evidence at this time.

6. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A. The Notice of Hearing was marked as Board Exhibit B. The Waiver of Notice was marked Board Exhibit C. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit A – A letter confirming Hamaker's status as a licensed minister from Pastor Rev. Steven Manley, Trinity Chapel Church.

Petitioner's Exhibit B – A copy of the Manual of the Bible Holiness Church, 1986.

Petitioner's Exhibit C – A copy of Hamaker's evangelism schedule for 1997.

Petitioner's Exhibit D – A handwritten note from Hamaker explaining his use and purpose for the subject property.

Petitioner's Exhibit E – A copy of Hamaker's evangelism schedule for 1996 and his certificate of license.

Petitioner's Exhibit F – Copies of pages from a handwritten itinerary of Hamaker's evangelistic appointments.

Petitioner's Exhibit G – A copy of Hamaker's 1996 Form 1040, Individual Income Tax Return.

Respondent's Exhibit A – A copy of the State Board's notice of hearing dated May 30, 1997 with notations.

Respondent's Exhibit B – A copy of the Individual's Tangible Personal Property Return, Form 101, filed by Hamaker on March 29, 1996.

7. The property subject to this appeal is a 1985 Toyota Dolphin motor home owned by the Hamakers. The subject property is located at 714 E. 28th Street, Marion, Center Township in Grant County.

8. Timothy Hamaker is a licensed minister through the Trinity Chapel Church of Summerfield, North Carolina and he travels throughout the United States and parts of Canada as a paid evangelistic speaker at revival meetings held by various churches across the country. (Pet. Ex. A, C, D, and E.)
9. Hamaker's evangelism schedule consists of 25 meetings each year. These meetings are held over a ten (10) day period with approximately two (2) meetings held each month. Hamaker conducts these meetings throughout the entire year – from January through December. (Hamaker testimony; Pet. Ex. C and E.)
10. Hamaker uses the subject property as a means of transportation from one location to another. The subject property is also the Hamakers' living quarters both while traveling and through the duration of each evangelistic meeting. (Hamaker testimony; Pet. Ex. D.)
11. The PTABOA denied the Petitioner's exemption request because no evidence was presented to show Hamaker's affiliation with a church and because no evidence was presented showing an itinerary for Hamaker's work or how the subject property was used to aid such work. (Carmichael testimony, Res. Ex. A & Board Ex. A.)

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Ind. Code § 6-1.1-15-3.

Burden

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide this administrative appeal based upon the evidence presented.

3. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995).

4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, Section 5.51; 73 C.J.S. Public Administrative Law and Procedure, Section 128.

5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239 (Ind. Tax 1998)).

6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.

7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event the taxpayer sustains his burden, then the burden shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
9. If the taxpayer fails to meet his burden of proof at the administrative level, the State does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116-21.

Constitutional and Statutory Basis for Exemption

10. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
11. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
12. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. 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 the property is used but on how much 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 predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
14. 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).
15. Strict construction construes exemption from the concept of the taxpayer citizen. 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 (NAME) v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt would otherwise have paid, and this should never be seen as an inconsequential shift.
16. This is why worthwhile activities or noble purpose is not enough to justify 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)).

17. 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).

Conclusions Regarding the Exemption Claim

18. Timothy Hamaker seeks property tax exemption for the subject property because it is used by the Petitioner as both a means of traveling from one evangelism meeting to the next and as housing while speaking at these evangelism meetings. Petitioner claims that because he uses the subject property for these purposes the property is entitled to an exemption under Ind. Code § 6-1.1-10-16 for religious purposes.
19. In Indiana, a property is exempt from taxation under Ind. Code § 6-1.1-10-16 if it is owned for an exempt purpose, used for an exempt purpose, and occupied for an exempt purpose. *Sangralea Boys Fund v. State Board of Tax Commissioners*, 686 N.E. 2d 954, 959 (Ind. Tax 1997).
20. Petitioner may also qualify for an exemption if it can show the subject property is reasonably necessary for the effective welfare of an exempt religious institution. *Alte Salems Kirche v. State Board of Tax Commissioners*, 694 N.E. 2d 810, 815 (Ind. Tax 1998).
21. The Petitioner owns the property at issue. The Petitioner uses the subject property to travel to and from work. The Petitioner uses the subject property as

lodging when at meetings. Just because the Petitioner is an evangelist does not automatically qualify all property he owns for an exemption. In Indiana, a parsonage is exempt from taxation. See Ind. Code § 6-1.1-10-21. Other than this specific section, no other home of a rabbi, priest, ministry, preacher, or pastor is exempt from property taxation.

22. The Petitioner never attempted to show, nor did he claim, that religious ceremonies are held in the property. While it is clear that the Petitioner is an evangelist and his job is to spread the Word of God, the use of the property is not religious. The use of the property is for transportation and lodging.
23. The Petitioner is the owner of the subject property, and occupies the property. However, his ownership and occupancy are not for religious purposes. His ownership and occupancy of the property is to use it for transportation to and from meeting and as lodging while attending meetings.
24. The Petitioner failed to show that the property is owned, used, and occupied for a religious purpose; therefore, the property is 100% taxable.
25. Petitioner may qualify for an exemption if he can establish the property is reasonably necessary for the effective welfare of exempt religious institutions. In the *Alte Salems Kirche* case, supra, the Tax Court found that a barn used for storing equipment and picnic tables and a mobile home on church property to maintain human presence to cut down on vandalism at the church were reasonably necessary; therefore exempt from taxation, if church is exempt from taxation.
26. This case is different. Here, the Petitioner is not affiliated with a single church. The Petitioner is a paid evangelist traveling around to churches and revivals in the United States and Canada. The Petitioner uses the property for personal transportations and lodging. The Petitioner did not show how the property is

reasonably necessary for an exempt property. Accordingly, the Petitioner did not meet his burden in this appeal; the property is 100% taxable.

27. Finally, assuming Petitioner had met his burden as to his exempt religious purpose, he has failed to prove that the property is predominantly used for such a purpose. The evidence establishes that the property is primarily a residence. When he is traveling to his meetings, those meetings take only a fraction of the year. There is no evidence as to the use the property is put to at other times.

The above stated findings and conclusions are issued in conjunction with and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairperson, Indiana Board of Tax Review