

**STATE OF INDIANA  
Board of Tax Review**

TROY TORNATTA	)	On Appeal from the Vanderburgh
	)	County Property Tax Assessment
	)	Board of Appeals
Petitioner,	)	
	)	
v.	)	Petition for Review of Exemption
	)	Form 132
VANDERBURGH COUNTY	)	Petition No. 82-029-00-2-8-00001
PROPERTY TAX ASSESSMENT	)	Parcel No. 1167030051016
BOARD OF APPEALS And PIGEON	)	
TOWNSHIP ASSESSOR	)	
	)	
Respondents.	)	

**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:

**Issue**

. Whether the real property owned by Troy Tornatta and leased by the not-for-profit Temple Beth Tefillah qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of religious/charitable 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, Troy Tornatta (the Petitioner) filed an application for exemption, Form 136, with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) on April 10, 2000. The PTABOA denied the application on March 29, 2001 and gave Mr. Tornatta notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a petition for review of exemption, Form 132, with the State seeking a review of the PTABOA action. The Form 132 was filed on April 30, 2001. (The petition was timely filed because April 29, 2001 fell on Sunday).
4. Pursuant to Ind. Code §6-1.1-15-4, a hearing was held on August 22, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Troy Tornatta was self-represented. Mr. Gary Schmidt, Temple Beth Tefillah, was also present for the Petitioner. Mr. Rick Barter, Vanderburgh County Hearing Officer, represented the County. Mr. Paul Hatfield, Pigeon Township Assessor, represented the Township.
5. At the hearing, the subject Form 132 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted as evidence:

Petitioner's Exhibit A - A report with the following materials:

- a. A listing of the various activities held by the Temple Beth Tefillah
- b. Photographs of the subject property
- c. A copy of the Commercial Lease agreement between Troy Tornatta and Adat Sar Shalom, Inc. (Gary C. Schmidt)
- d. A copy of the Letter from the Internal Revenue Service granting the 501(c) Status to Adat Sar Shalom, Inc.
- e. A copy of the Not-For-Profit Tax Registration Certificate for Indiana Sales Tax Exemption
- f. A copy of the By-Laws for Temple Beth Tefillah
- g. A copy of the Remand Determination for Kevin Wilson from the State Board of Tax Commissioner (Petition No. 95-822-19)
- h. A copy of the Indiana Tax Court Case *Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*.

Respondent's Exhibit A - A copy of a brief prepared by Rick Barth containing the following:

- a. A summary of the issue.
- b. A response from the county to the issue.
- c. A copy of the Form 120 - Notice of Disapproval of the Exemption.
- d. A copy of the Exemption Memorandum to the PTABOA from Vanderburgh Hearing Officer, Kris Seger, dated February 7, 2001.
- e. A copy of the final determination from the State Tax Board to Washington Court Redevelopment.
- f. A copy of the minutes from the Vanderburgh County PTABOA meeting dated March 1, 2001.

6. The subject property is located on 2214 W. Indiana, Evansville, Indiana, (Vanderburgh County, Pigeon Township).

7. The correct assessed value for March 1, 2000 is:

Land: \$1,670                      Improvements: \$14,670                      Total: \$16,340

8. The Hearing Officer did not view the subject property.

**Issue - Whether the real property owned by Troy Tornatta and leased by the not-for-profit Temple Beth Tefillah qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-16 under the classification of religious/charitable purpose.**

9. The lease agreement with the Temple began in 1999. The subject property was an office building redesigned to be used by the not-for-profit Temple Beth Tefillah (Petitioner's Exhibit B). The monthly rent is \$750. He is responsible for his mortgage and any major upkeep. The Temple is responsible for interior furnishings, utilities and their insurance. The rent was set at just above the mortgage amount. *Tornatta Testimony. Schmidt Testimony.*
10. The Petitioner contends that the Temple is used only for religious purposes.
11. The Petitioner also cites a Final Determination from the State issued September 3, 1998, in which taxpayer Kevin Wilson was granted an exemption. In the Wilson case, Mr. Wilson was the property owner and allowed his property to be used by churches in the area that were trying to become established. This case should be considered when making the decision for the Temple. *Schmidt Testimony. Hatfield Testimony.*
12. The Petitioner testified that the Temple is a new fellowship trying to establish itself in the Evansville area. The tax burden would apprise over 20% of the total operating budget. An additional \$150 added to the bottom line expenses per month would make it difficult to survive. There

is no paid staff and Mr. Schmidt (Rabbi) does not take a salary. *Schmidt Testimony*.

13. The Petitioner argued that the Court's ruling in *Sangralea* has in mind ministries like the Temple that are trying to establish themselves in the community. The Court's ruling favors not putting a financial burden or inhibiting growth in such entities, so that they may one day grow to have ownership of their own property. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).
14. The Respondent argued that *Sangralea* does not apply to the subject property. The owner is a "for-profit" entity. *Washington Court Redevelopment Corp. v. Vanderburgh Property Tax Assessment Board of Appeals*, Petition Nos. 82-029-92-2-8-0001-4 and 82-029-99-2-8-0001-4, was an appeal before the State in which the exemption was lost because one of the parties was a "for-profit" group. *Washington Court* should be considered when the exemption is decided for the subject case. *Barter Testimony. Hatfield Testimony*.

### **Conclusions of Law**

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

#### **A. Burden in General**

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 the 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*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also, Ind. Code § 4-21.5-2-4(a)(10)(Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. 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*.
6. 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).

7. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.
8. 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. at 1116-21.

### **B. Property Tax Exemption**

9. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
10. Article 10, § 1 of the Indiana Constitution reads:
  - (a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:
    - (1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.
11. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for the above stated purposes in general. It reads in pertinent part:

(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, or charitable purposes.

12. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*
13. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.
14. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938, (Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.



15. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220, (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Buildings Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
16. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

**C. Conclusions Regarding Claim Under Indiana Code § 6-1.1-10-16.**

17. The Petitioner claims exemption under Indiana Code § 6-1.1-10-16. This statute plainly exempts tangible property from taxation if the property is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.
18. The Petitioner requests that the subject property be exempt from taxation because it is leased by a religious and charitable entity, the Temple Beth Tefillah.
19. In *Sangralea*, the Tax Court held that tax exemptions "[a]re strictly construed against the person claiming the exemption." The Tax Court has also held that the burden is upon the person claiming the exemption to show that the property falls specifically within the statute under which exemption is being sought. (*Indiana Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987)).
20. In *Sangralea*, the Tax Court also held that the statute (Indiana Code § 6-1.1-10-16) does not require unity of ownership, occupation, and use of

property, but that the statute required ownership, occupancy, and use in furtherance of charitable purpose. *Sangralea*, 686 N.E. 2d at 959.

Receiving a benefit or gain in exchange for giving or performing an act, or giving or performing an act with motive to receive a benefit or gain, does appear to be at odds with the definition of charity and charitable purpose.

21. Based on *Sangralea*, there are three (3) requirements in determining entitlement to an exemption: (1) Is the property used for a tax-exempt purpose? (2) Is the property occupied for a tax-exempt purpose? (3) Is the property owned for a tax-exempt purpose?
22. The parties agree that the property is used and occupied for an exempt purpose.
23. The third requirement, ownership for the furtherance of a charitable purpose is in dispute.
24. The Petitioner admits to changing the property from an office to a religious entity. The Petitioner does not qualify as a "not-for-profit" entity. Furthermore, the Petitioner admits that he leases the property to the Temple for a monthly fee that is a little over the amount of his monthly mortgage.
25. The third requirement of *Sangralea* specifies that the subject property needs to be owned for a tax-exempt purpose. In this case, the Petitioner leases the subject building for whatever purpose is needed at the time. The photographs show that the building is used at this time as a religious entity, but prior to this lease with the Temple, the building was used as an office. The Petitioner states that the extra \$50 he makes per month over and above his mortgage and realtor fees does not often cover his expenses. While the Petitioner may not be showing a profit on this lease

agreement, he is increasing his equity position in the property and paying his realtor fees from the rent that he charges. Any type of payment made to the Petitioner is a gain or benefit and not considered charitable.

26. The Petitioner's request for an exemption on the subject building must fail using *Sangralea's* conditions. The Petitioner does not wholly meet all three (3) requirements. Once again, in order to comply with *Sangralea*, the subject property must be used for a tax-exempt purpose, occupied for a tax-exempt purpose, and owned for a tax-exempt purpose.
27. The Petitioner also cited the Final Determination of the State Tax Board for the Kevin Wilson petition (Petition No. 95-822-19). In that case, Mr. Wilson, an assistant pastor with the subject church, charged no rent or fee for the use of the property.
28. The Petitioner bears the burden of proving that the subject property falls specifically within the requirements set forth in this matter. The Petitioner has failed to prove that the subject building is eligible for exemption under Indiana Code 6-1.1-10-16.
29. There is no change to the assessment as a result of this issue.

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.

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Chairman, Indiana Board of Tax Review