

**STATE OF INDIANA
Board of Tax Review**

UNITED PENTACOSTAL CHURCH)	On Appeal from the Wayne County
OF RICHMOND,)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Exemption,
)	Form 132
WAYNE COUNTY PROPERTY TAX)	Petition No. 89-028-96-2-8-00054
ASSESSMENT BOARD OF APPEALS,)	Parcel No. 0160220400
)	
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:

Issue

Whether the land and improvements owned by United Pentecostal Church of Richmond qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious purposes.

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 be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, United Pentecostal Church of Richmond (United Pentecostal) filed an application for property tax exemption with the Wayne County Board of Review on March 13, 1996. The Board of Review denied the application on October 10, 1996, and gave United Pentecostal proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, United Pentecostal filed a Form 132 petition seeking a review of the Board of Review action by the State. The Form 132 petition was filed September November 7, 1996.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 2, 1997, before Hearing Officer E. Wayne Hudson. Testimony and exhibits were received into evidence. Glen Hawkins, Board member of United Pentecostal, was present on behalf of the petitioner. Wanda Ronan, Wayne County Assessor, was present for the Board of Review.
5. At the hearing, the subject Form 132 petition and attachments were made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following items were received into evidence:
 - Petitioner Exhibit 1 – Building fund income statement for 1996
 - Petitioner Exhibit 2 – 1995 income statement
 - Petitioner Exhibit 3 – 1993 income statement
 - Petitioner Exhibit 4 – Church by-laws
6. The subject property is located at 1225 South 23rd Street, Richmond, Indiana, Wayne County, Wayne Township. The property contains 57.987 acres of land and a pole building. The exemption is sought for the 1996 assessment year.
7. The Hearing Officer did not view the property.

Administrative Proceedings

8. The subject property was purchased by the Petitioner in 1985 as a site for a new church building, a K-12 school, and administrative offices. Due to financial difficulties, no clear progress has been made on the construction of any of the proposed structures. This is a 1996 appeal; building permits were scheduled to be obtained in September of 1997.
9. The pole building is used to house equipment used to clear the land in question.
10. According to testimony, 29 acres of land will be sold in 1997, in order to help fund the construction.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. 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 County Board (or 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. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board 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, n. 13 (Ind. Tax 1998)).
5. If the taxpayer is 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.

B. Constitutional and Statutory Basis for Exemption

8. 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.
9. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed under Ind. Code § 6-1.1-10-16 which provides that all or

part of a building is exempt from property taxes if it is owned, occupied, and used for educational or religious purposes.

10. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

11. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
12. 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).
13. 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 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.
14. 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)).

15. 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).
16. The term “religious” generally has reference to man’s relationship and belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443 (Ind. 2001)(“worship” is the act of paying divine honors to the Supreme Being); *Grutka v. Clifford*, 445 N.E. 2d 1015 (Ind. App. 1983)(ecclesiastical matters are those which concern doctrine, creed, or form of worship of the church); *Minersville School District v. Gobitis*, 108 F. 2d 683 (3d Cir. 1939); *McMasters v. State of Oklahoma*, 21 Okla. Crim. 318, 207 P. 566 (Okla. Crim. App. 1922).

D. Conclusions Regarding the Exemption Claim

17. The Petitioner has failed to show that the subject land and building are currently occupied and used for the exempt purpose.
18. The Petitioner purchased the land in question as a site for a new church building, school, and administrative offices.
19. The Petitioner has failed to supply any evidence concerning the progress of its future construction. In fact, the Petitioner has failed to present any evidence that would tend to show the Church is actively pursuing the building project. The financial statements simply show that the Church has lost money, without details regarding the loss.

20. Indiana Code § 6-1.1-10-16 (d) (3) states that a tract of land is exempt if “not more than three years after the property is purchased, and for each year after the three year period, the owner demonstrates substantial progress towards the erection of the intended building and use of the tract for the exempt purpose.”
21. Further, the intent to use the property for an exempt purpose must be more than a “mere dream”. *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850 (Ind. Tax 1990), and *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E. 2d 816 (Ind. Tax 1998).
22. The record is devoid of any evidence that the Petitioner made any progress toward its plan within the first three years after the purchase or that the Petitioner has made any progress toward construction in the years following. The Petitioner purchased the property in 1985, the year of the appeal is 1996. The Petitioner has failed to show that the intended use of the property is more than a “mere dream”.
23. For the above reasons, the Petitioner did not meet the burden of showing that the subject property falls specifically within Ind. Code § 6-1.1-10-16. As such, the subject property is wholly subject to property taxation.

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.

Chairman, Indiana Board of Tax Review