

REPRESENTATIVE FOR PETITIONER:

Jeffrey S. Wrage, Attorney, Blachly, Tabor, Bozik & Hartman, LLC

REPRESENTATIVE FOR RESPONDENT:

Mark Thiros, Attorney, Cohen & Thiros

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

International Union of Operating	)	Petition Nos.:	45-030-00-2-8-00005
Engineers, Local 150,	)		45-030-00-2-8-00006
Building Corporation	)		45-030-00-2-8-00007
	)		45-030-02-2-8-00001
Petitioner,	)		45-030-02-2-8-00002a
	)		45-030-02-2-8-00003
v.	)		
	)		
Lake County Property	)	Parcel Nos.:	08-15-0119-0031
Tax Assessment Board of	)		08-15-0119-0089
Appeals	)		08-15-0119-0124
	)		
Respondent.	)		
	)	County:	Lake
	)	Township:	Ross
	)		
	)	Assessment Years:	2000 and 2002

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

**October 9, 2007**

**FINAL DETERMINATION**

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

1. The issue presented for consideration by the Board is whether the subject properties should be granted an exemption under Ind. Code § 6-1.1-10-16 because the property is predominantly used for educational, charitable and fraternal purposes.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. On May 15, 2000, International Union of Operating Engineers (IUOE), Local 150, filed three Form 136, Applications for Property Tax Exemption, for real and personal property for the 2000 assessment year. On May 15, 2002, IUOE filed three Form 136 applications for real and personal property for the 2002 assessment year. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 4, 2005, denying the request for exemption for 2000 and 2002 and finding the properties 100% taxable. On September 2, 2005, pursuant to Ind. Code § 6-1.1-11-7, IUOE filed six Form 132, Petitions to the Indiana Board of Tax Review for Review of Exemption, requesting the Board conduct an administrative review of the properties' 2000 and 2002 assessments.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on July 25, 2007, in Crown Point, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

David A. Fagan, Financial Secretary, IUOE,  
John Garza, Office Manager, IUOE  
For the Respondent:

Sharon Fleming, Director Non-Profit Department, Lake County  
Assessor's Office.

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Aerial photograph of the subject parcels from the Lake County Surveyor's Office as of spring 1999,
- Petitioner Exhibit 2 – Floor plan for the subject building,
- Petitioner Exhibit 3 – Plat of the subject parcels from Ross Township,
- Petitioner Exhibit 4 – Letter from the Lake County Board of Review granting IUOE 100% exemption for 1992,
- Petitioner Exhibit 5 – Letter from the Lake County Board of Review granting IUOE 100% exemption for 1996,
- Petitioner Exhibit 6 – By-laws of IUOE Local 150, 150A, 150B, 150C,
- Petitioner Exhibit 7 – Certification of Incorporation under the General Not For Profit Corporation Act from the Illinois Secretary of State,
- Petitioner Exhibit 8 – 2004 Annual Report of IUOE filed with the Illinois Secretary of State,
- Petitioner Exhibit 9 – Letter from the Internal Revenue Service stating IUOE Local 150, 150 A, 150 B, 150 C is exempt under 501(c)(5) and the IUOE Building Corporation is exempt under section 501(c)(2),
- Petitioner Exhibit 10 – State of Indiana Certificate of Authority and Application for Certificate of Authority of a Foreign Nonprofit Corporation,
- Petitioner Exhibit 11 – Lease between IUOE and Independence Hill Conservancy District dated June 21, 2001,
- Petitioner Exhibit 12 – 2000 booking log for Angela's Garden,
- Petitioner Exhibit 13 – Letter from IUOE to Angela's Garden terminating the lease as of December 31, 2004,
- Petitioner Exhibit 14 – IUOE profit and loss statements from 1997-2006,
- Petitioner Exhibit 15 – General ledger reports showing donations between 2002 and 2006,
- Petitioner Exhibit 16 – Document from Indiana Secretary of State's website showing the Operating Engineers Children Christmas Fund, Inc. is a non-profit domestic corporation,
- Petitioner Exhibit 17 – Copies of IUOE schedule of events from December 2003 to October 2006,

Petitioner Exhibit 18 – Attendance lists for Haz-Mat, Haz-Woper, OSHA and fork lift classes from 2002-2007,  
Petitioner Exhibit 19 – Attendance lists for COMET classes for 1999-2006,  
Petitioner Exhibit 20 – Definition of structure,  
Petitioner Exhibit 21 – Definition of fraternal benefit association or society.

6. The Respondent did not submit any exhibits.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 132 Petitions,  
Board Exhibit B – Notice of Hearing dated June 19, 2007,  
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,  
Board Exhibit D – Order for Pre-hearing Briefs,  
Board Exhibit E – Hearing sign in sheet.

8. The Board requested the parties submit pre-hearing briefs by July 3, 2007. Both parties timely submitted their briefs.
9. On July 9, 2007, the Petitioner submitted amended petitions for all three parcels for both 2000 and 2002.<sup>1</sup> On July 17, 2007, the Board denied the request to amend the petitions and notified the Petitioner.
10. The subject properties are three contiguous parcels improved with a driveway, garage, pavilion and a one-story building. Parcel No. 08-15-0119-0124 (Parcel 124) and Parcel No. 08-15-0119-0031 (Parcel 31) are located at 2193 W. 84<sup>th</sup> Place and Parcel No. 08-15-0119-0089 (Parcel 89) is located at 8401 Taft Street. All of the parcels are in Merrillville, Indiana.
11. The ALJ did not conduct an on-site inspection of the subject property.

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<sup>1</sup> In the amended petitions, IUOE claimed that, in addition to the educational and fraternal exemption originally sought, IUOE also qualified under Ind. Code § 6-1.1-10-16, charitable and also under Ind. Code § 6-1.1-10-23 and Ind. Code § 6-1-1-30-36.3.

12. For 2000 and 2002, the Lake County PTABOA determined the subject properties to be 100% taxable. For 2000, the Ross Township Assessor assessed the subject properties to be \$17,030 for the land for Parcel 124 (Petition 45-030-00-2-8-00007); \$7,830 for the land for Parcel 89 (Petition 45-030-00-2-8-00006); \$48,760 for the land, \$281,470 for the improvements, and \$19,870 for personal property for Parcel 31 (Petition 45-030-00-2-8-00005). For 2002, the Ross Township Assessor assessed the subject properties at \$522,600 for the land and \$20,700 for the improvements for Parcel 124 (Petition 45-030-02-2-8-00003); \$266,300 for the land and \$13,800 for the improvements for Parcel 89 (Petition 45-030-02-2-8-00002a); \$504,800 for the land, \$1,307,200 for the improvements, and \$93,660 for personal property for Parcel 31 (Petition 45-030-02-2-8-00001).<sup>2</sup>
13. The Petitioner contends the property is entitled to either a full or partial exemption.

### **JURISDICTIONAL FRAMEWORK**

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

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<sup>2</sup> For 2000, the assessor did not value any improvements to parcels 124 or 89, although the Petitioner admitted that there were improvements on those parcels and Petitioner Exhibit 1, an aerial map dated 1999, shows that improvements existed on those parcels.

## **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
  
16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
  
17. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

### **Basis of Exemption and Burden**

18. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
  
19. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government services carry

with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. See generally, *Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996).

21. Worthwhile activities or noble purpose alone is not enough for tax exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E. 2d 850, 854 (Ind. Tax Ct.1990)).
22. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind.Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

### **Petitioner's Contentions**

23. The Petitioner contends the property should be exempt under Ind. Code § 6-1.1-10-16 as a fraternal, charitable and educational organization.
24. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends it is a non-profit, federal tax-exempt organization, incorporated in Illinois and certified as a foreign nonprofit corporation in Indiana. *Wrage argument; Garza testimony*. According to the Petitioner's Articles of Incorporation and By-laws, its purpose is to "promote and advance

the intellectual and moral interests of International Union of Operating Engineers, Local 150, 150A, 150B and 150C, to promote the health and security and to provide facilities for advancing the cultural, educational, social and recreational interests of the International Union of Operating Engineers, Local 150, 150A, 150B, 150C, its members and families.” *Petitioner Exhibits 6 and 7*. In support of this contention, the Petitioner submitted a letter from the IRS, the Petitioner’s By-Laws, a Certificate of Incorporation from the State of Illinois, and a Certificate of Authority from the State of Indiana. *Petitioner Exhibits 6 - 10*.

- B. The Petitioner contends that three parcels, Parcel 31, Parcel 80 and Parcel 124, are at issue in its appeals. *Wrage argument; Petitioner Exhibit 1*. According to the Petitioner, Parcel 31 contains the buildings and the hall and part of the parking lot that is used for the hall. *Wrage argument; Fagan testimony*. Parcel 89 contains the driveway, which is the primary entrance to the building that union employees use six days a week. *Id.; Fagan testimony; Petitioner Exhibit 1*. Similarly, Parcel 124 contains part of the parking lot and also contains part of the building at issue. *Id.*
- C. The Petitioner contends that the primary use of the building is for union/labor purposes, including education, training, recreational and social activities for its members. *Wrage argument*. The Petitioner argues that 30% of the building is used exclusively for the union and 6% is rented to a tax-exempt entity. *Id.; Petitioner Exhibit 2*. The remaining 64% of the area contains the hall, kitchen, foyer, coat rooms, bathrooms, and mechanical room. *Id.*
- D. The Petitioner’s witness, Mr. Fagan, testified that the union uses the hall for Haz-Mat certification classes, OSHA training classes, crane safety training classes, union meetings, contract meetings, retirees’ meetings, and construction organizing membership education training (COMET). *Fagan testimony; Petitioner Exhibits 17-19*. The Petitioner contends that the



educational safety training classes are the types of classes available at local colleges and universities and provide a public benefit. *Fagan testimony.*

- E. According to the Petitioner's witness, COMET classes are held a minimum of 3 or 4 times a year, a 10 hour OSHA class is held 2 to 4 times a year and 40 hour crane training courses are held 2 or 3 times a year. *Fagan testimony.* In addition, steward/foremen meetings are held 4 times a year, retiree meetings are held up to 12 times a year and regular union meetings are held approximately 9 times a year. *Id.* The Petitioner admits there is no log listing all the events for the years under appeal, but argues that documents for subsequent years substantiate its contentions. *Wrage argument; Fagan testimony; Petitioner Exhibits 14, 17-19.*
- F. The Petitioner contends that the hall is also donated for various charitable events. *Wrage argument.* According to Mr. Fagan, the IUOE donated the use of the hall to other tax-exempt organizations, such as the Boy Scouts and ironworkers and for fundraising events. *Fagan testimony.* In addition, the IUOE makes regular charitable donations. *Wrage argument.* In support of this contention, the Petitioner submitted a general ledger report listing the charitable donations for 2002-2006. *Petitioner Exhibit 15.* Mr. Fagan testified that "check-marked" entries on the ledgers represented charitable donations. *Fagan testimony.* Thus, according to the Petitioner's exhibit, the Petitioner donated \$300 in 2002, \$400 in 2003, \$5,450 in 2004, \$25,400 in 2005, and \$3,475 in 2006. *Petitioner Exhibit 15.* There are no documents detailing donations prior to 2002. *Id.*
- G. Further, the Petitioner contends that the hall was used for wedding receptions, banquets and bingo tournaments, catered by Angela's Garden, for which Local 150 Building Corporation received certain income. *Wrage argument.* According to Mr. Fagan, for the tax year 2000, the hall was used for approximately 92 bingo days and approximately 40 wedding receptions.

*Fagan testimony; Petitioner Exhibit 12.* Mr. Fagan testified that the hall has been rented less each successive year. *Wrage argument; Petitioner Exhibits 14 and 17.*

H. Finally, the Petitioner contends IUOE was 100% exempt for 1992 and 1996. *Wrage argument; Petitioner Exhibits 4 and 5.*

### **Respondent's Contentions**

25. The Respondent contends the Petitioner is not entitled to 100% exemption.
26. The Respondent presented the following evidence in support of its contention:
  - A. The Respondent contends that the Petitioner fails to meet the statutory standard for exemption as a fraternal benefit association. *Thiros argument.* The Respondent argues that Ind. Code § 6-1.1-10-23 specifically states that, unless the property is actually occupied and exclusively used by the association for carrying out its intended purpose, the exemption does not apply. *Id.* According to the Respondent, the Petitioner admits the building and property is not exclusively used for union purposes. *Id.* Further, the Respondent argues, IUOE was not incorporated in the State of Indiana for the years under appeal as required by the statute governing fraternal organizations. *S. Fleming testimony.*
  - B. The Respondent also contends that the Petitioner failed to make a prima facie case regarding the Petitioner's claim to exemption for educational and charitable purposes. *Thiros argument.* According to the Respondent, the Petitioner has not presented evidence that the union used the hall for educational or charitable purposes 51% or more of the time. *Id.*

C. Finally, the Respondent argues that IUOE claims that it rented a portion of the building to the Independence Hill Conservancy District, a tax-exempt entity, but the lease submitted commenced on June 21, 2001. *Thiros argument.*

### **Analysis of the Issue**

#### *Union Property is Not Exempt*

27. The Petitioner contends it is entitled to an exemption because it is a non-profit entity whose property is used for union purposes. According to the Petitioner, approximately 30% of the property is used exclusively for the union and 6% is leased to a tax-exempt entity. The remaining 64% of the area contains the hall, kitchen, foyer, coat rooms, bathrooms, and mechanical room which, the Petitioner contends, is predominantly used for charitable, educational and fraternal purposes.
28. The Petitioner assumes that, because IUOE is a union and a non-profit entity, its union offices, land, and outbuildings are exempt. The Petitioner, however, has offered no statute to support a finding that property used for union purposes is exempt. A taxpayer seeking exemption bears the burden of proving that the property is entitled to an exemption by showing that the property falls specifically within the statutory authority for the exemption. *See, e.g., Indianapolis Osteopathic Hospital*, 818 N.E.2d 1009. Here, the Petitioner has not shown that the use of property for union purposes is an exempt purpose. Nor could we find such an exemption.
29. Similarly, the Petitioner's non-profit status does not raise a prima facie case that its property is exempt. The fact that IUOE may be exempt from income taxes does not entitle the Petitioner to a property tax exemption because an income tax exemption does not depend so much on how property is used, but on how money is spent. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*,

667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).

*The Property's Use Is Not Predominantly Charitable or Educational*

30. The Petitioner further claims it uses its property for educational and charitable purposes. Ind. Code §6-1.1-10-16(a) states that “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.” The test used to determine whether all or a portion of a subject property qualifies for an exemption is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
31. Ind. Code § 6-1.1-10-36.3(a) states that “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3(c) further provides that “[p]roperty is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3(c)(3).
32. The Petitioner’s witness testified that the property holds COMET classes a minimum of 3 or 4 times a year. *Fagan testimony*. In addition, a 10 hour OSHA class is held 2 to 4 times a year and 40 hour crane training courses are held 2 or 3 times a year. *Id.* The Petitioner admits there is no log listing all the events for the

years under appeal, but argues that documents for subsequent years substantiate its claim. *Wrage argument; Fagan testimony; Petitioner Exhibits 14, 17-19*. In support of this contention, the Petitioner submitted a calendars of events from December 2003 to October 2006, sign-in sheets for COMET classes for January 1999 to September 2006, and attendance lists for Haz-Mat training, OSHA classes, and forklift training from 2002-2007. *Petitioner Exhibits 17-19*. The exhibits show that Haz-Mat recertification classes were held once a year between 2003 and 2007, a Haz-Woper class was held once in 2002, OSHA training occurred once a year between 2002 and 2007, and forklift training classes occurred once in 2002. The property held four COMET classes in 1999, five in 2000, one in 2001, five in 2002, five in 2003, three in 2004, five in 2005, and three in 2006. Mr. Fagan also testified that various steward/foremen and retiree meetings are held in the hall. *Id.* The Petitioner, however, failed to show how such meetings are “educational.” Thus, Mr. Fagan’s testimony regarding a few dozen training classes fails to prove that education is the predominate use of the building.

33. In addition, Mr. Fagan testified that the IUOE donated the use of the hall to other tax-exempt organizations, such as the Boy Scouts and ironworkers and for fundraising events. *Fagan testimony*. The Petitioner, however, failed to specify any time frame other than “on a regular basis.” *Id.* A taxpayer must present more than anecdotal type information to prove that property is entitled to an exemption. The onus is on taxpayers to produce detailed facility usage reports with supporting documentation of exempt use. *State Board of Tax Commissioners v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002).
34. Finally, the Petitioner argues that the IUOE makes regular charitable donations. *Wrage argument*. In support of this contention, the Petitioner submitted a general ledger report identifying charitable donations of \$300 in 2002, \$400 in 2003, \$5,450 in 2004, \$25,400 in 2005, and \$3,475 in 2006. *Petitioner Exhibit 15*.<sup>3</sup>

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<sup>3</sup> The Petitioner admits that there are no documents detailing its donations prior to 2002.

While charitable giving may serve as evidence to support a claim of charitable use, the statutory test is the predominant use of the property, not the distribution of income for charitable purposes. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d at 1263. The Petitioner has failed to show that its property is entitled to an exemption based on any “charitable use.”

*The Petitioner’s “Fraternal” Use is Not Exempt*

35. The Petitioner also claims it uses its property for “fraternal purposes.” Ind. Code §6-1.1-10-16 includes a “fraternal purposes” exemption. Subsection (b) of that statute states that “A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.” While IUOE may serve some fraternal functions for its members, it is clearly not “owned, used, and occupied by a town, city, township, or county.” The Petitioner has identified no other statute that would exempt property used for “fraternal purposes.”
36. To the extent that the Petitioner argues it is a “fraternal benefit association,” we find that it is not. Pursuant to Ind. Code § 6-1.1-10-23, “tangible property is exempt from property taxation if it is owned by a fraternal benefit association which is incorporated, organized, or licensed under the laws of this state.” Subsection (b), however, states that “This exemption does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” As the Respondent noted, not only did IUOE admit the property was not used exclusively by the association, but the Certificate of Authority from the State of Indiana recognizing IUOE as a foreign nonprofit corporation was not effective until November 24, 2004.
30. Further, while Ind. Code § 6-1.1-10-23 does not define the term “fraternal beneficiary association.” At least one case, has defined the term in interpreting

the predecessor statute to Ind. Code § 6-1.1-10-23. *See State Bd. of Tax Comm'rs v. Fort Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874, 880 (1970). In *Fort Wayne Sports Club*, the court explained that the term “fraternal beneficiary association has a very limited and definitive meaning.” 258 N.E. 2d at 880. The court found that meaning set forth in Ind. Stat. Anno. § 39-4401(b), which was part of a larger statute governing the regulation of fraternal beneficiary associations under the Indiana Insurance Law. *See id.* Ind. Stat. Anno. § 39-4401(b) provided, in relevant part:

The term ‘fraternal benefit society’ or ‘fraternal beneficiary association’ shall mean any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit and having a lodge system and representative form of government, *and which shall make provision for the payment of [death] benefits in accordance with this act.*

*Forty Wayne Sports Club*, 258 N.E.2d at 880 (quoting Ind. Stat. Anno. § 39-4401(b))(emphasis added). In many ways, the definition of “fraternal beneficiary association” set forth in Ind. Stat. Anno. § 39-4401(b) mirrors the language currently found in its successor statute, Ind. Code § 27-11-1-1, which identifies the types of fraternal organizations to which Indiana’s insurance laws apply. Although Ind. Code § 27-1-1 now refers to those organizations solely as “fraternal societies,” the legislative intent behind Ind. Code § 6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana’s insurance laws. That remains true despite the slight difference in terminology between Ind. Code § 27-1-1 and its predecessor statutes. Thus, in order to demonstrate entitlement to an exemption under Ind. Code § 6-1.1-10-23, a taxpayer must prove (1) that it is an organization described in Ind. Code § 27-11-1-1, and (2) that it occupies and uses the property sought to be exempted exclusively for the purposes for which the taxpayer was organized or incorporated. This the Petitioner did not do.

*Each Tax Year Stands Alone*

36. Finally, the Petitioner argued that its property has always been exempt. In support of this contention, the Petitioner submitted two documents showing that the Lake County Board of Review determined the properties to be tax-exempt in 1992 and 1996. *Petitioner Exhibits 4 and 5*. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, evidence that the property was exempt in the past does not raise a prima facie case that the property is exempt in a different tax year. *Id.*
37. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**Summary of Final Determination**

38. The Petitioner failed to raise a prima facie case that its properties are entitled to an exemption for 2000 or 2002. The Board finds in favor of the Respondent.

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

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Commissioner, Indiana Board of Tax Review



## **IMPORTANT NOTICE**

### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>