

REPRESENTATIVE FOR PETITIONER: Robert Skutch, Treasurer

REPRESENTATIVE FOR RESPONDENT: Peggy Hudson, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

FOUNDATION FOR INNER PEACE)	Petition No.: 54-030-02-2-8-00001
INC.,)	
)	Parcel No: Personal Property
Petitioner,)	
)	County: Montgomery
v.)	
)	Township: Union
MONTGOMERY COUNTY PROPERTY)	
TAX ASSESSMENT BOARD OF)	Assessment Year: 2002
APPEALS,)	
)	
Respondent.)	
)	

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

JANUARY 11, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue: Did Petitioner prove that a quantity of paper located at a printing plant in Indiana on March 1, 2002, qualifies for property tax exemption under Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-29?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Montgomery County Property Tax Assessment Board of Appeals (the PTABOA) issued its denial of exemption on August 15, 2002. Pursuant to Ind. Code § 6-1.1-11-7 Robert Skutch, on behalf of the Foundation for Inner Peace, Inc. (the Petitioner) filed a Form 132, Petition for Review of Exemption, seeking the Board's review of the PTABOA decision. The Petitioner filed a Form 132 Petition For Review Of Exemption on August 28, 2002, by certified mail.

Hearing Facts and Other Matters of Record

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, held the hearing on October 13, 2005, in Crawfordsville, Indiana.
3. The Petitioner requested permission to present its argument through written document, the Form 130. *Board Exhibit C; Pet'r Ex. A*. The Respondent did not object to proceeding in this manner.
4. Persons sworn as witnesses at the hearing:
Peggy Hudson, Montgomery County Assessor,
Sue Sams, Union Township Assessor.
5. The following exhibits were presented:
Petitioner Exhibit A – Form 130,¹
Respondent Exhibit A – Form 103, Form 103-W, and Form 113/PP,

¹ Petitioner requested that this case be reviewed "in writing" rather than "in person." *Board Exhibits C, D, E*. Petitioner failed to appear at the hearing and failed to submit any evidence in support of its claims. Respondent offered a Form 130 (identified as Petitioner Exhibit A), which contained a statement of Petitioner's allegations that Respondent read into the record, but probative evidence to support those claims is not in the record.

Respondent Exhibit B – Letter dated August 9, 2004, from Kelly Ewoldt, Deputy Township Assessor, to Mr. Skutch,

Respondent Exhibit C – Letter dated September 10, 2004, from Ms. Ewoldt to Mr. Skutch.

6. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132 Petition for Review of Exemption,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Letter dated August 22, 2005, from Mr. Skutch,
 - Board Exhibit D – Letter dated August 25, 2005, to Mr. Skutch,
 - Board Exhibit E – Letter dated August 30, 2005, from Mr. Skutch.

7. The contested personal property consists of paper used for printing and binding into books. The paper was located at a publishing plant in Union Township, Montgomery County, on the assessment date of March 1, 2002.

8. The Administrative Law Judge did not conduct an on-site inspection of the subject property.

9. For the 2002 assessment, the PTABOA determined the property was 100% taxable.
Board Ex. A, Form 120.

10. Evidence considered particularly relevant to this determination includes the following:
 - (a) Union Township officials received information from R.R. Donnelly indicating that the Petitioner owned inventory in Donnelly’s warehouse. *Resp’t Ex. C.* Later the township assessor received a personal property return for the 2002 assessment year from the Petitioner confirming that it owned the paper. *Resp’t Exs. A, B; Sams testimony.*
 - (b) The claim for exemption based on Ind. Code § 6-1.1-10-29 was denied because the paper was raw material and not finished product. *Sams testimony.* The claim for religious, charitable, and educational exemption based on Ind. Code § 6-1.1-

10-16 was denied because it was untimely filed, but subsequently it was acknowledged that the claim was timely filed. *Hudson testimony; Resp't Ex. B.*

Jurisdictional Framework

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and 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.

Administrative Review and the Petitioner's Burden

12. 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).
13. 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. Washington 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”).
14. 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

15. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1. This provision 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 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 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 Ct. 1996) (non-profit status does not necessarily entitle a taxpayer to tax exemption).

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

18. 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 Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). Therefore, the general rule is that all property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1.

19. The transfer of this obligation to non-exempt properties is not an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of accomplishment of 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)).

20. 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 claimed. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co, Inc. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Issue: Did Petitioner prove that a quantity of paper located at a printing plant in Indiana on March 1, 2002, qualifies for property tax exemption?

Analysis

21. The applicable laws regarding exemption 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.

(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) ... if it were a building.

Ind. Code § 6-1.1-10-29

(a) As used in this section, "manufacturer" or "processor" means a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form. The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual. The terms include a person that:

- (1) dries or prepares grain for storage or delivery; or
- (2) publishes books or other printed materials.

(b) Personal property owned by a manufacturer or processor is exempt from property taxation if the owner is able to show by adequate records that the property:

- (1) is stored and remains in its original package in an in-state warehouse for the purpose of shipment, without further processing, to an out-of-state destination; or

(2) consists of books or other printed materials that are stored at an in-state commercial printer's facility for the purpose of shipment, without further processing, to an out-of-state destination.

(c) Personal property that is manufactured in Indiana and that would be exempt under subsection (b), except that it is not stored in its original package, is exempt from property taxation if the owner can establish in accordance with exempt inventory procedures, regulations, and rules of the department of local government finance that:

(1) the property is ready for shipment without additional manufacturing or processing, except for packaging; and

(2) either:

(A) the property will be damaged or have its value impaired if it is stored in its original package; or

(B) the final packaging of finished inventory items is not practical until receipt of a final customer order because fulfillment of the customer order requires the accumulation of a number of distinct finished inventory items into a single shipping package.

(d) A manufacturer or processor that possesses personal property owned by another person may claim an exemption under subsection (b) or (c) if:

(1) the manufacturer or processor includes the property on the manufacturer's or processor's personal property tax return; and

(2) the manufacturer or processor is able to show that the owner of the personal property would otherwise have qualified for an exemption

22. In order to qualify for an exemption under Ind. Code § 6-1.1-10-29, the Petitioner must prove it is a processor or manufacturer and that the product consists of finished goods ready for shipment out of state. The Petitioner offered no probative evidence that it is a manufacturer or processor. Further, there is no probative evidence that the books were finished and ready to be shipped out of state. The Petitioner therefore has not established a prima facie case showing the property is entitled to an exemption under Ind. Code § 6-1.1-10-29.

23. To qualify for an exemption under Ind. Code § 6-1.1-10-16, the Petitioner must provide probative evidence indicating the property was used and owned for religious, charitable, or educational purposes. In order to qualify for a religious exemption, the Petitioner must show the property is used and own for a religious purpose or for furthering the religious activities of a church. *See State Bd. of Tax Comm'rs v. Wright*, 215 N.E.2d 57 (Ind. App. Ct. 1966) (cabins used by a church for an annual retreat where yearly planning occurred

furthering the religious activities of the church were exempt). A charitable purpose exemption is granted when there is an expectation of a benefit that will inure to the public by reason of the exemption. “The rationale justifying a tax exemption is that there is a present benefit to the general public from the operation of the charitable institution sufficient to justify the loss of tax revenue.” *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990) (internal citations omitted). In order to qualify for an educational exemption under Ind. Code § 6-1.1-10-16, the Petitioner must prove the predominant use of its property is educational. *Trinity School of Natural Health, Inc. v. Kosciusko County Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1236 (Ind. Tax Ct. 2003). When considering an exemption under Ind. Code § 6-1.1-10-16, an organization's educational, charitable and religious contributions should be analyzed together. *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm’rs*, 733 N.E.2d 40, 44 (Ind. Tax Ct. 2000) (citing *State Bd. of Tax Comm’rs v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678, 681 (Ind. 1988)).

24. Allegations that are not supported by probative evidence are not sufficient to support a claim. In this case, the Petitioner did not present any evidence indicating how the paper was being used for religious, charitable, or educational purposes on the assessment date. The Petitioner therefore failed to make a prima facie case that the property was exempt.

25. Finally, the Petitioner contended that it did not own the personal property on March 1, 2002. The Petitioner claimed it arranged for the blank paper to be delivered to the Donnelly plant in mid-January of 2002. The Petitioner filed a personal property return reporting the paper as inventory. Additionally, the Respondent indicated that it received a report from Donnelly identifying the Petitioner as owner of property in Donnelly’s warehouse. The Petitioner did not provide any probative evidence indicating another entity owned the property on March 1, 2002. The Petitioner failed to make a prima facie case it was not the owner of the property.

Final Determination

26. The Petitioner did not present a prima facie case. The Board finds for the Respondent.

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

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.