

**STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW**

EVANSVILLE DOWNTOWN DEVELOPMENT CORPORATION)	On Appeal from the Vanderburgh County PTABOA
)	
v.)	Petition for Review of Exemption Form 132
)	
VANDERBURGH COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	Petition No. 82-029-98-2-8-10000 Personal Property
)	
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 personal property owned by the Evansville Downtown Development Corporation, ("EDDC"), qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable 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, EDDC filed an application for property tax exemption, Form 136, with the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) seeking exemption for charitable purposes. The application was filed on May 14, 1998, for the tax year 1998, payable 1999. The PTABOA denied the application on June 15, 1999 and mailed notice of the same to EDDC.

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 June 28, 1999.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 15, 2000 before Hearing Officer Sandra M. Oakes. Charles A. Compton, Attorney-at-Law and Chairman of the Board of Directors of EDDC, and Eric Persson, President of EDDC, represented the Petitioner. Khri Seger, Hearing Officer, represented the PTABOA.

5. At the hearing, the Form 132 petition, with attachments, was made a part of the record and labeled Board Exhibit A. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 - Articles of Incorporation
Petitioner's Exhibit 2 - By-Laws
Petitioner's Exhibit 3 - EDDC Initial Progress Report
Petitioner's Exhibit 4 - EDDC Progress Report 1999
Petitioner's Exhibit 5 - EDDC Mid-Year 2000 Report
Petitioner's Exhibit 6 - EDDC Balance Sheet for 12/31/1997
Petitioner's Exhibit 7 - Agreement for Services between EDDC and City of
Evansville

Respondent's Exhibit A - Memorandum with Attachments

Item 1 - Exemption Memorandum of the County Board dated
May 21, 1999

Item 2 - Minutes of the County Board Hearing on June 10, 1999

6. The personal property at issue is located in the EDDC office at 209 Main Street, Evansville, Pigeon Township, Vanderburgh County. The Hearing Officer did not view the subject property.
7. The material facts of this case are not in dispute.
8. The PTABOA denied an exemption to EDDC because it found that the organization's purpose did not qualify as charitable pursuant to Ind. Code § 6-1.1-10-16.
9. The Petitioner takes the position that the Board has narrowly and inappropriately construed the type of charitable organizations that may be exempt from property taxation.

10. EDDC was formed at the specific request of city government to halt further blight and deterioration in the downtown area and to invigorate said area. The Petitioner argues that this serves the interests of the public as a whole and lessens the burden of government. Further, the Petitioner maintains that without organizations like EDDC many important civic works would go undone.
11. EDDC Articles of Incorporation (Pet. Ex. 1) indicate that the corporation is a nonprofit, public benefit corporation organized under Section 501(c)(3) of the Internal Revenue Code.
12. Petitioner's representative testified that one program set up for EDDC allows EDDC to be a conduit to facilitate below market rate funds for vacant buildings that are in distress or in need of occupancy. For example, the EDDC helped to package a below market rate loan to induce Stratman's Pharmacy to set up business in a vacant downtown building. The fact that a private entity received a benefit by setting up a business is ancillary to EDDC principal focus, which is to bring vitality to downtown. The above acts are the reason the City of Evansville has retained EDDC and has provided more than half of EDDC funding.
13. Petitioner further argues that EDDC has given a couple of grants to private businesses to enhance the cosmetic appeal of their buildings. If a private entity approaches EDDC about a building that they would like to rescue or rehab with a viable proposal to purchase, EDDC works within its guidelines to assist that entity.
14. The cooperative loan fund that allowed the Stratman relocation is not under EDDC control. The fund is part city monies and part cooperative monies from four banks in the downtown area that set aside funds particularly for this use.

EDDC does not make any money from this and does not charge for any of this service. EDDC just tries to help streamline and expedite the process as it serves the city's goals for the downtown redevelopment areas and satisfies the banks in their community reinvestment activities.

15. Petitioner also testified that EDDC also maintains a publicly available database of the properties in the downtown area. EDDC has stepped in and worked with the owners to find an economic use for buildings slated for demolition such as the property located at 615 Main Street. Other testimony established that, at least in part through EDDC efforts, the tax base has increased while urban blight has decreased in the downtown area. (Persson testimony).
16. The PTABOA representative testified that he did not dispute the testimony offered by EDDC representatives. However, Board argued that the downtown developers or property owners were the primary beneficiaries of EDDC activities and this activity is not charitable within the meaning of the Indiana Statute. (Seeger testimony).

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 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.
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, n. 13 (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 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.

Constitutional and Statutory Basis for Exemption

9. The General Assembly may exempt from property taxation any property being used for educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
11. In this appeal, EDDC claims exemption 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 charitable purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).
12. In Indiana, the fact that a nonprofit entity owns the property under examination 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 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property

must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3. Therefore, the EDDC status as a 501(c)(3) entity does not, in itself, provide a basis for exemption.

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 views 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 property would otherwise have paid, and this should never be seen as an inconsequential shift.
16. For precisely this reason, worthwhile activities or a “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)).

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).
18. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, the taxpayer must demonstrate that it provides “a present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d 1247 (Ind. 1991)).
19. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
20. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity,” namely:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E. 2d at 813 -14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979).

21. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
22. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *Name*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279.

Conclusions Regarding Charitable Purpose Claim

23. Thus, in considering EDDC charitable purpose claim, the question arises as to whether there is a correlation between EDDC activities and charitable purposes such as to justify tax exemption. Further, assuming that such correlation exists, the issue remains whether the record demonstrates the predominant use of the property.
24. The EDDC Articles of Incorporation, in pertinent part, provide that EDDC is a not for-profit corporation organized for the following purposes:
 - a. to promote charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
 - b. to combat community deterioration; and
 - c. to lessen the burdens of government;
25. The EDDC contract with the City of Evansville dated November 18, 1997 provides, in pertinent part, that EDDC shall perform the following services:

- a. Stimulate the development of projects downtown.
 - b. Work with Downtown businesses and property owners to assist in maintaining and/or expanding their businesses.
 - c. Assist new business developers in locating to Downtown Evansville by marketing the benefits and financial incentives that make downtown an attractive investment.
 - d. Maintain an inventory of all properties and buildings in the Downtown area.
 - e. Develop a program that will allow the EDDC to be self-supporting within five (5) years.
 - f. Develop a program that will impact 60,000 square feet of property within five (5) years.
 - g. Have in place a \$2.5 million equity fund within ten (10) years.
26. While EDDC is formed as a not-for-profit entity, it partners with for profit entities. The direct beneficiaries of EDDC activities are the investors who receive various types of tax credits in exchange for funds, and businesses that receive the below-market loans for business development or enhancement benefit.
27. In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *NAME* at 221.
28. Further, to qualify for a tax exemption property must be predominantly used for the exempt purpose. See Ind. Code § 6-1.1-10-36.3. "Predominant use" is defined as property used or occupied for the exempt purpose more than 50% of the time. *Id.*

29. The EDDC function as a “conduit” is best described as a marketing activity primarily directed at assisting for profit entities. Clearly its predominant purpose deals with aiding commercial business and property development as previously mentioned.
30. While these might be activities a governmental entity may choose to engage in, they are not obligations that the government would “otherwise be required to fill” consistent with the intent of *NAME, Foursquare Tabernacle* and other relevant Indiana case law.
31. Regardless of whether the Petitioner’s activities may further a governmental purpose, they do not fall within the established concept of a “charitable purpose.”
32. For all of the above reasons, the State finds that EDDC has not carried its burden of proving that its activities qualify as a “charitable purpose” pursuant to Ind. Code § 6-1.1-10-16. Accordingly, EDDC does not qualify for a property tax exemption for personal property and is subject to 100% taxation for the tax year 1998.

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