

REPRESENTATIVES FOR PETITIONER: Steven Perry, Executive Director – Evansville Rescue Mission

REPRESENTATIVES FOR RESPONDENT: J.F. Rick Barter, Vanderburgh County Hearing Officer

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EVANSVILLE RESCUE MISSION,	)	Petition No.: 82-030-96-2-8-00136
	)	
Petitioner	)	County: Vanderburgh
	)	
v.	)	Township: Scott
	)	
VANDERBURGH COUNTY	)	Parcel No.: 0704009067029
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS and	)	Assessment Year: 1996
SCOTT TOWNSHIP,	)	
	)	
Respondents.	)	
	)	

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

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**October 16, 2002**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

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

### **Issue**

1. The issue presented for consideration by the Board were:  
*ISSUE – Whether the property tax exemption granted by the PTABOA should be limited to 50 acres of the 105-acre parcel.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Steven Perry, Executive Director of the Evansville Rescue Mission filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 4, 1997. The determination of the County Board was issued on July 10, 1997. The County Board's determination granted 100% property tax exemption for the improvements and 47.7% property tax exemption for the land. The County Board denied exemption for 52.3% of the land.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 20, 2002 in Evansville, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

Mr. Steven Perry, Executive Director – Evansville Rescue Mission

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Assessor's Office

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. Steven Perry, Executive Director – Evansville Rescue Mission

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Assessor’s Office

6. The following exhibits were presented:

For the Respondent:

Respondent’s Exhibit A – Hearing Memorandum presenting Vanderburgh County’s Comments.

For the Board:

Board Exhibit A - The Form 132 petition.

Board Exhibit B - Notice of Hearing dated July 2, 2002.

### **Jurisdictional Framework**

7. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

### **State Review and Petitioner’s Burden**

8. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
9. The petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230

(Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

10. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
11. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
12. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case.’ See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

### **Constitutional and Statutory Basis for Exemption**

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.

14. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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.

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

16. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
17. 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).
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 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.

19. 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)).
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 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).
21. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), 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 (Ind. Tax 1991)).

### **Discussion of Issues**

ISSUE – *Whether the property tax exemption granted by the PTABOA should be limited to 50 acres of the 105-acre parcel.*

22. The Petitioner contends that property tax exemption should be applied to all of its 105 acres.
23. The Respondent contends that property tax exemption for the land is statutorily limited to 50 acres.
24. This issue is governed by:

**Ind. Code § 6-1.1-10-16(c):** A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

(1) a building which is exempt under subsection (a) or (b) is situated on it; and

(2) The tract does not exceed:

(A) Fifty (50) acres in the case of:

(i) An educational institution;

(ii) A tract that was exempt under this subsection on March 1, 1987; or

(B) Two hundred (200) acres in the case of a local association formed for the purpose of promoting 4-H programs; or

(C) Fifteen (15) acres in all other cases.

25. Evidence and testimony considered particularly relevant to this determination include the following:

A. The subject property has held property tax exemption since 1917.

B. The Form 5748, Required Information for Property Tax Exemption.

#### Analysis of ISSUE 1

26. The Petitioner argues that exemption should be granted for all of its 105 acres of land rather than limiting the exemption to 50 acres. The Petitioner presented the testimony of its witness in support of its position that, because (1) the property had been wholly exempt prior to 1996 and (2) the property is used in a manner similar to the YMCA or other charitable organizations, all of its 105 acres should be exempt.

27. The problem with the Petitioner's argument is that the YMCA is specifically exempted by Ind. Code § 6-1.1-10-25, which states: "subject to the limitations in subsection (b) of this section tangible property is exempt from property taxation if it is owned by any of the following organizations: (1) Young Men's Christian Association." The statute goes on to list eleven (11) other specific organizations.

28. The application of § 6-1.1-10-25 is limited to the organizations it lists. Petitioner cannot prevail simply because the subject property is used in a similar manner to the YMCA.

29. The Respondent granted the Petitioner an exemption under Ind. Code § 6-1.1-10-16 for charitable purposes. It is under this section that the determination of the amount of land exempt from taxation must be determined. Petitioner's claim is defeated by the limiting terms of the very statute under which it claims to be exempt, Ind. Code § 6-1.1-10-16 (limiting the exemption to no more than 50 acres.)
30. The property's previous exemption history is relevant only to the extent of determining whether the land limitation is 15 acres or 50 acres. The fact that all of the Petitioner's 105 acres received property tax exemption from 1917 until 1996 does not spare the Petitioner from legislative limitations applicable to property tax exemption for land.
31. The Petitioner's claim that the property qualifies for exemption of all 105 acres because the property is used like a YMCA must fail. The statute that grants the YMCA their exemption is specifically limited to certain organizations. The Evansville Rescue Mission is not listed in Ind. Code § 6-1.1-10-25; therefore, it cannot qualify for an exemption under that section.

### **Summary of Final Determination**

ISSUE – *Whether the property tax exemption granted by the PTABOA should be limited to 50 acres of the 105-acre parcel.*

32. The Petitioner did not make a prima facie regarding its claim that exemption was not limited to 50 acres of land. No change is made to the taxable/exempt status of the subject property.

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

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Chairman, 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.**