

REPRESENTATIVE FOR PETITIONER: Allen Demkovich, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Kathleen L. Rhodes, Fayette County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

FAYETTE COUNTY DEMOCRAT CENTRAL COMMITTEE,)	
)	Petition No.: 21-010-08-2-8-00001
)	
Petitioner,)	Parcel No.: 21-05-25-124-004.000-003
)	
v.)	Fayette County
)	
FAYETTE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,)	Connersville Township
)	
)	Assessment Year: 2008
Respondent.)	

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

April 8, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings and conclusions of law on the following issues:

Issue 1 – The Property Tax Assessment Board of Appeals denied exemption for the subject property for 2008. Is its determination on the exemption invalid because that Board’s composition fails to meet statutory requirements?

Issue 2 – Is the real property that the Fayette County Democrat Central Committee owns and uses for its meetings and various other things entitled to an educational exemption based on Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Fayette County Democrat Central Committee (Central Committee) filed a Form 136 Application for Property Tax Exemption for the subject property on June 24, 2008. On that form it indicated the exempt uses or purposes were charitable, educational, and “other.” The application was for the assessment as of March 1, 2008.
2. The Property Tax Assessment Board of Appeals (PTABOA) denied the exemption on July 16, 2008.
3. On August 8, 2008, the Petitioner filed a Form 132 Petition for Review of Exemption requesting the Board to consider the exemption claim. On the Form 132 it indicated the exempt uses or purposes were educational under Ind. Code § 6-1.1-10-16 and “other” without citing any other specific statute.

Hearing Facts and Other Matters of Record

4. The Board conducts an impartial review of appeals concerning assessed valuations, deductions, and exemptions for tangible property. Ind. Code § 6-1.5-4-1(a). Such appeals are conducted under Ind. Code § 6-1.1-15.
5. Administrative Law Judge, Kay Schwade, held the hearing in Connersville on January 8, 2009. She did not conduct an on-site inspection of the property.
6. Tim Rose, Donna Schroeder, and Arleen Boughner were sworn as witnesses and testified for the Petitioner. Mr. Rose is the Chairman of the Central Committee. Ms. Schroeder is the Vice-Chairperson. Ms. Boughner is the Financial Secretary. County Assessor Kathleen Rhodes also was sworn and testified.

7. The Petitioner did not present any exhibits.
8. The Respondent presented the following exhibits:
 - Respondent Exhibit A – An email from Joe Lukomski,
 - Respondent Exhibit B – Copy of Ind. Code § 6-1.1-10-16(a),
 - Respondent Exhibit C – Page 5 from the Springhill Christian Ministries Findings and Conclusions with paragraph 10 highlighted,
 - Respondent Exhibit C-1 – Copy of Ind. Code § 6-1.1-10-36.3,
 - Respondent Exhibit D – Page 5 from the Springhill Christian Ministries Findings and Conclusions with paragraph 11 highlighted,
 - Respondent Exhibit D-1 – Copy of Ind. Code § 6-1.1-2-1,
 - Respondent Exhibit E – Form 136 with the claim for exemption highlighted,
 - Respondent Exhibit E-1 – Page 6 from the Springhill Christian Ministries Findings and Conclusions with paragraphs 15 and 16 highlighted,
 - Respondent Exhibit F – Form 132 with portions of Section III highlighted.
9. The following additional items are part of the record:
 - Board Exhibit A – Form 132 petition with attachments,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing Sign In sheet.
10. At the hearing, the parties were instructed to submit post-hearing briefs on or before January 15, 2009. The briefs were timely submitted and entered into the record.
11. The subject property is a lot and three-story building at 426 Central Avenue in Connersville.
12. The PTABOA determined it is 100% taxable for 2008.

Objections

13. The Petitioner objected to Respondent's Exhibits C, D, and E-1 on the basis of relevance. Those documents are nothing but pages from a prior Board decision (*Springhill Christian Ministries*) with isolated paragraphs highlighted. They merely state general principles of law regarding the application of property tax exemptions in Indiana—well-settled

principles that do not appear to be disputed in this case and principles that are relevant to the determination of any exemption case. Even though the Respondent marked and offered the pages as evidence, there is no evidentiary aspect to them. They are not evidence. They are argument. Therefore, the Board will neither sustain nor overrule the objections. Those pages are not considered to be part of the evidence.¹

Summary of the Petitioner's Case

14. The PTABOA was not legally comprised pursuant to Ind. Code § 6-1.1-28-1(a) on July 16, 2008. Its composition did not comply with the statutory requirement of having two freehold members appointed by the County Commissioners. Therefore, its denial of the exemption application is invalid. *Demkovich argument; Pet'r Brief.*
15. The Petitioner is a not-for-profit organization. The subject property has been tax exempt since the Petitioner purchased it in 1994. *Rose testimony; Boughner testimony.*
16. This building has three stories, but the second and third floors have no electricity, water, or heat. "We never, hardly ever go up there unless we need something up there—a box or whatever." *Rose testimony.*
17. The Petitioner does not lease any part of the subject property for income purposes. The Petitioner does not conduct any retail activity at the subject property. *Pet'r Brief at 3; Rose testimony; Boughner testimony; Schroeder testimony.*²

¹ Although the Petitioner made no objection to the Respondent's Exhibits B, C-1, and D-1 (copies of statutes), there also is no evidentiary aspect to those exhibits. Statutes, court cases, and prior decisions of the Board do not need to be *proved* as an evidentiary matter. Nevertheless, relevant statutes, court cases and prior decisions are among the things that should be brought to the Board's attention through arguments, briefs, etc. Providing a copy of such items for the Board's convenience is often appropriate.

² The fact that no retail activity takes place was not disputed. As an alternative argument, the Petitioner attempted to argue that if the property is not exempt, then the assessed value is wrong because that value was determined by using a retail pricing model. Challenging the methodology used to value the subject property, however, is not relevant to the claim for exemption and the valuation issue will not be addressed in this determination.

18. The subject property should be 100% exempt under Ind. Code § 6-1.1-10-16 because it is used for educational purposes. It is used for meetings of the Democrat Central Committee, the Men's Club, and the Women's Club. The subject property is opened to the public prior to election time and used to educate the public regarding political issues, the names and qualification of the candidates, polling locations, voter registration, absentee voting, and obtaining rides to the polls. High school students are also educated on these matters as well as the duties of various poll workers including inspector. These educational services are provided regardless of party affiliation. *Demkovich argument; Pet'r Brief at 1; Rose testimony; Boughner testimony; Schroeder testimony.*

Summary of the Respondent's Case

19. The Petitioner's not-for-profit status is not in question. The fact that the property is owned by a not-for-profit organization does not necessarily mean that it is entitled to exemption. *Rhodes argument.*
20. The fact that the property has been exempt since the Petitioner purchased it in 1994 also does not mean the property is entitled to exemption. *Rhodes argument.*
21. The county's Department of Local Government Finance field representative advised that the Petitioner's use of the property does not appear to meet the qualifications for the exemptions provided under Ind. Code § 6-1.1-10-16 and the Petitioner's activities are not listed specifically under any other exemption statute. *Rhodes testimony; Resp't Ex. A.*
22. The exemption for the Republican Party's building was also denied. *Rhodes testimony.*

Analysis

Issue 1: Is the PTABOA determination on the exemption invalid because the composition of that board fails to meet statutory requirements?

23. The Petitioner's claim regarding the composition of the PTABOA is tangential to this case. It does not aid in determining the qualification of the property for exemption.
24. The Petitioner did not explain what relief it sought if the PTABOA determination were invalidated, but implied that the property should default to exempt status because an exemption was allowed in prior years. The Petitioner, however, provided no support or substantial explanation for that position. Even if the Petitioner is correct about the improper composition of the PTABOA, invalidating that determination would not grant the exemption.
25. Furthermore, the Petitioner will not be harmed or prejudiced by any flaw in the PTABOA composition or its determination because both parties had the opportunity to present cases to the Board for full, de novo consideration. The Board need not address the validity of the PTABOA determination and will make a determination based on the merits of the exemption claim.

Issue 2: Is the real property that the Fayette County Democrat Central Committee owns and uses for its meetings and various other things entitled to an educational exemption based on Ind. Code § 6-1.1-10-16?

26. As a general proposition, all tangible property in Indiana is subject to taxation. Ind. Code § 6-1.1-2-1. But Ind. Code § 6-1.1-10-16(a) provides an exception: "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." If a property is exclusively used for exempt purposes, then it is totally exempt. If a property is predominantly used for exempt purposes then it gets a partial exemption based on the percentage of exempt use. If a property is predominantly used for non-exempt purposes,

then it gets no exemption. Ind. Code § 6-1.1-10-36.3(b). “Predominant use” means more than 50% of the time that a property is used during the year that ends on the assessment date. Ind. Code § 6-1.1-36.3(a).

27. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm’rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Exemption provisions, however, are not to be construed so narrowly that the legislature’s purpose is defeated or frustrated. *See id.* Furthermore, the listed exempt purposes are to be construed broadly and in accordance with their constitutional meaning. *Trinity Episcopal Church*, 694 N.E.2d at 818.
28. “The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks.” *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
29. Exemptions are decided based on the actual use of a property. Not-for-profit status does not establish any inherent right to be tax exempt. *See Knox Co. Prop. Tax Assessment Bd. of Appeals v. Grandview Care*, 826 N.E.2d 177, 182-183 (Ind. Tax Ct. 2005); *Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm’rs*, 521 N.E.2d 1360, 1361 (Ind. Tax Ct. 1998); *Raintree Friends Housing, Inc. v. Indiana Dep’t of Rev.*, 667 N.E.2d 810, 816 n.8 (Ind. Tax Ct. 1996).
30. “Education,” as that term is broadly understood, can occur anywhere. A more restrictive definition is required to avoid irrationally applying the exemption statute. *Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm’rs*, 258 N.E.2d 874, 881 (1970). To get the educational exemption, a taxpayer must demonstrate a public benefit by showing it provides education that is the “substantial equivalent” of instruction offered in Indiana’s tax-supported institutions. The closer the taxpayer’s activity is to traditional educational programs offered in public schools, the more obvious the public benefit. *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1266 (Ind. 2006).

31. The Petitioner failed to establish that the use of the subject property for political meetings of the Central Committee, the Men’s Club, and the Women’s Club is educational. Similarly, the Petitioner failed to establish that using the property for “educating” the public about political issues and candidates is equivalent to instruction offered in tax-supported institutions, which would be required to justify an exemption. Providing information about polling locations, registering voters, helping with absentee voting, and getting people rides to the polls may be admirable, civic-minded functions, but there is no evidence that they are educational within the meaning of Ind. Code § 6-1.1-10-16. These types of uses do not weigh in favor of the Petitioner’s claim. *See Roller Skating Rink*, 853 N.E.2d at 1266; *Fort Wayne Sports Club*, 258 N.E.2d at 881.
32. The evidence shows that the Petitioner opens the subject property to the public prior to election time for the purpose of “educating” the public on election procedures, names and qualifications of candidates, and other similar activities. The evidence also shows that the Petitioner provides this same information to local high school students during an election year. Even if there is some amount of truly educational use of the property, the Petitioner provided no evidence to quantify the various types of usage. Assuming, *arguendo*, that some use of the subject property was educational, the exemption must be denied. The evidence does not establish specifics about how much the property is used in that manner. Under the predominant use test, the evidence must show that more than 50% of the total usage is for exempt purposes before any exemption is allowed. Ind. Code § 6-1.1-36.3(a)-(b). Without evidence to determine the amount of time the property was used for specific purposes, it is impossible to determine predominant use or grant any exemption.
33. The undisputed evidence established that the subject property received exemption in prior years. That fact, however, is not a reason for continuing to allow an exemption that does not meet statutory requirements. In Indiana, each assessment year stands alone. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm’rs*, 568 N.E.2d 1116 (Ind. Tax Ct. 1991); *Thousand Trails Inc. v. State Bd. of Tax Comm’rs*, 757 N.E.2d 1072, 1077 (Ind. Tax Ct.

2001). The exempt status for prior years does not prove an educational use exemption must be allowed for 2008.

Summary of Final Determination

34. The Petitioner failed to prove that the subject property qualifies for any exemption. Therefore, the subject property is 100% taxable.

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

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>>