

**STATE OF INDIANA
BOARD OF TAX REVIEW**

FOUNDATION AGAINST COMPANION ANIMAL EUTHANASIA (FACE))	On Appeal from the Marion County Board of Review
)	
Petitioner,)	
)	
v.)	Petition for Review of Exemption Form 132
)	
MARION COUNTY BOARD OF REVIEW)	Petition Nos. 49-101-98-2-8-00007 49-101-98-2-8-00008
)	
Respondent.)	Parcel Nos. 1097566 1053390 1018649 1061184

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 real property owned by Foundation Against Companion Animal Euthanasia (FACE), qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable or educational 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. FACE is an Indiana not for profit corporation that operates a high volume, low cost spay/neuter clinic in Marion County. The property at issue involves real property and improvements located at 1530 and 1536 Brookside and 1507 and 1523 Massachusetts Avenue, in Center Township in Marion County, Indiana.
3. Pursuant to Ind. Code § 6-1.1-11-3, FACE filed an application for property tax exemption with the Marion County Board of Review (County Board). The application was filed on May 11, 1998, for the tax year 1998 payable 1999, alleging exemption for charitable purposes.
4. The County Board denied the application and found the property and improvements at issue to be 100% taxable. The County Board notified FACE of its determination on July 31, 1998.
5. Thereafter, pursuant to Ind. Code § 6-1.1-11-7, on August 28, 1998, FACE filed a Form 132 Petition for Review by the State, alleging exemption for charitable and educational purposes, and alleging disparate treatment. See Board's Exhibit A.
6. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held in this matter on August 28, 2000, before Hearing Officer Sandra M. Oakes. FACE was represented by Alice Morical, of the law firm of Johnson Smith, counsel for FACE, and by Ellen Robinson, Clinical Administrator of FACE. The Marion County Board of Review was represented by Mrs. Melissa Tetrick, Exemption Deputy for Marion County. Testimony and documents were received into evidence.
7. At the hearing, the Form 132 petition and attachments filed by, or on behalf of,

FACE, were made a part of the record and identified as Board's Exhibit A.

8. At the hearing, Ms. Morical provided a copy of the Power of Attorney previously filed with the State Board to the Hearing Officer. On June 8, 2001, Ms. Morical filed additional Powers of Attorney for the law firm of Hoover Hull, Baker & Heath under both Petitions. The subsequent Power of Attorney forms are marked and admitted herein as the Board's Exhibit B.

9. At the hearing, FACE presented the testimony of Ms. Ellen Robinson, Clinical Administrator of FACE. The following exhibits were admitted into evidence without objection:

Petitioner's Ex. 1: Humane Society's Application for Exemption

Petitioner's Ex. 2: Documentation Showing Humane Society Granted 100% Exemption

Petitioner's Ex. 3: Letter Showing "501c3" exempt status from IRS

Petitioner's Ex. 4: FACE's Articles of Incorporation

Petitioner's Ex. 5: FACE's By-Laws

Petitioner's Ex. 6: Newsletters Sent by FACE

Petitioner's Ex. 7: Brochures Used by FACE About Issues

Petitioner's Ex. 8: Synopsis of FACE

Petitioner's Ex. 9: FACE's List of Activities, 1997 - 2000

Petitioner's Ex. 10: Newspaper articles written about FACE

Petitioner's Ex. 11: 1997 Tax Return

Petitioner's Ex. 12: Profit and Loss Statements for 1998

Petitioner's Ex. 13: Profit and Loss Statements for 1999

Petitioner's Ex. 14: Profit and Loss Statements for 2000

Petitioner's Ex. 15: Letters of Support

Petitioner's Ex. 16: USA Today article

Petitioner's Ex. 17: Summaries of Other Cities with Low Cost Spay/Neuter Programs

Petitioner's Ex. 18: Monthly Surgery Report Summary

10. The Respondent presented the testimony of Ms. Melissa Tetrick, Exemption Deputy for Marion County, and Respondent offered no exhibits at the hearing.
11. Ellen Robinson, Clinical Administrator for FACE, testified to the following:
 - a. She first became involved with FACE in 1996 during the fund raising stage wherein FACE hoped to raise \$200,000. The final \$20,000 was donated by Bob Barker's Foundation and FACE began the establishment of the building and clinic.
 - b. Ms. Robinson originally helped the organization on a volunteer basis at first to help organize the Homeless Animal Day activities at Broad Ripple Park, which is a national event sponsored by many organizations, and then after the completion of the initial fund drive, Ms. Robinson became the Administrator of FACE.
 - c. During the initial fund drive, Mrs. Robinson became the event coordinator early on and participated in regular meetings and had a weekly table at Petsmart to raise awareness of the importance of pet overpopulation and spay/neutering and to raise funds.
 - d. Years ago, the President of FACE heard about other programs, such as the Animal Foundation in Las Vegas, Nevada, wherein these programs started low cost spay/neutering clinics and subsequently saw a decline in the number of companion animal euthanasia procedures performed.
 - e. The Las Vegas program allowed the city, even in the midst of an animal population explosion, to almost become a "no kill" city in which only those animals which are sick or injured are euthanized.
 - f. FACE's president presented these ideas to the Humane Society of Indianapolis, which at that time, was not interested in a spay/neuter clinic, and so FACE began its own fundraising efforts even as early as 1993.
 - g. FACE has tried to model clinics in Houston and San Francisco who have also had successes with spay/neuter clinics.
 - h. The number of animals euthanized in Marion County on an annual basis is, on average, 20,000 animals per year at the Humane Society and at the

Animal Control facility.

- i. FACE's goal is to see an impact within two to three years of operation and then a more dramatic effect upon the number of animals euthanized in shelters within five years of operation and then, like Las Vegas, to become a "no kill city" within ten years.
- j. Other cities with similar clinics have an impact on city costs for animal control. Animal control has spent hundreds of thousands per year to kill animals. The Humane Society's estimate to handle and euthanize an animal is up wards of \$100 per animal, and that does not include the costs of disposal of the animal. Likewise, that estimate does not take into account the human toll of having to euthanize the animals.
- k. FACE wanted to be centrally located to affect the Marion County population and accessible to the interstates so as to be easy for people to get to. The property located at 1505 Massachusetts Avenue was formerly owned by Brandt construction and was sold to FACE for \$ 60,000 with the remaining portion being a charitable contribution.
- l. FACE spent \$250,000 renovating the building and fundraising continued to allow FACE to open the clinic in March of 1999.
- m. FACE opened with one veterinarian and two technical staff members along with Mrs. Robinson, and the clinic initially performed twenty surgeries per day, open four days per week, ten hours per day.
- n. The clinic does only low cost spay/neutering and runs a low cost vaccine clinic in the afternoon for about an hour.
- o. The goal of the price point for surgery is to set the price at an amount that people will come. The average price in the area for a cat to be spayed, is \$80.00 to \$100.00, and for a female dog to be spayed, the average cost is \$100.00 to \$200.00. FACE charges \$20.00 for female cats and \$25.00 to \$50.00 for female dogs. The rationale of the clinics is to make it accessible as to location and the price structure.
- p. FACE added a second veterinarian in June of this year and expanded services to be open six days per week. FACE has 4-6 technicians, depending upon the day of the week.

- q. FACE's clinic is open to everyone, regardless of income. In Indianapolis, there are coupons for low cost surgeries at local veterinary clinics, which have been around for a while, and there are about 500 to 1000 per year of those surgeries performed. FACE does not want to place any impediments on people coming and therefore does not place limitations on provision of services.
 - r. Late last year and earlier this year, a donor left a fund specifically for stray animals which allowed people to bring in strays and have them spayed or neutered for free.
 - s. Another fund, an urban spay/neuters fund, was established by a couple of donors for that fund, for certain downtown zip codes where there was a need. This fund was established around the same time that Animal Control was doing "round ups" of strays due to the large numbers of strays in the downtown area. FACE used a coupon program for this, but people just had to call, the coupon program was more a communication piece to inform people of the services available.
 - t. FACE is exempt from federal income taxation as a 501c(3) charity.
 - u. FACE has received grants from Bob Barker's Foundation, Petsmart Charities, the Indianapolis Foundation, and the Pulliam Charitable Trust, in addition to funds from individuals locally and nationally who care about animals.
 - v. In FACE's first year of operation, ending March of 2000, FACE completed over 7,000 surgeries with only 8 months of surgeries. Mrs. Robinson postulated that estimates say for every animal spayed or neutered, three animals are prevented from being born, so in essence FACE had prevented 21,000 animal births. Mrs. Robinson further testified that in the year 2000, FACE had completed 11,500 surgeries and was approaching 12,000 surgeries by the end of this particular month. FACE's goal had been to perform more than 10,000 per year.
12. Mrs. Melissa Tetrick, Exemption Deputy, Marion County, testified to the following:
- a. This decision occurred prior to Mrs. Tetrick beginning her position as

Exemption Deputy.

- b. The Board denied the application as it did not see the Petitioner as a charitable organization.
 - c. The Humane Society also does animal adoptions and FACE does not.
 - d. That as FACE did not do animal adoptions or sheltering, FACE did not remove animals from the street.
13. The Hearing Officer did not view the subject property.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden In General

2. In reviewing the actions of the County Board (or 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). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
4. 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).

B. Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, FACE 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 charitable or educational purposes.
7. 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.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. 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).

10. 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 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.
11. 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)).
12. 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).
13. 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)).

D. Charitable Purpose

14. 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)).

15. “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)).

16. 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).

17. 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. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.

18. Thus, in considering FACE's charitable purpose claim, the question arises as to whether there is a correlation between its activities and benefit to the public so as to justify tax exemption. Further, assuming that such correlation exists, the issue remains whether the record demonstrates the predominant use of the property.
19. There are obvious benefits to the public in controlling the population of unwanted animals. The most compelling of which is the reduction in the number of stray animals (which may be comprised of lost "pets" or simply unwanted animals or the offspring of either,) which may become sick, injured and/or possibly dangerous to the public at large.
20. Further, local governments have traditionally taken on the obligation of animal control, including establishing animal pounds.
21. The government, and ultimately the taxpayer, incurs expense in retrieving, boarding, euthanizing, and disposing of unwanted animals.
22. FACE presented uncontroverted evidence that programs in other municipalities which combined low cost spay/neuter clinics with other animal control efforts reduced the number and costs of euthanized animals in animal control facilities.
23. The evidence demonstrated that FACE's activities, the provision of a low cost/high volume spay/neuter clinic provides a benefit to the public.
24. Indiana has construed "charitable" endeavors as applied to relief of *human* want and *human* suffering, though an argument can be made that relief of animal suffering likewise relieves human suffering. Other jurisdictions have adopted this position where there is a benefit to the public. See, e.g., *Farm Sanctuary v. Patton*, 221 A.D. 67, 643 N.Y.S.2d 770 (1996), citing *Matter of North Manursing Wildlife Sanctuary [City of Rye]*, 48 N.Y.2d 135, 140, (the Court held the care and comfort of animals is generally beneficial to mankind and remanded to local

taxing authorities to determine extent of benefit to the public.) See also, *Commonwealth of Pennsylvania v. American Anti-Vivisection Society*, 377 A.2d 1378, 32 Pa.Commw. 70, (1977), (main activity of taxpayer is influencing public opinion and legislation that is favorable to its tenets and beliefs and there is no clear nexus between the activities and any alleged benefit conferred either on society or animals to justify exemption from sales tax)

E. Predominant Use

25. Property must be predominantly used for the exempt purpose. 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.*
26. The building and land at issue is used solely in the operation of the low cost spay/neuter clinic and low cost vaccine clinic and therefore the property is predominantly and solely used for exempt purposes.
27. For the above reasons, the State finds that FACE is entitled to 100% exemption for charitable purposes for the tax year 1998, payable 1999.

F. Educational Purpose

28. FACE did not include a claim for exemption for educational purposes in its original Form 136 applications for exemption, although FACE did claim it was entitled to an educational exemption in its Form 132 Petitions for Review. (See Board’s Exhibit A.
29. For purposes of an educational exemption, the term “education” is not restricted to academic curricula or to ivy covered halls. *State Board of Tax Commissioners v. Fort Wayne Sport Club*, 147 Ind. App. 129, 258 N.E.2d 874 (1970).

30. To qualify for an education purpose exemption, FACE must show that it “provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.” *NAME*, 671 N.E. 2d at 221 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).
31. “An educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction.” *NAME*, 671 N.E. 2d at 222 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 881-82).
32. Accordingly, FACE is required to affirmatively show that it provides educational training that would otherwise be furnished by tax supported schools.
33. FACE presented evidence that it issues a newsletter and maintains brochures, however, the record does not demonstrate that tax supported schools provide education or are required to provide instruction regarding spay/neutering procedures or pet care such that these activities relieve a government obligation.
34. For all of the above reasons, the State finds that FACE is not entitled to the educational purpose claim for the tax year 1998 payable 1999.

G. Disparate Treatment

35. FACE argued that the denial of its exemption constituted disparate treatment in that other organizations such as the Humane Society, are granted exemption from taxation for charitable purposes. Because the State has determined that FACE is entitled to an exemption for charitable purposes, this issue is now moot.

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.

Chairman, Indiana Board of Tax Review