

REPRESENTATIVE FOR PETITIONER: James H. DeLucio, Secretary of the Fraternal Order of Eagles Wayne Aerie #666.

REPRESENTATIVES FOR RESPONDENT: Charles K. Todd, Jr., Attorney for Wayne County Property Tax Assessment Board of Appeals; Michael P. Statzer, Wayne County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

FRATERNAL ORDER OF)	Petition No.: 89-014-02-2-8-00005
EAGLES WAYNE AERIE #666,)	
)	
Petitioner)	County: Wayne
)	
v.)	Township: Wayne
)	
WAYNE COUNTY PROPERTY)	Parcel No.: 029-99434-00
TAX ASSESSMENT BOARD OF)	and Personal Property
APPEALS,)	
)	
Respondent)	Assessment Year: 2002
)	

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

March 15, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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 was:
Whether the subject real and personal property qualifies for an exemption under IC § 6-1.1-10-16.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, James H. DeLucio, Secretary of the Fraternal Order of Eagles Wayne Aerie #666 (Petitioner) (Eagles) filed a Form 136 application for property tax exemption with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) on April 12, 2002. The County PTABOA denied the application on September 8, 2003 and gave the Petitioner the proper notice of denial.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petition seeking a review of the PTABOA action by the Board. The Form 132 was filed on September 23, 2003.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 18, 2003 in Richmond, Indiana before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:
For the Petitioner: James H. DeLucio, Secretary for the Eagles

For the Respondent: Charles Todd, Jr., Attorney for the Wayne County PTABOA; and
Michael P. Statzer, Wayne County Assessor.

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

For the Petitioner: James H. DeLucio

For the Respondent: Charles Todd, Jr.
Michael P. Statzer

7. The following exhibits were presented:

For the Petitioner: Petitioner's Exhibit 1 – Copy of Eagle's hours and usage activities by floor.

Petitioner's Exhibit 2 – Schedule CG-DIST, Indiana Department of Revenue Charitable Contribution Distribution Listing reports for fiscal years 2000-2003.

Petitioner's Exhibit 3 – Submissions from the County PTABOA hearing including: a) subject property record card; b) 2000-2002 Auditor's semi-annual financial reports; c) Notice of Action by the PTABOA on the 2002 application for exemption; d) letter from Wayne County Assessor requesting information regarding the Eagles facility usage, dated August 11, 2003; and, e) a letter of response from the Eagles, dated August 18, 2003 with attached postmarked envelope.

8. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit A – Form 132 with the following attachments:

Form 136, Application for Property Tax Exemption; Notice of Action on Exemption, Form 120; Articles of Incorporation; and, Suggested By-Laws for the Eagles.

Board's Exhibit B – Notice of Hearing on Petition.

9. Neither party to the hearing participated in the discovery provisions outlined in Ind. Code § 6-1.1-15-4. Both parties consented to waive the discovery requirements and proceed with the hearing as scheduled.
10. The subject property is assessed as a commercial lodge hall located at 55 South 12th Street, Richmond, Wayne County, Wayne Township, Indiana. The PTABOA determined the property to be 100% taxable. The assessed values at appeal are: Land: \$128,800
Improvements: \$240,500 Personal Property: \$20,460.
11. The Administrative Law Judge did not conduct an onsite inspection of the subject property.

Jurisdictional Framework

12. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
13. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-5-5.

State Review and Petitioner's Burden

14. The Board does not undertake to make the case for the petitioner. The Board bases its decision 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).
15. 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 890

(Ind. Tax 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

16. 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.]
17. 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.]
18. The Board 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 Board (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 Board 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

19. 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.

20. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
21. 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) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

22. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
23. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services 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. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996).
24. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).

25. 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 Co. v. State Bd. of Tax Comm'rs*, 611 N.E. 2d 708, 713; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

Discussion of Issue

Whether the subject real and personal property qualifies for an exemption under IC § 6-1.1-10-16.

26. The Petitioner contends the subject building is used for charitable purposes and should qualify for 100% exemption on its land, improvements, and personal property as a charitable fraternal organization.
27. The Respondent contends the Petitioner failed to meet its burden before the County PTABOA by providing sufficient information showing the property was used predominately for charitable purposes.
28. The applicable rules governing this Issue are:
- IC § 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.
- IC § 6-1.1-10-16(c)**
A tract of land, including the campus or athletic grounds of an educational institution, is exempt from property taxation if a building which is exempt under subsection (a) or (b) is situated on it and the tract does not exceed fifty (50) acres in the case of an educational institution or a tract that was exempt on March 1, 1987 or fifteen (15) acres in all other cases.
- IC § 6-1.1-10-16(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) or (b) if it were a building.

IC § 6-1.1-10-36.3

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.

(b) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

(2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.

(3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purpose during that year.

(4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

(c) Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one or more of the stated purposes.

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

a. The Petitioner requested exemption on its Form 136 and Form 132 for both fraternal and charitable uses in accordance with IC § 6-1.1-10-16. *Board's Ex. A, Forms 136 and 132.*

b. The use of the facility is almost 100% charitable; the downstairs area, used by Eagle's members only, promotes ticket sales on a daily basis with the proceeds going to charitable causes. *DeLucio Testimony; Petitioner's Ex. 1.* The profits from weekly public Bingo games and private quarterly dances held on the first floor go to benefit charity. *Id.*

- (c) The former County PTABOA denied the Eagle's 2002 exemption application, stating the taxpayer failed to carry its burden by providing sufficient information to show that the property was used predominantly for charitable purposes. *Todd Testimony; Attachment to Board Ex. A, Form 120, Section IV.*
- (d) The County PTABOA did contend for the record, however, that it approved the Eagle's exemption application for the 2003 exemption year after requesting additional information on two occasions from them. *Todd Testimony.*
- (e) Evidence from the 2003 PTABOA hearing, which the Respondent asserted is applicable to the 2002 appeal, was submitted by the Respondent "in support of the record" as an "ethical obligation" on behalf of the Petitioner and thereby identified as Petitioner's Ex. 3 at the Board hearing. *Todd Testimony; Petitioner's Ex. 3.*
- (f) The Eagles have been tax exempt since 1904, with the exception of the denial by the Wayne County PTABOA for 2002. *DeLucio Testimony; Board's Ex. A, Form 132.* The 2002 exemption application year is the first time the Eagles have ever been denied full exemption. *Id.*

Analysis of the Issue

- 30. The Petitioner contends the Fraternal Order of Eagles was organized for charity. Therefore, the Petitioner asserts, the subject facility's predominate use is charitable, entitling it to exemption for charitable use under IC § 6-1.1-10-16. The subject property has benefited from exempt status since it's inception in 1904 with the exception of the 2002 exemption year, and was approved for exemption for the 2003 exemption year.
- 31. The Respondent contends the Eagles failed to meet their burden at the County PTABOA exemption hearing for 2002 by showing the subject property was predominantly used for charitable purposes or by citing the specific statute applicable to its exemption request. However, the Respondent testified that the Petitioner met its burden in 2003 before a new

PTABOA board and offered that evidence on behalf of the Petitioner's record at the 2002 Board hearing. *See*, Petitioner's Ex. 3.

32. The PTABOA accepted the evidence at their 2003 hearing as sufficient to make a determination that the property should be entitled to 100% exemption for land, improvements and personal property. The Respondent then shared said evidence with the Board on behalf of the 2002 exemption appeal record, testifying that the evidence might offer support for the record in making the proper decision and that the Respondent felt an ethical obligation to offer the evidence for the Board's record.
33. Therefore, because the Respondent did not rebut the Petitioner's usage breakdown or question the Petitioner's charitable use on a floor-by-floor basis at the Board hearing, the Petitioner's evidence is considered probative and represents the only evidence of the building's use available. Further, because the Wayne County PTABOA accepted the above evidence as sufficient for the 2003 exemption application, and the record does not indicate that the facility use changed between 2002 and 2003, the evidence is thereby deemed applicable for the 2002 exemption appeal.
34. The Respondent did not dispute that the Eagle's activities are charitable in nature, but disputed whether they had met their burden at the 2002 County hearing by offering a breakdown of the building by square footage and use to determine the predominant use in accordance with the IC § 6-1.1-10-36.3. The PTABOA requested additional evidence for the 2003 subject exemption application to clarify questions regarding the application. The PTABOA, satisfied with the Petitioner's submission of additional evidence, declared the land, improvements, and personal property as 100% exempt for the 2003 tax year.
35. In reviewing the actions of the PTABOA, the Board 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).

36. Therefore, for all the reasons listed above and based on the decision of the PTABOA determination that the subject property be 100% exempt for the 2003 exemption year, and the years prior to 2002, the subject property is entitled to 100% exemption for its land, improvements, and personal property for the 2002 exemption application year. There is a change in the amount of exemption allowed from 0% to 100%.

Summary of Final Determination

Whether the subject real and personal property qualifies for an exemption under IC § 6-1.1-10-16.

37. Sufficient evidence supporting the Petitioner's claims for full exempt status was not rebutted by the Respondent. The real and personal property are determined to be 100% exempt for the 2002 application year.

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

Commissioner, 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.