

**State of Indiana
Board of Tax Review**

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| GESSNER MUSIC MINISTRIES, |) On Appeal from the Hendricks County |
| |) Property Tax Assessment Board of Appeals |
| Petitioner, |) |
| |) Petition for Review of Exemption, |
| v. |) Form 132 |
| |) Petition No. 32-031-01-2-8-00001 |
| HENDRICKS COUNTY PROPERTY |) Parcel No. 23-1-34-61E-430-001 |
| TAX ASSESSMENT BOARD OF |) |
| APPEALS, |) |
| |) |
| 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 subject lot classifies as a parsonage and is therefore exempt from property taxes under Ind. Code § 6-1.1-10-21.

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 also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Gessner Music Ministries (Petitioner) filed an Application for Property Tax Exemption, Form 136 with the Vanderburgh County Auditor. The Form 136 was filed on April 3, 2001. The Hendricks County Property Tax Assessment Board of Appeals (PTABOA)(Respondent) denied the application and gave the Petitioner notice on January 24, 2002. The Petitioner filed a Form 132 petition on February 7, 2002 seeking a review by the State.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 25, 2002, before Administrative Law Judge Brian McKinney. Don Gessner, President of Gessner Music Ministries, Robert Bedford, accountant, and Keith D. Robinson, Pastor of Grace Pointe Church of the Nazarene, represented the Petitioner. Gordon McIntyre, member of the PTABOA, Lester E. Need, member of the PTABOA, Ronald L. Faulkner, member of the PTABOA, and Robert C. Richardson, member of the PTABOA, represented the Respondent.

4. At the hearing, the subject Form 132 Petition was made a part of the record and labeled Board Exhibit A; the Notice of Hearing was labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner Exhibit A – Song Evangelist’s Commission

Petitioner Exhibit B – Letter with Grace Pointe heading

Petitioner Exhibit C – Letter from Ted R. Lee, dated April 17, 2002

Petitioner Exhibit D – Affidavit of Don Gessner

Petitioner Exhibit E – Copy of Ind. Code § 6-1.1-10-21

Petitioner Exhibit F – Definitions for parsonage, parson, and church

Petitioner Exhibit G – Copy of the Form 136 petition

Petitioner Exhibit H – Letter from Indiana Secretary of State
Petitioner Exhibit I – Letter from the Internal Revenue Service
Petitioner Exhibit J – Letter to the Internal Revenue Service
Petitioner Exhibit K – Articles of Incorporation, from Tennessee
Petitioner Exhibit L – Bylaws of Gessner Music Ministries
Petitioner Exhibit M – Document with Ministering in Song header
Petitioner Exhibit N – Schedule of Gessner Music Ministries from 1990 – 2001.

Respondent Exhibit A – Narrative argument with cover page and attachments
Respondent Exhibit B – Property record card (PRC) of subject with a plat map
Respondent Exhibit C – Copy of the Form 136 petition
Respondent Exhibits D – I – Photographs of the subject site, and Mail Boxes Etc.
Respondent Exhibit J – Copy of Ind. Code § 6-1.1-10-21.

5. The subject is a vacant lot located at 6891 Black Oak Court East in Avon, Indiana. The Administrative Law Judge did not view the subject property.
6. The Petitioner is an Indiana not-for-profit corporation that was originally incorporated in Tennessee. Sometime after the original incorporation the name was changed from Ed Irwin Evangelist Association to Gessner Music Ministries. The Internal Revenue Service has granted the Petitioner status as a 501(c) (3) corporation. *Petitioner's Exhibits I and K.*
7. The purpose of the Petitioner, according to the Articles of Incorporation is:
“Providing a religious, educational, and charitable program, in which lay members of the church will participate in raising funds through membership dues and donations from the public, corporations, foundations and other legitimate sources for the following named objectives...” *Petitioner's Exhibit K.*
8. The Petitioner is claiming an exemption under Ind. Code § 6-1.1-10-21(a)(2). When the building is finished, it will be used as a parsonage; Don Gessner and his wife will live on the subject property and also maintain an office there.

9. Mr. Gessner is affiliated with Grace Pointe Church of the Nazarene. Mr. Gessner is a Song Evangelist and is paid a salary by the Church. The Church also pays for Mr. Gessner's medical insurance. *Robinson Testimony.*
10. The Respondents made several arguments at the hearing, including the fact that Gessner Music Ministries is not a church, and the Respondent questioned whether Gessner Music Ministry is a religious society and can qualify for a religious exemption.
11. The Respondent also argues that the statute exempts only parsonages being used to house "the church's or religious society's rabbis, priests, preachers, ministers, or pastors..." under Ind. Code § 6-1.1-10-21(b)(1). *Faulkner Testimony.*
12. Finally, the Respondents argue there can be no exemption for a parsonage, because there is no house built on the land as of the assessment date. *McIntyre Testimony.*

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.

Burden

2. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. "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).

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 Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity 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 the property is used but on how much 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 predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

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 construes 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 would otherwise have paid, and this should never be seen as an inconsequential shift.

11. This is why worthwhile activities or noble purpose is not enough to justify 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).

Conclusions Regarding the Exemption Claim

13. The Petitioner believes that its property is exempt from taxation under Ind. Code § 6-1.1-10-21 as a parsonage. The Petitioner maintains that the subject property will be used as a residence for Mr. Gessner and his wife, and as an office for the Gessner Music Ministries.
14. As of March 1, 2001, the assessment date for the property, the subject was a vacant lot in Oak Bend Estates subdivision. There were no improvements on the subject property.
15. Under Ind. Code § 6-1.1-10-21 (b)(1), “all parsonages are being used to house one (1) of the church’s or religious society’s rabbis, priests, preachers, ministers, or pastors....”
16. The Petitioner did not show the subject was being used as a parsonage on the assessment date. The subject was a vacant lot, not capable of housing anyone. Accordingly, the Petitioner fails to show how the subject property was being used as a parsonage.¹
17. Therefore, the Petitioner has not met the burden of showing that it qualifies for property tax exemption under Ind. Code § 6-1.1-10-21. Thus, the subject property is wholly subject to property taxation for 2001 payable 2002.

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

¹ Because the State concludes there is no parsonage, the State need not decide whether Gessner Music Ministries is a religious society or whether Mr. Gessner would qualify as a minister, preacher, priest, pastor, or rabbi under Ind. Code § 6-1.1-10-21(b)(1).