

REPRESENTATIVE FOR PETITIONER: Mr. Terry Glasglow

REPRESENTATIVES FOR RESPONDENT: Ms. Gail Sims, County Assessor; Ms. Delores Barnes, PTABOA Member; Mr. George Thomas, PTABOA Member; Mr. Elbert Hines, PTABOA Member; Mr. James Martin, PTABOA Member.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GOOD SAMARITAN MINISTRIES, INC.)	Petition No.: 39-011-02-2-8-00003
)	
Petitioner,)	County: Jefferson
)	
v.)	Township: Madison
)	
JEFFERSON COUNTY PROPERTY)	Parcel No.: 130221402400011
TAX BOARD OF APPEALS,)	
)	Assessment Year: 2002
Respondent.)	
)	Assessment Year: 2002

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

January 8, 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 is:

Whether the property is entitled to 100% property tax exemption rather than 75% property tax exemption pursuant to Ind. Code § 6-1.1-10-36.3.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Mr. Terry Glasglow, on behalf of Good Samaritan Ministries, Inc. (Petitioner), filed a Form 132 petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on June 2, 2003. The determination of the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) was issued on May 21, 2003¹.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 16, 2003 in Madison, Indiana before Kay Schwade, 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. Terry Glasgow

For the Respondent: Ms. Gail Sims, Jefferson County Assessor

Ms. Delores Barnes, PTABOA Member

Mr. Elbert Hines, PTABOA Member

Mr. George Thomas, PTABOA Member

Mr. James Martin, PTABOA Member

¹ Beginning in 2000, a religious organization was relieved from the requirement of filing an application for exemption if an application had been properly filed at least one time after the property was designated for religious use as described in Ind. Code § 6-1.1-10-21. The uses described under this subsection include, but are not limited to, the use of a building for worship and the use of a building for a parsonage. In 2000, the PTABOA granted 100% exemption to Good Samaritan on the basis of use of the property as a church and related ministries. Thus, Good Samaritan had, at least one time, properly filed an application for exemption after designating the property for religious use. Given these facts, Good Samaritan was not required to file an application for exemption at the beginning of the 2002 cycle nor will Good Samaritan be required to file in the future provided the use of the property remains the same.

5. All persons present at the hearing were sworn in.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Photographs of the exterior and interior of the property.

Petitioner's Exhibit B – A pamphlet and copy of a newspaper notice explaining the services offered by Good Samaritan.

Petitioner's Exhibit C – Copies of donation receipts.

For the Respondent:

Respondent's Exhibit A – A packet of documents containing the following:

1. 2000 & 2001 Income & Expense Statements for Good Samaritan.
2. 1999 & 1998 Food Assistance Report for Good Samaritan.
3. Articles of Incorporation for Good Samaritan.
4. Constitution & Bylaws of Good Samaritan.
5. Notice of Not for Profit Status from the Internal Revenue Service for Good Samaritan.
6. A letter from the PTABOA requesting additional information from Good Samaritan.
7. A copy of the Form 136 and attachments filed by Good Samaritan.

7. The following documents are officially recognized as part of the record of proceedings and labeled Board exhibits:

Board Exhibit A - The subject Form 132 petition with attachments.

Board Exhibit B - Notice of Hearing dated August 29, 2003.

Jurisdictional Framework

8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, 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.

9. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

State Review and Petitioner's Burden

10. The State does not undertake to reassess property, or 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
11. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax. 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
12. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
13. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
14. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to

demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).

15. 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’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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

16. 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.
17. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
18. In Indiana, the 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 predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

19. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
20. The courts of some states construe constitutional and statutory tax exemptions liberally, come 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).
21. 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.
22. 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)).

23. 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 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).
24. 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 the Issue

Whether the property is entitled to 100% property tax exemption rather than 75% property tax exemption pursuant to Ind. Code § 6-1.1-10-36.3.

25. The applicable statutes governing this issue are:

§ 6-1.1-10-16. Land and buildings used for educational, literary, scientific, religious or charitable

(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.

§ 6-1.1-10-36.3. Property used or occupied for one or more stated purposes

(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 purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any 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.

Emphasis added.

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

1. The Petitioner sought exemption under the claim of religious purposes. The Petitioner organized for the purposes of “conducting religious worship as a Church” and making distributions to other qualifying organizations. *Board Ex. A; Resp. Ex. A, Art. of Inc., Art. II.*
2. The Petitioner is bound to “establish and maintain” services with the Ministries for the “propagation of the gospel and its work embraced by the purposes of the corporation and to “provide clothing and food for the needy as a ministry”. *Resp. Ex. A, Constitution and Bylaws, Art. II, 2.02(b) & (f).*
3. The PTABOA continued property tax exemption granted for the portion of the property used and occupied for religious worship, parsonage, clothing bank, and food bank in the amount of 75%. The PTABOA denied exemption for 25% of the property used in a manner resembling conventional retail sales. *Hines testimony.*

Analysis of the Issue

27. The Petitioner contends that the property is entitled to 100% property tax exemption because it is used and occupied to fulfill the Petitioner's religious and charitable purposes.
28. The Respondent maintains that, because the contested area of the property operates in a manner similar to conventional retail sales, the contested area does not qualify for property tax exemption.
29. The Respondent's action granting 75% tax exemption to the Petitioner clearly provides sufficient evidence to show that the property is used more than 50% of the time for an exempt purpose. The Respondent testified that the 75% exemption was for the areas used for worship services, parsonage, food bank, and a clothing bank for the needy.
30. The Respondent misapplied Ind. Code § 6-1.1-10-36.3 in this case. Respondent's actions suggest it applied the provisions of subdivision (b)(3) instead of subdivision (b)(2) which applies to religious entities such as the Petitioner. Ind. Code § 6-1.1-36.3(b)(2) states "Property predominantly used or occupied for one or more of the stated purposes by a church, religious society, or not-for-profit school is **totally** exempt under that section." Emphasis added. The partial exemption (75%) applied by the Respondent would have been appropriate had the Petitioner been a charitable organization rather than a religious entity.
31. The Respondent, by granting a 75% exemption for religious purposes concedes that the property is used predominantly for the stated purpose by a church. Therefore, the Petitioner should have been granted a 100% exemption.

Summary of Final Determination

32. The Petitioner presented probative evidence that they qualify for a 100% exemption under Ind. Code § 6-1.1-10-36.3(b)(2). A change is made as a result of this issue.

The above stated findings of fact and conclusions of law 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 _____, 2003.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. 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.