

REPRESENTATIVES FOR PETITIONER:

Alice A. O'Brien, Attorney

REPRESENTATIVES FOR RESPONDENT:

Debbie Folkerts, Hamilton County Assessor

Marilyn Meighen, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

NANCY IRSAY,	)	
	)	Petition for Review of Exemption,
Petitioner,	)	Form 132
	)	
	)	Petition No: 29-003-02-2-8-00002
v.	)	
	)	County: Hamilton
	)	Township: Clay
HAMILTON COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD	)	Parcel No: 1713030000028102
OF APPEALS,	)	
	)	
Respondent.	)	Assessment Year: 2002

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

**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 certain property owned by Irsay and claimed as exempt qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purposes.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-3, the Petitioner filed a Form 136, Application for Property Tax Exemption, on May 15, 2002. The Form 136 application requests exemption for 10% or 4 acres of land; 100% of the Robert Irsay Charity Pavilion; and 25% of the work barn.
3. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120, Notice of Action on Exemption Application, on February 25, 2003, denying the requested exemption. The PTABOA determined the property to be 100% taxable for the March 1, 2002 assessment date.
4. Pursuant to Ind. Code § 6-1.1-15-3, Alice O'Brien, Attorney, filed a Form 132, Petition for Review of Exemption, on behalf of the Petitioner, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on March 24, 2003.

### **Hearing Facts and Other Matters of Record**

5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on November 13, 2003 in Noblesville, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

6. The following persons were present at the hearing:

For the Petitioner:

Nancy C. Irsay, Owner  
Megan G. Wiles, Witness  
Alice A. O'Brien, Attorney for the Petitioner

For the Respondent:

Debbie Folkerts, Hamilton County Assessor  
Marilyn Meighen, Attorney for the Respondent

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

For the Petitioner:

Nancy Irsay  
Megan Wiles

For the Respondent:

Debbie Folkerts

8. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of the Application For Property Tax Exemption (Form 136) filed May 15, 2002.

Petitioner's Exhibit 2 – A copy of a letter, dated September 23, 2002, from Nancy Irsay to Debbie Folkerts.

Petitioner's Exhibit 3 – A copy of the 1997 through 2003 charitable events logs for the Robert Irsay Charity Pavilion (Charity Pavilion).

Petitioner's Exhibit 4 – A copy of *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).

Petitioner's Exhibit 5 – A copy of *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E. 2d 1257 (Ind. 2002).

Petitioner's Exhibit 6 – A copy of a survey for 4.67 acres, prepared by Paul Cripe, dated May 15, 2002.

For the Respondent:

Respondent's Exhibit 1 – A copy of a warranty deed from Nancy Irsay to Nancy Irsay, filed December 30, 2002.

Respondent's Exhibit 2 – A copy of Nancy Irsay's 2002 property record card.

Respondent's Exhibit 3 – A brief from the Hamilton County PTABOA on the Nancy Irsay exemption appeal.

For the Board:

Board's Exhibit A – Form 132 petition dated March 24, 2003.

Board Exhibit B – Notice of Hearing on Petition (Form 117) dated September 23, 2003.

9. The subject property is located at 1303 West 116<sup>th</sup> Street, Carmel, Clay Township, Hamilton County, Indiana. The property record card (PRC) shows the subject property consists of 38.68 acres of land, a utility storage building (work barn), a theatre (Charity Pavilion), a dwelling with attached garage, pool, and pool enclosure

### **Jurisdictional Framework**

10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

### **State Review and Petitioner's Burden**

11. The State does not undertake 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 Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
12. 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.]

13. 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.]
14. 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.]
15. The State 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 State (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 State 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, 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 predominantly 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. 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.
21. 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)).

22. 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).
23. 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 Issue**

*Whether certain property owned by Nancy Irsay and claimed as exempt qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purposes.*

24. The Petitioner contends that 10% of the land, 100% of the Charity Pavilion and 25% of the work barn should be exempt from property taxation. On the Form 136 application, the Petitioner claimed 10% or 4 acres of land to be exempt. However, based on a survey of the Charity Pavilion, the Petitioner is seeking 4.67 acres of land as exempt.
25. The Respondent contends that the subject property should be 100% taxable because it is owned by an individual and the Petitioner failed to meet the criteria of owned, occupied and used for charitable purposes.
26. The applicable statutes governing this issue are:

**IC 6-1.1-10-16**

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 6-1.1-10-36(a)**

Property is predominately used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

**IC 6-1.1-10-36.3(b)(4)<sup>1</sup>**

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

27. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject property record card for March 1, 2002 shows 38.68 acres of land, a utility storage building (work barn), a theatre (Charity Pavilion), and a dwelling with attached garage, pool and pool enclosure. *Respondent's Exhibit 2*
  - b. The Petitioner requested 4.67 acres of land, 25% of the work barn, and 100% of the Charity Pavilion be exempt from taxation pursuant to Ind. Code § 6-1.1-10-16 as charitable for March 1, 2002. *Petitioner's Exhibits 1 & 6; Irsay testimony.*
  - c. The Petitioner testified that the Charity Pavilion is only used for charitable events except for three or four events per year, but the non-charitable events do not occur every year. The Pavilion Event logs are complete for 2001, 2002, and 2003. The 120 days listed on the Form 136 is an estimate of how often activities occur, not the amount of time the building is used by each charity, which varies according to the function or activity being conducted by the organization. The remaining time the Charity Pavilion sits vacant. *Petitioner's Exhibit 3; Irsay testimony.*
  - d. The Petitioner testified the work barn contains the equipment and tools used for maintaining grounds for the entire 38.68 acres. The 25% requested is an estimate of the time spent on maintaining the Charity Pavilion area. The Indiana Repertory Theatre (IRT) also makes and stores props in the work barn. *Irsay testimony.*
  - e. A survey for the Charity Pavilion was completed in May 2002, allocating 4.67 acres of land to the Charity Pavilion. In December 2002, the Petitioner by

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<sup>1</sup> The provisions of this statute were amended effective July 1, 2003. However, the subject exemption application is evaluated under the provisions that were in effect for the 2002 assessment date, March 1, 2002.



warranty deed separated the Charity Pavilion off as a separate plat/parcel.

*Petitioner's Exhibit 6; Respondent's Exhibit 1; Irsay testimony.*

- f. The Respondent testified that she has personal knowledge that in the past the Charity Pavilion has been used for non-charitable purposes. The Respondent attended two political fundraisers, one in 1998 and the other in 1999 or 2000. The Respondent contends the Form 136 states the Charity Pavilion is only used 120 days and there are 365 days in a year, therefore it would not meet the test of being predominantly used for charitable purposes. *Folkerts testimony.*
- g. The Respondent further contends that the subject property is 100% taxable because it is owned by an individual, with this ownership comes certain rights and privileges for gaining an equity position in the property, therefore the ownership of the property is not for charitable purposes.

### **Analysis of the Issue**

- 28. Ind. Code § 6-1.1-10-16 exempts property if it is owned, occupied, and used by a person for educational, literary, scientific, religious or charitable purposes. There is no requirement that a single entity own, occupy, and use a piece of property before it can be exempted from taxation. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).
- 29. Ind. Code § 6-1.1-10-36.3 establishes a “predominant use” test for determining whether property qualifies for exemption under Ind. Code Chapter 6-1.1-10. “Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominant use of the facility, not distribution of income for charitable purposes.” *State Board of Tax Commissioners v. New Castle Lodge # 147*, 765 N.E. 2d 1257, 1263 (Ind. 2002).

30. Pursuant to Ind. Code § 6-1.1-10-36.3,<sup>2</sup> property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one 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. Property that is predominantly used or occupied for purposes other than one of the stated purposes is not exempt from any part of the property tax.
31. The Form 136 indicates the Charity Pavilion is used approximately 120 days in a year. The Charity Pavilion logs for 2001 and 2002 indicate the facility was used by fifteen organizations between March 1, 2001 and February 28, 2002. No events were held in May 2001 and January 2002. Testimony presented indicates that no other events were held at the Charity Pavilion during that time period.
32. While the Petitioner has established that the sub-segment of the entire tax parcel, the Charity Pavilion, is used for charitable events, the problem is that the application must be considered in terms of the predominant use of the entire parcel.<sup>3</sup>
33. The Charity Pavilion has not been described by a separate legal description, and is not a separate tax parcel. Consequently, the exemption application must be considered as regarding the Petitioner's entire 38.68 acres. The Petitioner claims exemption on 4.67 acres of land, the Charity Pavilion, and 25% of the work barn. However, the predominant use test cannot be applied to selected sub-segments of the tax parcel, as is suggested by Petitioner contention. Separate rooms within a facility may be evaluated separately, but for the purpose of calculating and determining the predominant use of the facility as a whole.
34. The predominant use of the entire subject property was as the Petitioner's residence. The Petitioner did not own, occupy, and use the entire 38.68 acres and improvements for charitable purposes. The use of the Charity Pavilion, work barn (25%), and 4.67 acres is

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<sup>2</sup> The provisions in effect March 1, 2002.

<sup>3</sup> This interpretation is arrived at based on the provisions effective for March 1, 2002.

incidental to the primary use of the property. The charitable use of the property is confined to the Charity Pavilion and 4.67 acres of land.

35. The burden for exemption rests with the Petitioner to prove the subject property falls within the requirements set forth in this matter. The Petitioner did not, by a preponderance of the evidence, meet its burden to show that the subject property qualifies for exemption pursuant to Ind. Code § 6-1.1-10-16 and the predominant use test of Ind. Code § 6-1.1-10-36.3. Accordingly, the denial of the exemption application is upheld.

### **Summary of Final Determination**

*Whether certain property owned by Nancy Irsay and claimed as exempt qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purposes.*

36. The Petitioner did not prevail by a preponderance of the evidence on this issue. The denial of the exemption application is upheld.

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 \_\_\_\_\_, 2004.

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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.**