

**STATE OF INDIANA
Board of Tax Review**

STATE BOARD OF TAX COMMISSIONERS*)	Remand from the Supreme Court of Indiana
Appellant,)	
)	Cause No. 49S10-0011-TA-720
v.)	
)	Petition No. 33-015-92-2-8-00034
)	
NEW CASTLE LODGE #147, LOYAL ORDER OF MOOSE)	Parcel Nos. 030-05178-00;030-05178-00;
Appellee.)	Personal Property
)	

HISTORY OF THE CASE

1. An evidentiary hearing was originally held for this dispute on July 13, 1994, in New Castle, Indiana.
2. On November 27, 1996, the State Board of Tax Commissioners (State) issued an order denying any property tax exemption for the Petitioner.
3. On January 14, 1997, counsel for the Petitioner served the State with a Notice of Intent to Appeal this order to the Indiana Tax Court.
4. On December 22, 1997, the Tax Court held a trial and oral arguments were made by each party on November 9, 1998.
5. On August 2, 2000, the Tax Court determined that the Petitioner was entitled to a property tax exemption for the 1992 tax year. The Tax Court **REVERSED** and **REMANDED** the case to the State with instructions to conduct further proceedings to determine the exemption allowed by Ind. Code Ann § 6-1.1-10-36.3(b)(3) for the 1992 tax year. Text is at 733 N.E. 2d 36, remand language *Id* at 40 (Ind. Tax 2000). The State appealed the Tax Court decision to the Indiana Supreme Court.

* On January 1, 2002, pursuant to P.L. 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending 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 (IBTR, SBTC, and Appeals Division) is hereafter referred to as "State".

6. On April 12, 2002, the Indiana Supreme Court in Cause No. 49S10-0011-TA-720 affirmed the remand ordered by the Tax Court subject to the following language:

“We therefore conclude that the available evidence satisfies the “predominant use” requirement of the statute and entitles the taxpayer to partial exemption. We remand to the Board for a final determination, regarding the Lodge’s 1992 exemption application with evidence limited to the hearing officer’s recommendation.” (See Page 19).

STATEMENT OF THE CASE

1. In the Tax Court’s remand order, the State was told to “conduct further proceedings to determine exemption allowed”. *Id* at 40.
2. After review the Indiana Supreme Court narrowed the scope of the remand by ordering that the “evidence be limited to the hearing officer’s recommendation.” (See Page 19).
3. Accordingly, the State now adopts the following as its decision in this matter.

Issue

What portion of the real and personal property owned by New Castle Lodge #147, Loyal Order of Moose (the Petitioner) qualifies for an exemption from property taxes pursuant to Ind. Code § 6-1.1-10-16 as charitable?

Hearing Officer’s Recommended Findings of Fact

1. The Petitioner is a Fraternal Lodge that is open to members only.
2. The Petitioner owns real property at 605 New York Avenue in New Castle, Henry County, Indiana that includes land, a main building, a paved parking lot and a garage. It also owns personal property at this location.
3. The main building includes a meeting/ballroom, a game room, a dining room, a kitchen, storage rooms and common areas (hallways, restrooms, office).
4. Members of the organization devote a substantial amount of time to charitable activities.

5. The Petitioner allows the main meeting facility to be used free of charge for civic affairs such as Senior Citizen's Banquets and the annual Muscular Dystrophy Association Telethon.
6. The meeting/ballroom is used approximately 1110 hours per year. A portion of this time is used for meetings of the Lodge and meetings of the Women of the Moose. Another portion of the time used is for purely social functions, e.g. Saturday night dances. All these activities are for members and members' families only. The majority of this time is devoted to charitable activities as mentioned in finding #5, above.
7. The predominate use of the bar, dining room and kitchen is for social purposes.
8. Access to and use of the facilities is strictly controlled in compliance with the Constitution and General Laws of the Loyal Order of Moose National Organization.
9. The hearing officer's room-by-room analysis of the activity revealed the following:
 - a. The meeting/ballroom is used 1110 hours of which 840 hours are devoted to charitable activities. This area is used for charitable purposes 76% of the time.
 - b. The game room, dining room, lounge and garage are not primarily used for charitable purposes and therefore are not exempt.
 - c. Common areas and land should be exempted 100% pursuant to Ind. Code § 6-1.1-10-16 (c)(2)(B).
 - d. Parking lot pavement and personal property should be exempted at the same percentage as the main building.
 - e. The main building exemption percentage was calculated by ascertaining what portion of the total square footage was used for charitable purposes for what percentage of the total time used.
10. The hearing officer determined the total square footage of the each building to develop a percentage to be applied to the meeting/ballroom. He did separate calculations for common areas and parking lot. He then used the various percentages to arrive at dollar amounts, both taxable and exempt, for each area.

Conclusions of Law

1. Pursuant to Ind. Code § 6-1.1-10-16(a) “All or part of a building is exempt from property taxation if it owned, occupied and used by a person for . . . charitable purposes.”
2. Pursuant to Ind. Code § 6-1.1-10-16(c) “A tract of land . . . is exempt from property taxation if: (1) a building which is exempt under subsection (a) or (b) is situated on it; and (2) the tract does not exceed: . . . (B) fifteen (15) acres in all other cases.”
3. Pursuant to Ind. Code § 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.”
4. Pursuant to Ind. Code § 6-1.1-10-36.3 “Property that is predominately 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.”
5. The Indiana Tax Court has determined that the Petitioner has qualified for a property tax exemption pursuant to previous statutory cites for Tax Year 1992. *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E. 2d 36 (Ind. Tax 2000).
6. Further, Indiana Supreme Court has ordered the State to limit the examination of evidence for this case to the original hearing officer’s recommendation. See Cause No. 49S10-0011-TA-720, April 12, 2002, page 19.
7. The hearing officer’s recommended final determination contained taxable and exempt amounts of assessed value for land, improvements and personal property. Converting the assessed values into exempt percentages results in the following:

Land – The assessed value of the exempt land is \$15,470; the total assessed value of land is \$15, 470. The percentage of exemption for land is 100%.

Improvements –The assessed value of the exempt improvements is \$46,930; the total assessed value of improvements is \$75,660. The percentage of exemption for the improvements is $46,930 \div 75,660 = 62.02$ or 62%.

Personal Property – The assessed value of exempt personal property is \$2,340; the total assessed value of personal property is \$5,220. The percentage of exemption for personal property is $2,340 \div 5,220 = 44.82$ or 45%.

8. The State determines that the land is 100% exempt; the improvements are 62% exempt; and the personal property is 45% exempt for the tax year 1992.

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