

**State of Indiana
Board of Tax Review**

North Anderson Church of God,) On Appeal from the Madison County Property
) Tax Assessment Board of Appeals
Petitioner,)
)
v.) Petition for Review of Exemption,
) Form 132
)
) Petition No. 48-003-96-2-8-00025*
Madison County Property Tax) Parcel No. 45-1-3
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:

Issues

1. Whether the application for exemption was timely filed pursuant to the requirement set forth under Ind. Code § 6-1.1-11-3 to achieve property tax exemption for the taxes assessed and imposed for the year 1996.

* The Petition number has been updated. The original petition number was 96-482-25.

2. Whether the real property owned by North Anderson Church of God qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3.

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, North Anderson Church of God (Church) filed an Application for Property Tax Exemption, Form 136 with the Madison County Auditor. The Form 136 was filed on August 23, 1996. The Madison County Board of Review (County) denied the application and gave the Church notice on January 15, 1997.
3. Pursuant to Ind. Code § 6-1.1-15-3, the Church filed a Form 132 petition seeking a review by the State. The Form 132 petition was filed January 30, 1997.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 13, 1997, before Hearing Officer George Helton. Mr. James Freeman and Mr. Samuel Taylor, Attorneys-at-Law, and Mr. Terry Bernard, Associate Pastor, were present at the hearing on behalf of the Church. Ms. Cheryl Heath, Deputy Assessor, and Ms. Jean Hornberger, Deputy Auditor, were present on behalf of the County.
5. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A and the Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State Board of Tax Commissioners:

Petitioner's Ex. 1 – A brief containing the Church's legal arguments.

- Petitioner's Ex. 2 – A memo to the Church regarding the Internal Revenue Service Form 990 exception and liability insurance concerns pertaining to Dove Harbor and North Kids.
- Petitioner's Ex. 3 – A request for an extension of time to file the Church's exemption application dated May 9, 1996.
- Petitioner's Ex. 4 – A request for an additional extension of time to file the Church's exemption application dated June 13, 1996 with a notation regarding the County Auditor's response.
- Petitioner's Ex. 5 – A copy of the warranty deed for the subject property between Sandra F. Patty and the Church dated December 31, 1994.
- Petitioner's Ex. 6 – A copy of the Articles of Incorporation for the Church dated August 27, 1931.
- Petitioner's Ex. 7 – A copy of the Revised By-laws for the Church dated November 23, 1993.
- Petitioner's Ex. 8 – A copy of a lease agreement between the Church and the Madison County ASCS office dated November 20, 1992.
- Petitioner's Ex. 9 – An undated copy of a lease agreement between the Church and Honor Books, Inc.
- Petitioner's Ex. 10 – Information regarding Dove Harbor's mission statement and a letter of support for Dove Harbor from the Church.
- Petitioner's Ex. 11 – The Parent Handbook for North Kids with the State Certificate of Registration attached.

4. On September 15, 1997, the State received via US Mail additional information pertaining to Dove Harbor from the Church. This information was entered into the record and labeled Petitioner's Ex. 12.
5. The property subject to this appeal is a 14,766 square foot office building, a 12,600 square foot warehouse, and 2.56 acres of land. (Board Ex. C.) The subject property is located at 2200 Madison Square, Anderson, Anderson Township, Madison County. The Church is seeking property tax exemption for the property taxes imposed March 1, 1996 payable in 1997. (Board Ex. A.) The

Hearing Officer did not inspect the subject property.

6. The Church is an Indiana not-for-profit corporation organized for the purpose of promoting the Gospel of Christ. (Petitioner's Ex. 6 & 7.)
7. The Church overlooked filing the 1996 application for exemption for the subject property. The Church properly filed exemption applications, and was granted exemption, for its other properties. (*Freeman & Taylor testimony.*)
8. The Church contends that, because its other properties hold tax exempt status, the subject property should also be tax exempt under a grandfather clause. (*Freeman & Taylor testimony.*)
9. The County Board denied the Church's application for exemption because the application was not filed within the statutory time limitation.

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 County Board (or PTABOA), the State 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). 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).

Statutory Requirements and Limitations Regarding Property Tax Exemption

13. The use of property in furtherance of an exempt purpose is the minimal limitation required for exemption given within the Indiana Constitution. This minimal limitation must be included in any legislation granting property tax exemption. However, the legislature may add other requirements or limitations when enacting exemption statutes. *Sangralea v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).
14. The legislature enacted legislation placing additional requirements for property tax exemption claims. The legislature enacted a provision that establishes the statutory procedure pertaining to the application for exemption. The provision enacted in Ind. Code § 6-1.1-11-3, which reads in pertinent part:
 - (a) The owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property is located. The application must be filed annually *on or before May 15* on forms prescribed by the state board of tax commissioners. Except as provide in sections 1, 3.5, and 4 of this chapter, the *application applies only for the taxes imposed for the year for which the application is filed.* (Emphasis added.)
15. The legislature enacted additional sections within Ind. Code § 6-1.1-11 that provide exceptions to Section 3 of Ind. Code § 6-1.1-11. These exceptions place specific requirements limiting the application for exemption. Two of these provisions are Section 3.5 and Section 1.
16. Section 3.5 *specifically* addresses the application for exemption for property of a not-for-profit corporation. Section 3.5 establishes that, beginning in 1988, a not-for-profit corporation needs only to file an application for exemption in 1988 and

every four years thereafter. Section 3.5 also provides that, if a not-for-profit corporation did not file an application for exemption in 1988 or in the first year of each four year cycle and was not exempt in the prior year, the not-for-profit corporation must file an application for exemption in the year for which exemption is sought.

17. Section 1 of Ind. Code § 6-1.1-11 provides that “an exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.” (See also *Dav-Con v. State Board of Tax Commissioners*, 644 N.E. 2d 192 (Ind. Tax 1994); *Kentron, Inc. v. State Board of Tax Commissioners*, 572 N.E. 2d 1366 (Ind. Tax 1991); *State Board of Tax Commissioners v. Stanadyne, Inc.*, 435 N.E.2d 278; and *Gulf Stream Coach, Inc. v. State Board of Tax Commissioners*, 519 N.E.2d 238 (Ind.Tax.1988)).
18. Therefore, in exemption claims, the propriety of the application for exemption must also be examined to insure that the owner of property who wishes its property to obtain property tax exemption has complied with the statutory procedures set forth for obtaining property tax exemption.

Conclusions Regarding the Exemption Claim

19. The Church claims that the subject property is predominately used for religious purposes and, as such, qualifies for property tax exemption under Ind. Code § 6-1.1-10-36.3. However, before examining the Church’s exemption claim, the State Board must first determine whether the Church complied with the statutory procedures for obtaining the exemption.
25. In order to obtain exemption for 1996, the Church was required to file the application for exemption on or before May 15, 1996. The Church did not file its application for exemption by May 15, 1996. Rather, the Church filed its

application for exemption on August 23, 1996 – more than three months after the statutory filing deadline. Clearly, the application for exemption was not timely filed to obtain property tax exemption for 1996.

20. The Church's application for exemption does not comply with the statutory procedures set forth under Ind. Code § 6-1.1-11-3 or –3.5. As such, the Church has waived the privilege of property tax exemption and the subject property is wholly subject to property taxation.

26. Finally, the State will not examine the merits of this case or explore the religious nature of the subject property before it today. As stated in the above findings, the Church did not comply with the statutory procedures pertaining to the application for exemption. As such, the exemption has been waived and must be denied without delving into the issue of whether the subject property is entitled to exemption pursuant to the cited statutes.

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