

REPRESENTATIVE FOR PETITIONER:

Brad Hasler, Attorney

REPRESENTATIVE FOR RESPONDENT:

Gabriel Deaton, Director of Assessments, Marion County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

NORTH AMERICAN ISLAMIC TRUST, INC.,)	Petition No.: 49-901-12-2-8-01503
)	
Petitioner,)	Parcel No.: 9008755
)	
v.)	County: Marion
)	
MARION COUNTY ASSESSOR,)	Township: Wayne
)	
Respondent.)	Assessment Year: 2012

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

FEBRUARY 16, 2016

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

INTRODUCTION

1. Did the Petitioner prove it is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-16 for the 2012 assessment year?

PROCEDURAL HISTORY

2. The Petitioner initiated its 2012 appeal with the Marion County Assessor on May 15, 2012. The Marion County Property Tax Assessment Board of Appeals (PTABOA) denied the exemption request, finding the property 100% taxable.¹ On March 26, 2013, the Petitioner filed a Petition for Review of Exemption (Form 132) with the Board. *Bd. Ex. A.*
3. On October 29, 2015, the Board's administrative law judge (ALJ), Gary W. Ricks, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.
4. Prior to the commencement of the Board's hearing, the parties reached a partial settlement regarding the subject property. The parties agree that twenty-five percent (25%) of the property shall be exempt from property taxes. This 25% encompasses a parking lot that services Cardinal Ritter High School, a mosque, and Marian University. *Deaton testimony, Hasler argument.*
5. Consequently, the Board's hearing was to address whether the remaining seventy-five percent (75%) of the subject property is entitled to an exemption.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. The following people were sworn as witnesses at the hearing:

For the Petitioner:

Syed A. Shah, Executive for North American Islamic Trust, Inc.,

¹ The PTABOA's Notice of Action on Exemption Application (Form 120) is not dated.

David D. Hackett, Operations Manager for North American Islamic Trust, Inc.

For the Respondent:

Gabriel Deaton, Director of Assessment, Assessor's Office,
Nicole Webb, Exemption Analyst, Assessor's Office.

7. The Petitioner offered the following exhibits:
Petitioner Exhibit 1: Subject property record card,
Petitioner Exhibit 2: Aerial photograph of the subject property,
Petitioner Exhibit 3: Aerial photograph of the subject property.
8. The Respondent offered the following exhibit.
Respondent Exhibit 1: Aerial photograph of the subject property.
9. The following additional items are recognized as part of the record:
Board Exhibit A: Form 132 with attachments,
Board Exhibit B: Notice of hearing, dated August 20, 2015,
Board Exhibit C: Hearing sign-in sheet.
10. The property under appeal is 12.44 acres of land located at 2490 Cold Spring Road in Marion County.
11. The PTABOA determined the property is one-hundred percent (100%) taxable for the 2012 assessment year.²
12. The Petitioner contends the property is entitled to a 100% exemption for the 2012 assessment year.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under

² As previously discussed, prior to the hearing the Respondent conceded that 25% of the property is entitled to an exemption.

any law. Ind. Code § 6-1.5-2-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4

SUMMARY OF PETITIONER'S CASE

14. The property is entitled to a 100% exemption for the 2012 assessment year. North American Islamic Trust, a 501(c)(3) organization, holds title to the subject property. The property was previously utilized as a concrete landfill. The property is currently used, in part, as a parking lot that serves several exempt entities, including a religious school, a mosque, and a university. Accordingly, the property is utilized for charitable, religious, and educational purposes. *Hasler argument; Bd. Ex. A.*
15. The Respondent conceded that approximately 25% of the property is exempt. This 25% encompasses the parking lot area.³ The remaining area is “unusable.” Church members do use the area for meditation and yoga. Accordingly, because part of the property has been granted an exemption, the remaining part must be found exempt as well, “[I]f any part of a parcel is exempt, then the entire parcel is exempt.” *Hasler argument (citing Johnson Co. Prop. Assessment Bd. of Appeals and the Johnson Co. Ass'r v. KC Propco LLC d/b/a/ Kindercare Learning Center, 28 N.E.2d 370 (Ind. Tax Ct. 2015); and referencing Ind. Code § 6-1.1-10-16(c)(2)); Resp't Ex. 1; Bd. Ex. A.*

SUMMARY OF RESPONDENT'S CASE

16. The Respondent concedes that 25% of the property is exempt from taxation. This portion of the property is utilized as a parking lot for exempt organizations located nearby. Even though the remaining part of the property is “unusable” it is not entitled to an exemption. *Deaton argument.*
17. The Petitioner's representative erroneously referenced a case in support of his argument that 100% of the property should be exempt. That case refers “only to properties that are less than one acre in size.” *Deaton argument.*

³ The evidence shows the “parking lot” area is an unpaved portion of bare land.

BASIS OF EXEMPTION AND BURDEN

18. As a general rule, all property is subject to taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
19. All property receives protection, security, and services from the government, such as fire and police protection and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Ass'n of Miniature Enthusiasts v. St. Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
20. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. St. Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)). In order to qualify for an exemption, the property must pass the predominant use test outlined in Ind. Code § 6-1.1-10-36.3. Property that is predominantly used for an exempt purpose is exempt in proportion to the amount of time it was used for exempt purposes during the year that ends on the assessment date. Ind. Code. § 6-1.1-10-36(c)(3).
21. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hosp. Inc. v. Dept. of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. St. Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. St. Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

ANALYSIS

22. Indiana Code § 6-1.1-10-16(a) provides that “[A]ll 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.” Further, “a tract of land...is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10.16(c). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox Co. Prop. Tax Assessment Bd. of App. v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*
23. Exemption statutes are strictly construed against the taxpayer and in favor of the state. *See New Castle Lodge #147, Loyal Order of Moose, Inc., v. St. Bd. of Tax Comm’rs*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.*
24. The test used to determine whether all or a portion of a property qualifies for an exemption is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259. Pursuant to Ind. Code § 6-1.1-10-36.3, “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.” Ind. Code § 6-1.1-10-36.3(a). Further, “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.” Ind. Code § 6-1.1-10-36.3(c)(2).
25. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.”

Jamestown Homes of Mishawaka, Inc., v. St. Joseph Co. Ass'r, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus, every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hosp. Inc.*, 818 N.E.2d 1009, 1018; and *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis and cannot assume the evidence speaks for itself).

26. According to the attachments to the Form 132, it appears that the Petitioner is a 501(c)(3) organization. But that status does not establish any inherent right to an exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because an income tax exemption does not depend so much on how property is used, but on how money is spent. See *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810,813 (Ind. Tax Ct.1996) (non-profit status does not automatically entitle a taxpayer to tax exemption). Thus, the Board must examine the use of the subject property. See *Bd. Ex. A*.
27. The Petitioner failed to make any argument regarding the predominate use of the 75% of the property. Rather, the entire argument focused on an interpretation of Ind. Code § 6-1.1-10-16(c). According to the Petitioner, Ind. Code § 6-1.1-10-16(c) exempts an entire property from taxation if *any part* of it is used for an exempt purpose. If that claim were correct, then because 3.11-acres is exempt the remaining 9.33-acres is also exempt. The relevant portion of the statute reads:

(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.

...

(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

(1) a building that is exempt under subsection (a) or (b) is situated on it;

(2) a parking lot or structure that serves a building referred to in subdivision (a) is situated on it; or . . .

Ind. Code § 6-1.1-10-16.

28. While the Petitioner based its entire argument on the interpretation of Ind. Code § 6-1.1-10-16, the Board will not base its determination on this interpretation of the statute. The Board will base its determination on the predominate use of the property.
29. The parties reached an agreement that 25% of the property serves an exempt purpose, a parking lot utilized by exempt organizations.⁴ Neither party was able to articulate how the remaining 75% was utilized, but both stated it was “unusable.” As such, the parties concede the property is solely “used” as a parking facility for exempt entities. As outlined in Ind. Code § 6-1.1-10-36.3(c)(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. Ind. Code § 6-1.1-10-36.3(c)(2). Here, because of the agreement made by the parties, and the concession that the remainder of the property is “unusable,” the Board is left to conclude the predominate use of the property is for exempt purposes entitling it to a full exemption.
30. Both parties also attempted to argue recent case law supports their assertions. The Petitioner argues that “[I]f any part of a parcel is exempt, then the entire parcel is exempt.” See *KC Propco LLC d/b/a/ Kindercare Learning Center*, 28 N.E.2d 370. In fact, the tax court held in this case the exemption was proper for the *entire parcel* upon which an early childhood learning center sits is proper when the *core focus of the property* is educational, even if there are incidental acts of childcare.⁵ *Id.* (*emphasis added*). Based on the concession made by the Respondent, the Board finds the *core focus* of the subject property is for an exempt purpose. Thus, according to the “predominate use” test outlined in Ind. Code § 6-1.1-10-36.3, the subject property is entitled to a 100% exemption.

⁴ By conceding that 25% of the property is exempt, Respondent has conceded that a portion of the property is owned, occupied, and used for exempt purposes. The record does not disclose why the Petitioner purchased the property or how it furthers an exempt purpose of the organization.

⁵ The Respondent was incorrect in his argument that this case refers “only to properties that are less than one acre in size.” The size of the lot in *KC Propco LLC* measured 1.607-acres.

31. In making its determination, the Board continues to recognize the long standing principle that each exemption application must be examined on its own facts, as it was in this case.

SUMMARY OF FINAL DETERMINATION

32. The Board finds based on the concession made by the Respondent, the property is entitled to a 100% exemption for the 2012 assessment year.

The Final Determination of the above captioned matter is issued on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.