

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 be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, St. David filed an application for property tax exemption with the Marion County Property Tax Assessment Board of Appeals (PTABOA) on May 1, 2001. The PTABOA denied the application on May 18, 2001, and gave St. David proper notice of denial.

3. Pursuant to Ind. Code § 6-1.1-11-7, St. David filed a Form 132 petition seeking a review of the PTABOA action by the State. The Form 132 petition was filed June 18, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 27, 2001 before Hearing Officer Alyson Kunack. Testimony and exhibits were received into evidence. Davina H. Sanders-Phillips and Sean F. Pack represented St. David. Andrew P. Seiwert and Patsy Sharpe represented the Marion County PTABOA.

5. At the hearing, the subject Form 132 petition and attachments were made part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following items were received into evidence:
 - Petitioner Exhibit 1 – Articles of Incorporation
 - Petitioner Exhibit 2 – Letters confirming 501(c)(3) status for Federal taxes
 - Petitioner Exhibit 3 – Form 120 issued for parcel 6003477
 - Petitioner Exhibit 4 – State Board brochure on religious exemptions

6. The subject property is located at 3530 West 71st Street, Indianapolis, Indiana, Marion County, Pike Township.

7. The Hearing Officer did not view the property.

Administrative Proceedings

8. The subject property is land that was purchased by the petitioner in 1999 for construction of a new church building and elderly housing. The Petitioner has received a HUD grant for the elderly housing. Construction on the new church building is scheduled to begin November 1, 2001. The land itself consists of three parcels comprising 16 acres. However, because one parcel was granted exempt status, only two of the parcels are being appealed. With regard to the exempt parcel, the County maintains that it, too, should be taxable, despite contradictory information on the Form 120 issued. *Petitioner Exhibit 3*.
9. With regard to the late filing of the initial petition, the Petitioner stated they were unaware of the deadlines involved, and had only the brochure upon which to depend for such information. *Petitioner Exhibit 4*.

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.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.

3. 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).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. 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).

8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. 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.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption is claimed under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational or religious purposes.
11. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

12. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
13. 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).
14. 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*, 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.

15. 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 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)).
16. 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).
17. The term “religious” generally has reference to man’s relationship and belief in a supernatural or superhuman being that exercises power over human beings by imposing rules of conduct with future rewards and punishments. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443 (Ind. 2001)(“worship” is the act of paying divine honors to the Supreme Being); *Grutka v. Clifford*, 445 N.E. 2d 1015 (Ind. App. 1983)(ecclesiastical matters are those which concern doctrine, creed, or form of worship of the church); *Minersville School District v. Gobitis*, 108 F. 2d 683 (3d Cir. 1939); *McMasters v. State of Oklahoma*, 21 Okla. Crim. 318, 207 P. 566 (Okla. Crim. App. 1922).

D. Conclusions Regarding the Exemption Claim

18. St. David seeks property tax exemption under Ind. Code § 6-1.1-10-16 claiming the classification of religious purpose.
19. Before exploring the question of whether St. David meets the requirements set forth under Ind. Code § 6-1.1-10-16, the State must first determine whether St. David statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
20. St. David requests that the application for exemption for property taxes due and payable in 2000 still be considered despite the acknowledged late filing date, stating that they were unaware of the deadline. The State must disagree.
21. Property taxes that are assessed and imposed for a year are due and payable in two equal installments the following year. (See Ind. Code § 6-1.1-22-9). Thus, property taxes that become due and payable in 2001 were assessed and imposed in 2000.
22. To repeat, an application for property tax exemption must be filed in the same year that property tax exemption is sought. Therefore, if St. David wished to have exemption from the property taxes assessed and imposed in 2000, then St. David was required to file an application for exemption on or before May 15, 2000. However, St. David filed an application for exemption in May 2001 requesting property tax exemption for property taxes assessed and imposed in 2000. Thus the application for exemption was filed after the statutory deadline to achieve property tax exemption for the taxes assessed and imposed for 2000.
23. Again, an exemption is a privilege that may be waived if the owner of the property does not comply with the statutory procedures for obtaining an exemption. St. David did not comply with the statutory filing date set forth under Ind. Code § 6-1.1-11-3 and -3.5 and has waived property tax exemption for the

year 2000. As such, property tax exemption is denied and the subject property is wholly subject to property taxation for the year 2000 with the property taxes due and payable in 20001.

24. Finally, the State will not examine the merits of the case or explore the religious nature of St. David in the matter before it today. As stated in the above findings, St. David did not comply with 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 St. David is entitled to exemption pursuant to the cited statute.

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