

**State of Indiana  
Board of Tax Review**

THE BUDGET CORNER, INC.	) On Appeal from the St. Joseph County
	) Board Of Review
Petitioner,	)
	) Petition for Review of Exemption, Form 132
v.	)
	) Petition No. 71-018-96-2-8-00008*
ST. JOSEPH COUNTY BOARD OF	)
REVIEW	) Personal Property
	) Key No. 18-35149-12604
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:

**Issue**

Whether the personal property owned by The Budget Corner, Inc. is exempt from property taxation pursuant to Ind. Code § 6-1.1-10-16.

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\* The petition number has been updated. The original petition number was 97-712-08.

## 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, The Budget Corner, Inc. (Petitioner) filed an Application for Property Tax Exemption, Form 136, with the St. Joseph County Auditor. The Form 136 was filed on April 1, 1996. The St. Joseph County Board of Review (County) denied the application and gave the Petitioner notice on October 31, 1996.
  
3. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Form 132 petition<sup>1</sup> seeking a review by the State. The Form 132 petition was filed November 11, 1996.
  
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 30, 1997<sup>2</sup>, before Hearing Officer George Helton. Ms. Joan Martin, President, and Ms. Lois Borden, Board Member, were present at the hearing on behalf of the Petitioner. No one appeared 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 documents were submitted to the State:

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<sup>1</sup> A notation on the Form 132 petition from the County Auditor explains that the Petitioner was initially provided the incorrect form to file for a review by the State Board of the County Board's action. This notation makes it plain that the Petitioner clearly set forth its intent to obtain a review of the exemption request and that the erroneous Form 131 petition was filed within the proper time limitations to obtain a review of exemption. Thus, the State Board will accept and treat the Petitioner's Form 132 petition as a properly filed petition.

<sup>2</sup>The hearing was originally scheduled on June 12, 1997. No one appeared. On June 13, 1997, the Petitioner contacted the Hearing Officer seeking to have the hearing rescheduled. The hearing was then set for June 30, 1997.

Petitioner's Exhibit A – A copy of the Articles of Incorporation and the Certificate of Incorporation for The Budget Corner.

Petitioner's Exhibit B – A copy of the By-laws for The Budget Corner.

Petitioner's Exhibit C – Financial Statements and Reports for 1996 and 1997.

Petitioner's Exhibit D – A copy of the March 1, 1996 Business Personal Property Return, Form 103, filed by The Budget Corner.

Petitioner's Exhibit E – A copy of Form IT-35AR, Annual Gross Income Tax Exemption Report, filed by The Budget Corner dated February 13, 1997.

Petitioner's Exhibit F – A copy of the Indiana Annual Report for Nonprofit Corporation, Form 2423, for the filing year 1997.

6. The personal property subject to this appeal consists of retail store furnishings and equipment (shelves, cabinets, clothing racks, cash register, etc.) used in the operation of a resale/consignment store. The subject property is located at 2312 Mishawaka Avenue, South Bend, Portage Township, St. Joseph County. The Petitioner seeks exemption for the taxes imposed in 1996, which are due and payable in 1997. The Hearing Officer did not view the subject property.
7. The Petitioner is governed by a Board of Directors. The President of the Board is a member of the First United Methodist Church and the Vice President is a member of the First United Methodist Women's Organization. The remaining Board members need not be members of the church. (Martin/Borden testimony.)
8. The Petitioner is an Indiana not-for-profit corporation organized exclusively for charitable and religious purposes. The Petitioner, in the furtherance of its expressed purposes, operates "a retail clothing store for the sale of pre-owned merchandise so as to provide such at discount and low cost to the economically disadvantaged individuals and groups of the community". The Petitioner is also organized and operated "exclusively to carry out the purposes of the United Methodist Women of the First United Methodist Church of South Bend". (Petitioner's Ex. A.)

9. The operation of the resale/consignment store is wholly dependent upon the general public to supply the goods to be resold. Individuals consign goods for sale and set the selling price at that time. The goods are left on consignment for a period of two months. After this initial period, the owner of the goods can remove the goods from consignment or allow the goods to remain on consignment at a reduced price. If, after a period of four to six weeks, the goods are unsold, the owner may reclaim the goods or, if unclaimed, the goods are distributed to other local charitable organizations. (Martin/Borden testimony.)
10. The Petitioner retains one-third of the proceeds from the sale of consigned goods. The one-third kept by the Petitioner is collected for the United Methodist Women's Organization (Organization). The Organization receives the profits, after expenses, to be used for mission, religious, or charitable projects of the Methodist Church. The Petitioner has no control over the use of these monies. (Martin/Borden testimony.)
11. The operation of the consignment store basically serves as a funding mechanism for the Organization to carry out the religious and charitable activities of the Methodist Church. This, along with the donation of goods not sold and not reclaimed to local organizations, is representative of the Petitioner's charitable nature. (Martin/Borden testimony.)
12. The Budget Corner has six paid part-time employees and 170 unpaid volunteers. Many of the volunteers are retired individuals who, without the work, would not feel useful or needed. (Martin/Borden testimony.)
13. The Budget Corner donates items to shelters, schools and needy persons who have been victim of fire, flood or other catastrophe. (Martin/Borden testimony.)
14. The Petitioner held tax-exempt status for 38 years prior to 1996. (Martin/Borden testimony.)

15. The Notice of Disapproval of Exemption sent to the Petitioner does not state a reason for the disapproval. A notation on the attachment to the application for exemption (Form SP198) states “In competition with private business”. (Board Ex. A.)

### **Conclusions of Law**

1. The State is the proper body to hear an appeal of the action of the PTABOA (or County) pursuant to Ind. Code § 6-1.1-15-3.

### **Burden**

2. In reviewing the actions of the 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.
3. A 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 v. State Board of Tax Commissioners*,

694 N.E. 2d 1230, 1233 (Ind. Tax 1998); *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 all or part of a building is exempt from property taxes if it owned, occupied, and used for charitable purposes. Personal Property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).
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. 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 are 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).

### **Conclusions Regarding the Exemption Claim**

13. The Petitioner is seeking exemption for the personal property it uses in the operation of a used clothing store. The Petitioner contends that the underlying purpose of its used clothing store constitutes a charitable purpose and, as such,

is entitled to property tax exemption.

14. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
15. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

*Raintree Friends*, 667 N.E. 2d at 813 - 14 (quoting *Black’s Law Dictionary*, 213 (5<sup>th</sup> ed. 1979)).
16. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
17. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.



18. The Petitioner's operation of a consignment store in and of itself does not constitute a charitable act. However, the purposes for which the consignment store is operated show that the Petitioner is participating in a charitable act and that the subject personal property is used to further, and is "reasonably necessary" to conduct the operations that forward the charitable purposes of the Organization and the Methodist Church.
19. The fact that the donors of the goods receive monetary compensation for the sale of their goods does not have any affect on the charitable nature of the Petitioner's activities. The opportunity to recoup a portion of an item's original cost is simply an incentive offered to the public in exchange for the donation of used goods. Without the donated goods, the Petitioner could not provide clothing and other goods to the less privileged or carry out the religious and charitable purposes of the Organization and, as such, would fail to fulfill the purposes for which it was organized.
20. The evidence submitted clearly shows that one purpose of the Petitioner's operation is the provision of goods at low cost to those suffering from economic challenges. Although the goods are sold in a retail setting, the price for the goods is discounted to make the sale reasonable for those less advantaged. The Petitioner does not have any aspirations to financially profit or benefit as an organization or to receive compensation for its activities. The Petitioner's operation is carried out as an avenue of relief offered to the economically disadvantaged and can certainly be categorized as a charitable act.
21. Additionally, another stated purpose of the Petitioner's operation is to carry out the purposes of the Organization. In doing so, the funds retained, after expenses, by the Petitioner are used solely for funding religious and charitable activities of the Methodist Church. Again, no dispute exists regarding the use of the proceeds retained by the Petitioner from the sale of consigned goods. The monies kept are used to carry out the religious and charitable works of the Organization. As such, the Petitioner's operation can be considered "reasonably

necessary” to the religious and charitable purposes of the Organization and, therefore, qualifies for property tax exemption. (When property is deemed “reasonably necessary” to furthering an entity’s exempt purpose, the property qualifies for exemption. *LeaSea Broadcasting Corporation v. State Board of Tax Commissioners*, 525 N.E. 2d 637 (Ind. 1988))

22. Personal property, as with real property, is exempt from property taxation if it is owned and used for charitable purposes. (Ind. Code § 6-1.1-10-16(e)) The Petitioner has demonstrated that the subject property is used to carry out a charitable activity through the operation of a consignment store. The Petitioner has also demonstrated that the subject property is “reasonably necessary” to the charitable and religious works of the Methodist Church through the Organization. The Petitioner has carried the burden of proving that the subject property fell specifically within the guidelines of the exemption statute.

23. Accordingly, the subject personal property is 100% exempt from property taxation for the assessment year 1996.

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.

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Chairman, Indiana Board of Tax Review