

**STATE OF INDIANA  
Board of Tax Review**

TRINITY WESLEYAN CHURCH,	)	On Appeal from the Vanderburgh
	)	County Property Tax Assessment
Petitioner,	)	Board of Appeals
	)	
v.	)	Petition for Review of Exemption
	)	Form 132
VANDERBURGH COUNTY PROPERTY TAX	)	Petition Nos. 82-028-97-2-8-00031
ASSESSMENT BOARD OF APPEALS,	)	82-028-97-2-8-00035
	)	82-028-97-2-8-00032
Respondent.	)	82-028-97-2-8-00033
	)	82-028-97-2-8-00034
	)	82-028-97-2-8-00036
	)	Parcel Nos. 1130024072011
	)	1131024079006
	)	1131024079002
	)	1131024079003
	)	1131024079004
	)	1131024079007

**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 land owned by Trinity Wesleyan Church qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for religious purposes.

## 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, Trinity Wesleyan Church (Trinity Wesleyan) filed an application for property tax exemption with the Vanderburgh County Board of Review (BOR) on May 15, 1996. The BOR denied the application on January 3, 1997, and gave Trinity Wesleyan proper notice of denial.
  
3. Pursuant to Ind. Code § 6-1.1-11-7, Trinity Wesleyan filed a Form 132 petition seeking a review of the BOR action 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 March 31, 1998, before Hearing Officer Kim Chattin. Testimony and exhibits were received into evidence. Tony O'Neal, trustee, was present for Trinity Wesleyan. Cheryl Musgrave, County Assessor, and Khris Seger, hearing officer, were present on behalf of the BOR.
  
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 – Treasurer's report, February 1998
  - Petitioner Exhibit 2 – Constitution of the North American General Conference of the Wesleyan Church
  
  - Respondent Exhibit 1 – information packet from the Vanderburgh County Assessor

6. The properties are located in Evansville, Pigeon Township, Vanderburgh County  
at: 1239 East Indiana Street  
1241 East Indiana Street  
1243 East Indiana Street  
1245 East Indiana Street  
1249 East Indiana Street  
1251 East Indiana Street
7. The exemption is requested for tax year 1997, with taxes due and payable in 1998.
8. The Hearing Officer did not view the property.
9. The property on appeal consists of six parcels purchased by the Petitioner to be ultimately used for a new church facility and park.
10. The current church is “landlocked”, so the Petitioner has been buying property as it becomes available. Currently, there is no target date for completion since it is unknown when the Petitioner will be able to acquire the rest of the needed property.
11. At the current time, the property is used for church activities a few times a month.

### **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. 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)).
5. 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*.
6. 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).
7. 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**

8. 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.
9. 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.
10. 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**

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

14. 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*, 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)).
15. 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).
16. 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**

17. In *LeSea Broadcasting v. State Board of Tax Commissioners*, the Court defined a “reasonably necessary” standard to evaluate whether a certain property should

be exempt from taxation. That is, a property must be determined to be “reasonably necessary” to the exempt purpose in order to be exempt from property taxation. 525 N.E. 2d 637 (Ind. Tax 1988).

18. With regard to the case at hand, the predominant use of the land also determines whether the property should be exempt. Ind. Code § 6-1.1-10-36.3
19. Although intended for future building sites, the current use of the subject property is as an area for church-related activities, which are mostly recreational activities sponsored by the Petitioner’s youth group. While infrequent, these activities are the only current use of the property, and therefore its predominant use.
20. Given that these activities are the predominant use of the property, their relation to the Petitioner’s religious purpose must be determined. As the activities are all directly related to the Petitioner’s religious purpose, they can be determined to be “reasonably necessary” to that purpose.
21. As such, it is determined that the subject property is “reasonably necessary” to the Petitioner’s exempt purpose. The appeal is granted, and the subject property is found to be wholly exempt from property taxation.

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