

REPRESENTATIVES FOR PETITIONER:

Leonard J. Solfa Jr., General Counsel, Moose International
Peter L. Poterek, Legal Assistant, Moose International Legal Department

REPRESENTATIVES FOR RESPONDENT:

Betty Wilusz, Lake County Property Tax Assessment Board of Appeals (PTABOA)
Sharon Fleming, Lake County Property Tax Assessment Board of Appeals (PTABOA)

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WHITING MOOSE LODGE #1189,)	Petition No.: 45-028-00-2-8-00001
)	Parcel No.: 28-29-0072-0010
Petitioner,)	Dupl. No.: 28-340649
)	
v.)	
)	
LAKE COUNTY PROPERTY)	County: Lake
TAX ASSESSMENT BOARD OF)	Township: North
APPEALS,)	Assessment Year: 2000
)	
Respondent.)	
)	

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

JULY 16, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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

ISSUE

1. The issue presented for consideration by the Board was:
Whether the subject property should be 100% tax exempt for the period of January 1, 2000 to November 30, 2000.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-11-7, Peter Poterek, filed a Form 132, Petition for Review of Exemption (Form 132 petition) on behalf of Whiting Moose Lodge #1189, petitioning the Board to conduct an administrative review of the above petition. The underlying Form 136 Application for Property Tax Exemption (Form 136 application) was filed on April 18, 2000. The Lake County Property Tax Assessment Board of Appeals (PTABOA) denied the application and sent notice on March 4, 2002. The Form 132 petition was filed on April 4, 2002.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was conducted on April 19, 2004, in Crown Point, Indiana, before Ellen Yuhan, the duly designated Administrative Law Judge (the "ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner:
Peter L. Poterek, Legal Assistant to Moose International Legal Department
James Kersbergen, Deputy Supreme Secretary, Moose International
Terry Steagall, Realtor

For the Respondent:

Betty Wilusz, Lake County PTABOA Staff

Sharon Fleming, Lake County PTABOA Staff

5. The following exhibits were presented for the Petitioner:

Petitioner's Exhibit 1 – List of Officers and Committee Chairman for the Loyal
Order of the Moose for 1999/2000

Petitioner's Exhibit 2 – Certification of Election of Administrator

Petitioner's Exhibit 3 – Letter to Mr. Hill

Petitioner's Exhibit 4 – Application for Property Tax Exemption, Form 136

Petitioner's Exhibit 5 – Notice of Action on Exemption Application, Form 120

Petitioner's Exhibit 6 – Petition to the Indiana Board of Tax Review for Review
of Exemption, Form 132

Petitioner's Exhibit 7 – Certified Reports of Whiting Lodge #1189, November 1,
1999 through October 31, 2000

Petitioner's Exhibit 8 – Resolution to Voluntarily Dissolve and Forfeit Charter

Petitioner's Exhibit 9 – Memorandum of Charter Forfeiture

Petitioner's Exhibit 10 – Certificate of Incorporation

Petitioner's Exhibit 11 – Special Assistants Reports, Lodge Officers

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit A – Ind. Code 6-1.1-10, Chapter on Exemptions

Respondent's Exhibit B(1) – Corporation Search Results for Whiting Lodge 1189
Loyal Order of Moose, Inc.

Respondent's Exhibit B(2) – Corporate Search Results for Whiting Lodge No.
1189 Loyal Order of Moose Incorporated

7. The Petitioner objected to the Respondent's exhibits, as they had not been exchanged in a timely manner. However during the course of the hearing, it became evident that, although the Petitioner sent the list of witnesses and evidence in a timely manner, the materials were sent to the Board and not to the Respondent. The participants were offered

the option of either continuing the hearing to another day or allowing all the evidence to be submitted. The participants opted to resume the hearing and include all the evidence.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Subject Form 132 Petition with attachments
 - Board Exhibit B – Notice of Hearing on Petition (Form 117)
 - Board Exhibit C – Tape recordings labeled IBTR #5809 and #5817
9. The subject property on appeal is located at 1548 199th Street, Whiting, IN.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. The Lake County PTABOA determined the land, improvements, and personal property to be 100% taxable for 2000.
12. The Petitioner contends that the land, improvements, and personal property should be 100% tax exempt for 2000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a

preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

CONSTITUTIONAL AND STATUTORY BASIS FOR EXEMPTION

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
18. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
19. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. 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 property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810 (Ind. Tax 1996) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

BASIS OF EXEMPTION AND BURDEN

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

21. 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 – 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. *See generally, National Association of Miniature Enthusiasts (NAME) v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax 1996).

22. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).

23. 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 v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

Analysis

Whether the subject property should be 100% tax
exempt for the period of January 1, 2000 to November 30, 2000.

24. The Petitioner contends that the Whiting Moose Lodge was an active entity during most of the year 2000 and, as such, is entitled to exemption for the portion of the year that the Lodge was open and the Lodge's charter was active.

25. The Respondent contends that the Petitioner failed to supply any documentation to establish that the property qualified for exemption and that on two separate occasions, when site inspections were done, the Lodge appeared to be vacant. Therefore, it was not occupied and the exemption was properly denied.

26. The Petitioner presented the following evidence and testimony in regard to this issue:
 - a. The Lodge's membership had gone down and despite the best efforts of the members they could not maintain an active lodge and voted to cease operations. The Lodge voluntarily dissolved and forfeited its charter effective November 30, 2000. *Board Exhibit A.*
 - b. The Lodge is a recognized IRS 501(c)(8) not-for-profit fraternal organization. *Board Exhibit A.*
 - c. The Lodge was an active, ongoing entity during most of 2000. Meetings were held there to discuss the sale of the building and to collect and audit records. During those meetings other members were present in the lodge. *Steagall testimony. Poterek testimony. Kersbergen testimony.*
 - d. The Certified Quarterly Reports show that the lodge was active and open during the period covered in the reports, November 1, 1999 to October 31, 2000. *Solfa statement. Petitioner's Exhibit 7.*
 - e. The Certificate of Incorporation shows the same name and creation date as Respondent's Exhibit B(2). This clearly shows that the organization was incorporated on the assessment date. The address shown on this exhibit belongs to Mr. Norman Hill, Sr., the Administrator. *Petitioner's Exhibits 2, 10, 11. Respondent's Exhibit B(2).*

27. The Respondent presented the following evidence and testimony in regard to this issue:
- a. Site inspectors were sent to view the building on two separate occasions. There was a “For Sale” sign on the building, no one was on the premises, and, although cards were left so that someone from the Lodge would call the assessor’s office, no one did.
Wilusz testimony. Board Exhibit A.
 - b. No documentation was provided with the Form 136. The form clearly states that the taxpayer must present evidence establishing that the property qualifies for exemption.
Fleming testimony. Board Exhibit A.
 - c. The statute states that the exemption does not apply to real property unless it is actually occupied and exclusively used by the fraternal beneficiary association in carrying out the purpose for which it was incorporated, organized, or licensed. The evidence shows that the legal entity at 1548 119th St. in Whiting was inactive as of November 28, 1988. We denied the exemption because the Lodge was not incorporated. *Wilusz testimony. Board Exhibit 1. Respondent’s Exhibit B (1).*
28. The Lake County PTABOA determined the Petitioner’s land, improvements and personal property to be 100% taxable. The PTABOA determination was based on several factors. One, the Petitioner had not supplied any documentation to establish that the entity was entitled to exemption. Two, the building appeared to be vacant and was for sale. Third, a search of business entities showed that the entity listed at 1548 119th Street had been administratively dissolved on November 28, 1988.
29. The Petitioner contends that the Lodge should be exempt from taxes for most of the year 2000 because the Lodge was active until November 30, 2000 when the Resolution to Voluntarily Dissolve and Forfeit Charter became effective. Testimony offered by the witnesses established that the Lodge was open and used for various meetings for a portion of the year 2000.
30. The Certified Quarterly Reports show receipts for merchandise sales/social quarters for the periods November 1, 1999 to January 31, 2000, February 1, 2000 to April 30, 2000 and May 1, 2000 to July 31, 2000. There were no receipts for the period of August 1,

2000 to October 31, 2000. A letter of explanation for the period ending October 31, 2000 shows that both the bar and the social quarters were closed on May 20, 2000.

31. The Petitioner presented testimony and evidence to show that the organization was incorporated on the assessment date. The name and the creation date shown on the Certificate of Incorporation match the information shown in Respondent's Exhibit B(2), although the address in said exhibit is not the address of the Lodge, but the address of Mr. Norman Hill, Sr., the Administrator.
32. The Petitioner therefore did establish that the Lodge was active for part of 2000 and that it was incorporated on the assessment date.
33. The Petitioner asserts that because the building was open in 2000 and the Lodge's charter was not forfeited until November 30, 2000, that the Lodge is entitled to an exemption. The Petitioner is incorrect.
34. The Petitioner 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*, 512 N.E.2d at 938. The Petitioner claimed exemption as Fraternal and made reference to Ind. Code § 6-1.1-10-16.
35. The PTABOA denied the Petitioner's claim for exemption based on Ind. Code § 6-1.1-10-23. The Petitioner provided no evidence to show that the subject property fits the definition of a fraternal benefit association.
36. Fraternal beneficiary associations are discussed in Ind. Code § 6-1.1-10-23 which states:
 - (a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if: it is owned by a fraternal beneficiary association, which is incorporated, organized, or licensed under the laws of this state.
 - (b) The exemption does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.

37. In the Indiana Code, Title 27, article 11 governs fraternal benefit societies. According to Ind. Code § 27-11-1-1: “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, **and that provided benefits in accordance with this article.**” (Emphasis added).
38. Ind. Code § 27-11-2-3 states that: “A society shall operate for the benefit of members and their beneficiaries by: (1) Providing benefits as specified in IC 27-11-6-1; and (2) Operating for one (1) or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members that may also be extended to others. These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.”
39. Ind. Code § 27-11-6-1 lists benefits that can be provided as: death benefits; endowment benefits; annuity benefits; temporary or permanent disability benefits; hospital; medical or nursing benefits; monument or tombstone benefits to the memory of deceased members; and such other benefits as authorized for life insurers and that are not inconsistent with this chapter. Title 27 Article 11 seems to apply to organizations that provided contractual benefits similar to insurers. (Title 27 contains the statutes governing insurance).
40. As noted, although the Petitioner claimed exemption as Fraternal, it also made reference to Ind. Code § 6-1.1-10-16.
41. Pursuant to Ind. Code § 6-1.1-10-16(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.

42. On the Form 136 application, the Petitioner states that the exempt purpose is “Fraternal activities for fund raisers – funds used for various community services.” *Petitioner’s Exhibit 4. Board Exhibit A.*
43. In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *Plainfield Elks Lodge No. 2186 v. State Board of Tax Comm’rs*, 733 N.E. 2d 32 (Ind. Tax Court 2000).
44. A “predominate use” test was adopted for determining whether property qualifies for exemption under Ind. Code Chapter 6-1.1-10. “Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominate use of the facility, not distribution of income for charitable purposes.” *State Board of Tax Commissioners v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E. 2d 1257, 1263 (Ind. 2002).
45. Pursuant to Ind. Code § 6-1.1-10-36.3, property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one 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. Property that is predominately used or occupied for purposes other than one of the stated purposes is not exempt from any part of the property tax.
46. The Petitioner was unable to produce any evidence to demonstrate the usage of the subject property, other than to refer to the quarterly reports which are essentially just financial reports that do not reflect the degree of charitable usage, if any.
47. Much of the discussion and evidence related to events subsequent to March 1, 2000, and consequently provided little probative value to show that the predominant use of the subject in the “year that ends on the assessment date.”
48. Therefore, for all the reasons stated above, the subject property is not entitled to an exemption.

SUMMARY OF FINAL DETERMINATION

49. The Petitioner failed to prove that the subject property is entitled to the exemption claimed. There is no change as a result of this issue.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.