

REPRESENTATIVE FOR PETITIONER:

Alan D. Wilson, Attorney

REPRESENTATIVE FOR RESPONDENT:

Jamie L. Shepherd, Howard County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Young Men’s Christian Association))	Petition No.: 34-002-08-2-8-00001
of Kokomo))	
)	Parcel No.: 34-09-04-226-002.000-019
Petitioner,))	
)	
v.))	Howard County
)	Center Township
Howard County Assessor))	
)	
Respondent.))	Assessment Year: 2008
)	

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

December 3, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The subject property is part of a YMCA camp consisting of 2.51 acres with a lodge and a house. Exemption was allowed for 2.4 acres and the lodge, but not for .11 acres and the house. Is the balance of the property (the caretaker’s residence) also exempt?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Young Men's Christian Association of Kokomo (YMCA) filed a Form 136 Application for Property Tax Exemption for the 2008 assessment on May 13, 2008. It claimed 100% exemption for the subject property pursuant to Ind. Code § 6-1.1-10-16.
2. The Howard County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on March 6, 2009. The PTABOA determined the land is 86% (\$44,150) exempt and 14% (\$7,250) taxable and the improvements are 81% (\$111,500) exempt and 19% (\$25,900) taxable. Part of the PTABOA's determination explained that "since the dwelling and the portion of land that this building contained was rented/leased to an individual, and not used in conjunction as to the intent of the exemption's purpose, then this portion shall be ... taxable...."
3. On April 8, 2009, the Petitioner filed a Form 132 Petition for Review of Exemption. It claimed charitable exemption based on Ind. Code § 6-1.1-10-16 for the whole property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. In its entirety, the subject property consists of a small house, a clubhouse/lodge and two utility sheds on 2.51 acres located at 917 South Malfalfa Road, Kokomo. The parties agreed that the focus of this appeal is the caretaker's residence (the house and .11 acres of land).
5. Administrative Law Judge Dalene McMillen held the hearing on August 6, 2009. She did not conduct an on-site inspection of the property.

6. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Executive Director David A. Dubois,
Office Manager Brandi Cupp,
 - For the Respondent – County Assessor Jamie L. Shepherd,
Chief Deputy Assessor Susan Kordel.

7. The Petitioner submitted the following exhibit:
 - Petitioner Exhibit 1 – Renter’s Agreement.

8. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1 – Summary of issues,
 - Respondent Exhibit 2 – Application for Property Tax Exemption – Form 136,
 - Respondent Exhibit 3 – Constitution and By-laws of the Young Men’s Christian Association of Kokomo,
 - Respondent Exhibit 4 – Notice of Action on Exemption Application – Form 120,
 - Respondent Exhibit 5 – Property record card (PRC) for the subject property,
 - Respondent Exhibit 6 – Aerial photograph of the subject property,
 - Respondent Exhibit 7 – Statement of Activities for 2005 and 2006,
 - Respondent Exhibit 8 – Statements of Financial Position for 2004, 2005 and 2006,
 - Respondent Exhibit 9 – Indiana Code §§ 6-1.1-10-16, -16.5 and -16.7,
 - Respondent Exhibit 10 – Indiana Code § 6-1.1-10-25,
 - Respondent Exhibit 11 – Indiana Code § 6-1.1-10-36.3,
 - Respondent Exhibit 12 – *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997),
 - Respondent Exhibit 13 – Indiana Board of Tax Review Determination in *Tornatta v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals and Pigeon Twp. Assessor*, Petition No. 82-029-00-2-8-00001,
 - Respondent Exhibit 14 – Indiana Board of Tax Review Determination in *Oaken Bucket Partners v. Hamilton Co. Property Tax Assessment Bd. of Appeals*, Petition No. 29-006-04-2-8-00009.

9. The following additional items are recognized as part of the record:
 - Board Exhibit A – Form 132 petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Hearing sign-in sheet.

SUMMARY OF PETITIONER'S CASE

10. The land and improvements at issue should be 100% exempt from property taxation. The disputed part of the property is the “caretaker’s residence” where a YMCA employee resides and carries out the objectives of the organization. *Wilson argument.*
11. The YMCA gets no income from renting the caretaker’s residence. The renter of the caretaker’s house must be a member of the YMCA of Kokomo. That person is responsible for cleaning and maintaining the lodge, as well as the lawn care of the upper level of Camp Tycony. The caretaker, Ms. Cupp, provides security to the property. Without Ms. Cupp at the property, the YMCA would not be able to afford to clean the property or protect it from trespassers and vandals. In return for those responsibilities, rent for the residence is waived. *Petitioner Exhibit 1; Dubois testimony.*
12. Ms. Cupp also is an employee of the YMCA. Her presence on the property contributes directly in allowing the YMCA to further their service of putting Christian principles into practice through programs for children, parents, non-profit groups, churches and schools that build a healthy mind, body and spirit. Ms. Cupp aids the YMCA in efficiently and effectively managing the camp. *Dubois testimony.*
13. In exchange for living in the house rent-free Ms. Cupp provides many services. She cleans the lodge after the YMCA’s summer camp that is conducted for approximately ten weeks. She mows. She acts as security to prevent trespassers and vandals. She coordinates activities such as nature collections, hikes, fishing, canoeing and camping. She also conducts tours and provides information to people who just stop at the property to find out what programs and services are available. *Cupp testimony.*
14. Ms. Cupp works 40 hours per week at the YMCA, as the office manager, in addition to her responsibilities of caring for Camp Tycony. Her salary (based on \$724.56 bi-weekly)

was not adjusted as a result of her assuming the added responsibilities at Camp Tycony. *Dubois and Cupp testimony.*

15. The caretaker residence is a way for the YMCA to lower costs while maintaining programs and services at Camp Tycony. *Wilson argument.*

SUMMARY OF RESPONDENT'S CASE

16. The Respondent contends the exemption should be denied because the YMCA has not shown the caretaker's residence is occupied and used for an exempt purpose. While the YMCA may be recognized as an exempt organization, the mere ownership of the caretaker's residence does not qualify it for a tax exemption. *Shepherd testimony.*
17. The statute under which the Petitioner claims an exemption states "all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for...charitable purposes." *Shepherd testimony; Respondent Exhibits 1 and 9.* When the PTABOA denied the exemption they believed the house was an income producing asset for the YMCA. Therefore, it was not occupied and used for a charitable purpose. Nor does it further the objectives of the YMCA as required by Ind. Code § 6-1.1-10-16. *Shepherd testimony; Respondent Exhibits 1, 2, 7, 8, 9.¹*
18. The caretaker residence does not qualify for exemption under Ind. Code § 6-1.1-10-36.3 because the property must be predominately used and occupied more than 50% of the time for an exempt purpose. The house is not used by the YMCA to promote or enhance its programs. Rather, it is occupied and used by Ms. Cupp as her primary residence. *Shepherd testimony.*

¹ The Petitioner's financial information filed with the Application for Exemption showed rental income of \$11,765. The PTABOA assumed the rental income reported on the financial reports was from renting the house. *Shepherd testimony; Respondent Exhibits 2, 7 and 8.* But even if the YMCA is not deriving an income from the house, it still would not qualify for an exemption because it is not used for a charitable purpose. *Shepherd testimony.*

19. The caretaker residence does not qualify under Ind. Code § 6-1.1-10-25, which limits the exempt property to property “exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization.” The house is not exclusively used or occupied for the purposes and objectives of the YMCA. *Shepherd testimony; Respondent Exhibit 10.*

20. The Indiana Tax Court has ruled charitable enterprises will be granted a tax exemption by engaging in conduct that is beneficial to the general public. *Shepherd testimony; Respondent Exhibit 12.* An exemption will generally be found if three elements are met, “a piece of property must be owned for charitable purposes; a piece of property must be occupied for charitable purposes; a piece of property must be used for charitable purposes.” *Shepherd testimony; Respondent Exhibit 11.* The YMCA has not shown how allowing an employee to live in this house is beneficial to the general public or that it is furthering the charitable purpose of the YMCA organization. *Shepherd testimony.*

21. The Board has ruled that exemption statutes contain specific requirements regarding ownership, occupancy and use in furtherance of exempt goals that prevent an entity from leasing property to another for either party’s profit. The Respondent cites two Board decisions in support of this contention, *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals and Pigeon Township Assessor*, Petition No. 82-029-00-2-8-00001 and *Oaken Bucket Partners LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-006-04-2-8-00009. According to the Respondent, the Indiana Board consistently has ruled the owner cannot hold the property as a profit making investment and they must show how leasing of the property is a benefit to the public. *Shepherd testimony; Respondent Exhibits 13, 14.*

ANALYSIS

22. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1-1-2-1. Nevertheless, property that is owned, occupied, and used for

educational, literary, scientific, religious, or charitable purposes is allowed an exemption from property taxation by Ind. Code § 6-1.1-10-16.² To qualify for this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. Ind. Code § 6-1.1-10-36.3.

23. The words “owned, occupied and used” restrict the activities that can be conducted on the property and qualify for an exemption, but they do not require a single entity to achieve a unity of ownership, occupancy and use. Once these three elements are met, the property can be exempt from property taxation. *Knox Co. Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).
24. A taxpayer seeking exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass’n of Seventh Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
25. Once there is a prima facie case for allowing an exemption, the burden shifts to the assessing official to rebut that case. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
26. The parties agree that only the house and .11 acre are in dispute—the remaining 2.40 acres and other improvements already were granted a tax exemption by the PTABOA.
27. The Petitioner contends its property is exempt from property taxation under Ind. Code § 6-1.1-10-16. It bears the burden of proving, by a preponderance of the evidence, that the subject property is owned, occupied and predominately used for one of the exempt

² Indiana Code §6-1.1-10-25 also provides an exemption for property owned by a YMCA, but that is not the exemption that the Petitioner claimed in this case.

purposes listed in that statute. In this case, the Petitioner claims the exempt use is charitable.

28. This kind of determination is particularly fact sensitive. Several factors support a conclusion that the caretaker's residence is owned, occupied, and used to further charitable purposes. The YMCA camp has programs for children, parents, non-profit groups, churches and schools that build a healthy mind, body and spirit. Ms. Cupp helps coordinate activities and conduct tours for schools, churches, and families who visit the subject property. In addition, Ms. Cupp helps maintain the property by cleaning the lodge and mowing the area surrounding the residence, lodge and camp. Furthermore, Ms. Cupp provides security and surveillance for the subject property. Without Ms. Cupp residing at the property, the YMCA would not be able to afford to clean and protect the property from trespassers and vandals. These factors demonstrate that the caretaker's residence is occupied and used to further the Petitioner's charitable purpose. Thus, the Petitioner established a prima facie case for a 100% exemption, including the caretaker's residence.
29. The Respondent did not dispute any of the facts, but simply reached a different conclusion. Apparently it was based (at least in part) on the erroneous assumption that the YMCA got rental income from the house. But the Respondent did not present any substantial evidence to demonstrate that the use and occupancy of the subject property is not for the exempt purposes and objectives of the YMCA camp. The Respondent merely argued that the Petitioner is not entitled to an exemption because the house in question is used by Ms. Cupp as her primary residence. The Respondent's argument is not sufficiently persuasive to deny the exemption.
30. In *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 40, (Ind. Tax Ct. 2000) the Indiana Tax court determined that a "mobile home played a large role in reducing vandalism of the property because it maintained a human presence on the property." Therefore, the court found that the mobile home residence was "reasonably

necessary” to further the purpose and use of the balance of the property, which was itself exempt. *Id.* at 44. The basic fact situation presented in this case is very similar to what was presented in *Alte Salems Kirche*. In such circumstances, the caretaker residence that is required and used in the furtherance of exempt purposes also is exempt.

Summary of Final Determination

31. The Petitioner established a prima facie case that the disputed portion of the subject property is also exempt. The Respondent failed to rebut that case. Therefore, the Board finds in favor of the Petitioner and holds that the subject property is 100% exempt.

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 pursuant to the provisions of Indiana Code § 6-1.1-15-5 as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE0287.1.html>.