

REPRESENTATIVES FOR PETITIONER:

John Hollinger, Treasurer for The Promise Church

REPRESENTATIVES FOR RESPONDENT:

Hamilton County: Debbie Folkerts, County Assessor
Fall Creek Township: Terry L. Michael, Township Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BROOKSCHOOL, LLC,)	
)	Petition for Review of Exemption,
Petitioner,)	Form 132
)	
)	Petition No: 29-020-02-2-8-00001
v.)	
)	County: Hamilton
)	Township: Fall Creek
HAMILTON COUNTY)	
PROPERTY TAX ASSESSMENT)	Parcel No: 19-11-34-00-00-012.304
BOARD OF APPEALS,)	
)	
Respondent.)	Assessment Year: 2002

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

January 30, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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

1. The issue presented for consideration by the Board was:

Whether twenty-two percent (22%) of the real property owned by Brookscool LLC and leased to the not-for-profit Metro Ministries, Inc., d/b/a The Promise Church, qualifies for property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of religious or charitable purpose.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Paul Somers, member of Brookscool, LLC, filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on March 17, 2003. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its decision on February 25, 2003, denying the requested exemption.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was conducted on May 7, 2003, in Noblesville, Indiana, before Dalene McMillen, the duly designated administrative law judge authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were present at the hearing, sworn as witnesses, and presented testimony:

For the Petitioner:

John Hollinger, Treasurer for The Promise Church (the “Church”)¹

For the Respondent:

Debbie Folkerts, Hamilton County Assessor
Terry Michael, Fall Creek Township Deputy Assessor

¹ Hollinger and the Church do not have any ownership interest in Brookscool, LLC. *Hollinger testimony.* Hollinger is neither a licensed attorney nor a tax representative certified to represent taxpayers before the Board pursuant to 52 IAC 1. Hollinger stated that he was acting as a “witness” on the property owner’s behalf. *Hollinger testimony and Pet. Ex. 1(f).*

5. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1

- (a) A copy of the evidence and summary of witness testimony letter;
- (b) four pages of summary of witness testimony by John Hollinger;
- (c) State Board's Findings of Fact and Conclusions of Law for *New Life Christian Center, Inc. v. Lake County Property Tax Assessment Board of Appeals*;
- (d) a fax from John Hollinger to Paul Somers, dated May 6, 2003;
- (e) a copy of the exchange of list of witnesses and exhibits, dated April 22, 2003;
- (f) a fax from Paul Somers authorizing John Hollinger to represent Brookscool LLC at the State hearing, dated April 18, 2003;
- (g) a list of four properties alleged to be comparable that are exempt from taxation; and
- (h) the cost to The Promise Church to build-out and finish the storefront leased space.

For the Respondent:

Respondent's Exhibit 1 – A copy of the exhibits and summary of witness testimony letter and Brookscool's 2002 property record card.

Respondent's Exhibit 2 – A copy of the Application for Property Tax Exemption (Form 136).

Respondent's Exhibit 3 – A copy of the Notice of Action on Exemption Application (Form 120).

Respondent's Exhibit 4 – A copy of the shopping center lease agreement between Brookscool, LLC and Metro Ministries, Inc., dated May 17, 2001.

Respondent's Exhibit 5 – A copy of *Sangrilea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954 (Ind. Tax Ct. 1997).

Respondent's Exhibit 6 – A copy of the State Board's Findings of Fact and Conclusions of Law for Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals and Pigeon Township Assessor.

Respondent's Exhibit 7 – A hearing memorandum prepared by Annette Lee Rutkowski, Counsel to the Hamilton County Assessor.

For the Board:

Board Exhibit A – Form 132 petition, dated March 17, 2003.

Board Exhibit B – Notice of Hearing on Petition (Form 117), dated March 21, 2003.

6. The subject property is located at 11681 Brookschool Road, Fishers, Fall Creek Township, Hamilton County, Indiana.
7. The Hamilton County PTABOA denied exemption on 100% of the subject property for March 1, 2002.

Jurisdictional Framework

8. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
9. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

State Review and Petitioner's Burden

10. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the

hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).

11. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
12. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax Ct. 1999). ['De minimis' means only a minimal amount.]
13. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
14. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and proven, by a 'preponderance of the evidence,' both the alleged error(s) in the assessment and specifically what the assessment should be. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all

evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

15. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Indiana Constitution, Article 10, § 1.
16. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption.
17. In Indiana, the 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 Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically 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

18. 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.
19. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for charitable and religious purposes in general. It reads in pertinent part: “[a]ll 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.” Ind. Code § 6-1.1-10-16(a).

20. 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, Nat’l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
21. 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 that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
22. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Miniature Enthusiasts*, 671 N.E.2d at 220; *Indiana Association of Seventh-Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Monarch Steel Co., Inc. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides “a present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *St. Mary’s Medical Center v. State Bd. of Tax Comm’rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989).
23. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes.

Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs, 686 N.E.2d 954, n. 2 (Ind. Tax Ct. 1997).

24. 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 exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of Issue

Whether twenty-two percent (22%) of the real property owned by Brookschool LLC that is leased to the church, qualifies for property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of religious or charitable purpose.

25. The Petitioner contends twenty-two percent (22%)² of the real property should be exempt from property taxation.
26. The Respondent contends that the subject property should be 100% taxable because the owner leases the property for a profitable gain, therefore the property fails to meet the criteria of owned, occupied and used for charitable purpose.
27. The applicable rules governing this issue are:

IC 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.

IC 6-1.1-10-36.3³

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of

² This percentage represents the 4,960 sq. ft. of the improvement leased to Metro-Ministries, Inc., that is being used as a church. That section amounts to 21.98 % of the 22,560 sq. ft. improvement.

³ As statute read prior to amendments effective July 1, 2003.

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.

* * *

(b) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

(2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.

(3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

(4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

(c) Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one (1) or more of the stated purposes.

Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997).

“[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. Once these three elements have been met, regardless of by whom, the property can be exempt from taxation.”

28. Evidence and testimony considered particularly relevant to this determination include the following:

(a) Hollinger contends that the PTABOA is defining ownership too narrowly and thus defeating the legislature’s purpose in enacting the exemption statutes in regards to the subject property. *Hollinger testimony and argument.*

(b) Hollinger refers to *New Life Christian Center, Inc. v. Lake County Property Tax Assessment Board of Appeals, 45-004-00-2-8-00001*, where the Board stated:

“IC 6-1.1-10-16 requires that the property be owned for a religious purpose and not necessarily by the religious entity.” *Pet. Ex. 1(c) and Hollinger testimony.*

- (c) Hollinger further argues that the lease evidences Brookscool’s intent to “own” the 4,960 square feet leased to the Church “solely as a church and all associated and related uses.” *Resp’t Ex. 4 and Hollinger testimony.*
- (d) The Church currently pays rent in the amount of \$7,440 per month for the 4,960 square foot area. They also pay an additional \$1,000 per month for their portion of the taxes, insurance, and common area maintenance. If the partial exemption were granted, Brookscool would no longer require the Church to pay their portion of tax into the escrow account for the taxes, insurance and common area maintenance. *Pet. Ex. 1(b), Resp’t Ex. 4, and Hollinger testimony.*
- (e) The Respondent contends that while unity of ownership, occupancy and use are not required, *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997) contains limits on each to prevent an entity from leasing property to another for either party’s profit and then claiming exemption. Further, a property must be predominately used for a charitable purpose to qualify for this exemption. *Resp’t Ex. 7 and Folkerts argument.*
- (f) Respondent posits that the tax exemption request made by the Church on behalf of the owner must be denied as there has been no showing that Brookscool, LLC owned the property for a charitable or religious purpose. There has been no evidence to show that Brookscool, LLC owns this property as anything other than a profit-making venture. *Resp’t Ex. 7.*
- (g) The Church provided testimony that indicates a claim of ownership to the real property through a lease agreement. This argument must fail, as a lease is not a conveyance of ownership, but a contractual arrangement that conveys possession, control and use for a specified rent and a specified term, “after which the property reverts to the owner.” (*Merriam-Webster’s Dictionary of Law*, 1996). *Resp’t Ex. 7.*

- (h) No one with an ownership interest was present for Brookschool, LLC to testify or present documentation to support the contention that the property is not owned for private gain or profit.

Analysis of the Issue

29. The Petitioner contends that twenty-two percent (22%) of the land and improvements should be exempt from taxation for the church's leased portion of the property.⁴ *Pet. Ex. 1 and Hollinger testimony.*
30. Exemptions are strictly construed against the person claiming the exemption. *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997). The burden is upon the person claiming the exemption to show that the property falls specifically within the statute under which exemption is being sought. *Indiana Seventh-Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
31. In *Sangralea*, the Tax Court held there are three (3) requirements in determining entitlement to an exemption: (1) Is the property used for a charitable (or religious) purpose? (2) Is the property occupied for a charitable (or religious) purpose? (3) Is the property owned for a charitable (or religious) purpose?
32. The parties agree that twenty-two percent (22%) of the subject property is occupied and used for charitable and religious purposes. The third requirement, ownership for a charitable or religious purpose, is in dispute.
33. Hollinger contends that the Church owns the 22% by way of the May 17, 2001, lease agreement between Brookschool, LLC and Metro Ministries, Inc. (the Church). However,

⁴ Hollinger also presented an alternative argument, requesting that a tax exemption of 4.5% should be granted on the amount paid out by the Church to "build-out" and finish the storefront leased from Brookschool, LLC, as the Church is the owner of this part of the property as long as the lease is in effect. While the church claims to be the owner of the build-outs, the build-outs become part of the real property and revert to the owner of the building upon termination of the lease agreement. *See Resp't. Ex 4*. Thus, Brookschool is the effective owner of the build-outs, and the "owned for a charitable purpose" requirements discussed *infra*, ¶¶ 38 and 39, are applicable.

the lease does not convey any ownership interest. *See Resp't. Ex 4*. The lease only temporarily grants the Church the rights of possession and use subject to certain restrictions. *Id.* Brookscool, LLC remains the owner and holder of legal title for all purposes during the lease term. *See Ind. Code § 6-1.1-1-9(b)*.

34. Therefore, the Board seeks to determine the answer to the following question:
Does the owner of the property, Brookscool, LLC, hold the portion of the property at issue for charitable or religious purposes?
35. In the absence of testimony by the owner, the best evidence of the owner's intent or ownership purpose is found in the lease.⁵
36. Brookscool's property is a retail shopping center. *See Resp't. Ex 4, ¶ 1*. Hollinger suggests that the lease requires the portion of the shopping center at issue to be used only as a church. *Hollinger testimony; Resp't Ex. 4, ¶ 6*. Essentially, Hollinger is claiming that Brookscool "owns" the property for charitable and religious purposes because the lease restricts its use. *Hollinger argument*.
37. Hollinger's argument is misplaced. The use restriction on the property only serves to limit the tenant's activity.⁶ In the event of termination of the lease, either by passage of time or default on the terms of the lease, Brookscool will not in any way be limited in whom it leases the property to or for what purpose it is leased. *See, e.g., Resp't Ex. 4, ¶ 15*.

⁵ The Board's review of this case was severely limited by the failure of Brookscool, LLC to appear at the hearing or to submit sufficient documentation to show the property is not owned for private gain or profit.

⁶ The pertinent portion of the lease reads:

6. Tenant's Use and Operation: The Demised Premises shall be used and occupied by Tenant solely as a church and all associated and related uses and for no other use without Landlord's prior written consent.

Resp't Ex. 4, ¶ 6. The lease also contains a Restricted Uses Addendum, which states that the property cannot be used as, *inter alia*, a bar, massage parlor, or adult bookstore. *Id.* at 20. Clearly these provisions serve only to protect the landlord from a tenant using the property in an undesirable fashion.

38. Brookscool, just as any landlord, owns the rental property for the purpose of making a profit. Brookscool leases the property to the Church as long as the Church makes its rental payments. If the church were not there, it might be fairly presumed that Brookscool would be willing to lease to any number of other tenants, allowing any number of other potential uses, so long as such other tenant that could pay the rent. The Board does not find any indication that Brookscool has somehow dedicated this portion of the property exclusively to religious or charitable purposes regardless of the current tenant.
39. The Petitioner's request for an exemption on the subject building must fail using the requirements set forth in *Sangralea*. The Petitioner does not meet all three (3) requirements. To repeat, in order to comply with *Sangralea*, the subject property must be used for charitable purpose, occupied for charitable purpose, and **owned** for charitable purpose. Brookscool does not own the property for religious or charitable purposes. Brookscool owns the property as a for-profit business venture.
40. The Petitioner also referred to the Board's determination in *New Life Christian Center, Inc v. Lake County Property Tax Assessment Board of Appeals (#45-004-00-2-8-00001)*. The facts of the *New Life* are distinguishable from this Petition. In *New Life*, Reverend and Mr. Thomas were both officers of the *New Life Christian Center, Inc.*, and they purchased property for use of the church corporation. The property was owned by the corporate officers of *New Life Christian Center, Inc.*, occupied strictly for a religious purpose and used as the church's facility.
41. Finally, the County objected to Hollinger's testimony, stating that portions of his presentation were legal in nature and that he is not qualified to present legal argument. Hollinger admitted that he is not an attorney, but was serving as a "witness" for the owner. It is troubling that Hollinger is the only person present for Brookscool, yet he is

not affiliated with Brookschool, he is not licensed to practice law, and he is not certified as a tax representative.⁷

42. The Board will only recognize Mr. Hollinger’s testimony as an affiliate with the Church with regards to the occupancy and use of the building at the date of the appeal. The Board will disregard Hollinger’s legal analysis.
43. The burden for exemption rests with the Petitioner to prove that the subject property falls within the statutory requirements set forth by the legislature. The Petitioner’s witness did not, by a preponderance of the evidence, prove that the property was owned for a charitable purpose. Neither the Petitioner nor the Respondent addressed the application of IC 6-1.1-10-36.3, the predominant use statute. Accordingly, there is no change in the assessment as a result of this appeal.

Summary of Final Determination

Whether twenty-two percent (22%) of the real property owned by Brookschool LLC that is leased to the church, qualifies for property tax exemption pursuant to Indiana Code §6-1.1-10-16 under the classification of religious or charitable purpose.

44. The Petitioner did not prevail by a preponderance of the evidence on this issue. There is no change in assessment with regard to this issue.

⁷ “Tax representatives” must be certified by the Department, and may not practice before the Board in:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136 [exemptions for property used for educational, fraternal, literary, charitable or scientific purposes];
- (2) claims that assessments or taxes are “illegal as a matter of law” . . . ;
- (3) claims regarding the constitutionality of an assessment; or
- (4) any other representation that involves the practice of law.

52 IAC 1-2-1(b); *see also*, *State ex rel. Ind. State Bar Ass’n v. Miller*, 770 N.E.2d 328, 330-331 (Ind. 2002).

The above stated findings of fact and conclusions of law 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 _____, 2004.

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.