

**STATE OF INDIANA
BOARD OF TAX REVIEW**

ELKS ONYX LODGE #479 IBPOE)	On Appeal from the Wayne County
)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
v.)	Petition for Review of Assessment
)	Form 132
WAYNE COUNTY PROPERTY TAX)	Petition No. 89-030-01-2-8-00003
ASSESSMENT BOARD OF APPEALS,)	Parcel Nos. 0299945800
)	0299945900
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 real and personal property owned by Elks Onyx Lodge #479, IBPOE (Elks) qualifies for property tax exemption for charitable or fraternal purposes pursuant to Ind. Code § 6-1.1-10-16, for the tax year 2001 payable 2002.

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 herein shall be considered a finding of fact.

2. The real and personal property at issue is owned by the Elks and is located at 1708 and 1710 South 5th Street in Richmond, Indiana. The property is located in Wayne Township in Wayne County, Indiana.

3. The Form 136, Application for Property Tax Exemption, was filed by the Elks on May 15, 2001. The Elks are seeking exemption from property taxation for charitable purposes pursuant to Ind. Code § 6-1.1-10-16. The Form 136 claimed 100% of the land, improvements and personal property to be exempt.

6. On June 29, 2001, the Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 120, Notice of Action on Exemption Application, denying the Petitioner's Application for Property Tax Exemption. The PTABOA found the land, improvements, and personal property at issue to be 100% taxable.

7. On July 27, 2001, the Elks filed a Form 132, Petition for Review of Exemption by the State. The Form 132 claims exemption for fraternal purposes pursuant to Ind. Code § 6-1.1-10-16.

8. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on December 5, 2001, before Hearing Officer Brian McKinney. William N. Harris, Trustee of Elks, and Clyde Williams represented the Petitioner. Wanda Ronan, Wayne County Assessor, Joseph Kaiser, Andrew Cecere, Charles Todd, Jr., and Lynette Shepard represented Wayne County. Michael Statzer represented Wayne Township.

9. At the hearing, the Form 132 was made part of the record and labeled Board Exhibit A. Notice of Hearing on Petition was labeled Board Exhibit B. In addition the Petitioner presented a receipt for an in-kind contribution and this was labeled Petitioner Exhibit A.
10. The subject is an Elks lodge, and a member of a national fraternity. On the Form 132, the Petitioner requested an exemption under Ind. Code § 6-1.1-10-16 for fraternal purposes. On the Form 136, the Petitioner requested and exemption under Ind. Code § 6-1.1-10-16 for charitable purposes.
11. The Petitioner stated that they have always been exempt. The exceptions are in 2000 when the filing deadline was missed, and in 2001 when the PTABOA denied their application.
12. At the hearing, the Hearing Officer requested additional evidence from the Petitioner including articles of incorporation, by-laws, information on the fraternal organization, and information on charitable contributions. The Petitioner was given 10 days to present the evidence. The request for additional evidence is labeled as Board Ex. C.
13. The Petitioner requested additional time to submit the additional evidence, and stated they would sign a waiver of the deadlines imposed by Ind. Code § 6-1.1-15-4. The Petitioner was given 20 days to submit the additional information, and stated that would be enough time. The State received the waiver on December 17, 2001. The waiver is labeled as Board Ex. D.
14. The State did not receive the requested additional evidence from the Petitioner.

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

2. 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). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The 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*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. 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

property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.

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.

C. 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. 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 (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 is 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).

D. Exemption for Charitable Purposes

13. The Petitioner has claimed exemption under Ind. Code § 6-1.1-10-16 for charitable purposes. Pursuant to this section, property is exempt from taxation “if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
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 (5th 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 evidence shows that the Petitioner donated \$12,150.00 (in-kind contribution) to other organizations. However, there was insufficient evidence to determine the Petitioner's gross income earned and the proportion of gross revenues donated to charitable purposes. Furthermore, the Petitioner failed to present the articles of incorporation, by-laws, and other information requested by the Hearing Officer. The Petitioner also failed to submit any evidence demonstrating that the property at issue is used more than 50% of the time for an exempt purpose.
19. For the above reasons, the Petitioner is denied an exemption for charitable purposes.

E. Exemption for Fraternal Purposes

20. The Petitioner's Form 132, Petition for Review of Exemption, claimed an exemption for fraternal purposes pursuant to Ind. Code § 6-1.1-10-16.

21. No evidence was presented to show that the Petitioner is currently classified as a fraternal benefit society.
22. Even if the Petitioner is currently classified as a fraternal benefit society, the Petitioner must still meet the charitable purposes requirement. Having determined herein that the Petitioner did not establish that the property at issue was used predominantly for charitable purposes, the Petitioner does not qualify for exemption as a fraternal benefit society. *Indianapolis Building Corp v. State Board of Tax Commissioners*, 251 N.E.2d 673, at 681, (Ind. App. 1969)
23. The fact that the Petitioner received an exemption in the past is also not enough to qualify the Petitioner for the exemption. The doctrine of legislative acquiescence does not apply. Administrative agencies should not be trapped in their mistakes and forced to continue their errors. See *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*.
24. For all the above reasons, the real and personal property at issue owned by Elks is therefore 100% taxable.

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.

Chairman, Indiana Board of Tax Review