

REPRESENTATIVES FOR PETITIONER: Rev. Kay Patton
Robin K. Lipp, Administrative Assistant

REPRESENTATIVE FOR RESPONDENT: Terri Boone, Huntington County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MARKLE UNITED METHODIST)	Petition No.: 35-008-03-2-8-00001
CHURCH,)	35-008-03-2-8-00002
)	35-008-03-2-8-00003
Petitioner,)	
)	County: Huntington
v.)	Township: Rock Creek
)	
HUNTINGTON COUNTY)	Assessment Year: 2003
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	Parcel Nos: 015-00306-00
)	015-00246-00
Respondent.)	015-00351-00
)	

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

May 20, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence in this matter.
The Board now enters the following findings and conclusions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Markle United Methodist Church purchased the three residential real estate parcels involved in this appeal for future expansion. The parcels were transferred from private non-exempt owners to the church in September and October 2003. (See, property record cards attached to Board Exhibit A). The church filed exemption applications for all three parcels for the 2003 assessment year on January 6, 2004. The Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the properties were 100 percent taxable on April 19, 2004. (Board Exhibit A).
2. Pursuant to Ind. Code § 6-1.1-11-7, Robin K. Lipp, treasurer of the church filed a separate Form 132 petitions for each of the three parcels, petitioning the Board to conduct an administrative review of the above petitions. The Form 132 Petitions were filed on May 12, 2004. (Board Exhibit A).

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 held on February 22, 2005, in Huntington, Indiana before Patti Kindler, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2.
4. The following persons were sworn as witnesses and presented testimony at the hearing:
For the Petitioner – Reverend Kaye Patton, Markle United Methodist Church,
Robin K. Lipp, Administrative Assistant/Treasurer,
For the Respondent – Terri Boone, Huntington County Assessor.
5. The following exhibits were presented for the Petitioner:
Petitioner's Exhibit 1 – 2002 Pay 2003 tax statement for parcel # 015-00306-00,
Petitioner's Exhibit 2 – 2002 Pay 2003 tax statement for parcel # 015-00246-00,
Petitioner's Exhibit 3 – 2002 Pay 2003 tax statement for parcel # 015-00351-00.

6. Respondent presented one exhibit:
Respondent's Exhibit 1 – Form 120 with copy of Ind. Code § 6-1.1-10-16 attached.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – Form 132 Petitions,
Board Exhibit B – Notices of Hearing dated January 14, 2005.
8. The three subject parcels include two residential dwellings and one vacant parcel located at 150 and 170 West Morse Street in Markle, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2003, the PTABOA determined all three of the parcels to be 100 percent taxable.

JURISDICTIONAL FRAMEWORK

11. 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

12. 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).

13. 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. Washington 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”).
14. 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

15. 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. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. 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 Dep't of Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996) (non-profit status does not entitle a taxpayer to tax exemption).
17. For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

BASIS OF EXEMPTION AND BURDEN

18. 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 Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). Therefore, in Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
19. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. Therefore, worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
20. 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. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co., Inc. 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).
21. As a condition precedent to being granted an exemption, the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Bd. of Tax Comm’rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct.

1989), aff'd 571 N.E.2d (Ind. Tax 1991)); *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1014.

DISCUSSION OF THE ISSUE

22. The Petitioner contends the properties should be exempt pursuant to Ind. Code § 6-1.1-10-16 because they are used for religious purposes and are not making a profit. The properties were purchased for proposed future construction of a community building for the church.
23. The Respondent denied the exemption because the "[l]and and buildings are not owned by a charitable entity." Respondent also cited Ind. Code § 6-1.1-10-16(c) (3) (C), because of the use of the residential structures as rental properties.
24. Before reaching the merits of the contentions regarding the exemption requirements, the Board must consider the fact that the exemption applications were late.
25. The most applicable laws governing this case are:
 - 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.
Ind. Code § 6-1.1-10-16(a).
 - An exemption is a privilege that may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.
Ind. Code § 6-1.1-11-1.
 - An owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15 on forms prescribed by the department of local government finance.
Ind. Code § 6-1.1-11-3(a).

- An exemption application which is required under this chapter shall contain the following information: A statement showing the ownership, possession, and use of the property.
Ind. Code § 6-1.1-11-3(c) (2).

ANALYSIS OF THE ISSUES

DID PETITIONER PROPERLY FILE AN APPLICATION FOR EXEMPTION FROM TAXATION FOR 2003?

26. Petitioner filed Form 136 applications for property tax exemption for three residential parcels seeking an exemption for the 2003 assessment. Those applications were required to be filed by May 15, 2003, but in this case they were not filed until January 6, 2004, which is too late. Ind. Code § 6-1.1-11-3(a). It is clear that an *owner* must file such applications. Ind. Code § 6-1.1-11-3(b); *Indiana University Foundation v. State Bd. of Tax Comm'rs*, 527 N.E.2d 1166, 1168 (Ind. Tax Ct. 1988) (recognizing that ownership requires legal title for the purpose of this exemption); *Community Christian Church v. State Bd. of Tax Comm'rs*, 523 N.E.2d 462, 465 (Ind. Tax Ct. 1988) (denying exemption for property where the church did not hold legal title to it).
27. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. Ind. Code § 6-1.1-11-1; *Gulf Stream Coach v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).
28. The requirement to file by May 15 of the year in which property is assessed allows the tax to be calculated (accounting for any exemption) and notice to be sent out prior to the first installment payment due date. *Indiana C.A.P. Directors Ass'n v. Dep't of Local Gov't Fin.*, 797 N.E.2d 878, 880 (Ind. Tax 2003). CAP was seeking an exemption for the 1998 tax year, but did not file until April 28, 1999. The Tax Court found that the State Board properly denied CAP's exemption application because it was not timely.
29. Petitioner's claim fails for at least two reasons. (1) Petitioner did not own the property on March 1, 2003. (2) Petitioner did not file timely exemption applications. Petitioner did not comply with Ind. Code § 6-1.1-11-3. These failures are determinative of this case.

30. Due to the late filing of the 2003 exemption applications and the Petitioner's lack of ownership on the assessment date, there is no reason for the Board to review any other issues regarding the exemption claim. Specifically, the Board makes no determination regarding the merits of the position of either party about the application of the religious exemption provided by Ind. Code § 6-1.1-10-16 and whether or not the use of these properties qualifies.

SUMMARY OF FINAL DETERMINATION

31. The Petitioner did not own the property or file for exemption on or before May 15th of the year for which the exemptions were sought. Accordingly, the PTABOA's determination to deny the exemption applications is upheld, but not for the reasons the PTABOA stated.
32. The issue about whether the properties qualify for exemption because they are rented to private individuals will not be reviewed or decided in this appeal.

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.