

**State of Indiana  
Board of Tax Review**

Evansville Lapidary Society, Inc.,	) On Appeal from the Vanderburgh County
	) Property Tax Assessment Board of Appeals
Petitioner,	)
	)
	) Petition for Review of Exemption,
v.	) Form 132
	)
	) Petition No. 82-028-96-2-8-00147*
Vanderburgh County Property Tax	) Parcel No. 11-780-33-018-002
Assessment Board of Appeals	)
	)
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 property owned by the Evansville Lapidary Society, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for educational purposes.

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\* The petition number has been updated. The original petition number was 96-822-147.

## 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 made herein shall also be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-11-3, Evansville Lapidary Society, Inc. (Society) filed an Application for Property Tax Exemption, Form 136 with the Vanderburgh County Auditor. The Form 136 was filed on June 3, 1996. The State Board notes that, while filed on June 3, 1996, the application for exemption was filed in compliance with Ind. Code § 6-1.1-11-3 and –3.5. The Society held property tax exemption prior to the 1996 filing period and, because the Society did not file by May 15, the County Auditor notified the Society that its exemption had lapsed. Upon receipt of the notice of lapse, the Society filed an application for exemption on June 3, 1996. The application for exemption was filed in compliance with Ind. Code § 6-1.1-11-5 and is viewed as a timely filed application.
  
3. The Vanderburgh County Board of Review (County Board) denied the application and gave the Society notice on July 10, 1997.
  
4. Pursuant to Ind. Code § 6-1.1-15-3, the Society filed a Form 132 petition seeking a review by the State. The Form 132 petition was filed July 22, 1997.
  
5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 31, 1998, before Hearing Officer Kim Chattin. Ms. Candace Chudzik and Ms. Keren Grimm, officers of the Society, were present at the hearing on behalf of the Society. Ms. Cheryl Musgrave, Vanderburgh County Assessor, and Mr. Khris Seger, Hearing Officer for the County Board, were present on behalf of the County Board.

6. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A and the Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1 – A list of activities carried out in 1997 by the Society.

Petitioner's Exhibit 2 – A copy of the Articles of Incorporation for the Society dated November 5, 1964.

Petitioner's Exhibit 3 – A copy of the 1997 Financial Report of the Society.

Petitioner's Exhibit 4 – A copy of the Constitution and By-laws of the Society.

Petitioner's Exhibit 5 – A copy of an Internal Revenue Service 501(c)(7) status notification to the Society.

Petitioner's Exhibit 6 – A copy of the January 1998 newsletter published by the Society.

Petitioner's Exhibit 7 – A list of the books available to members of the Society as of June 1997.

Respondent's Exhibit 1 – A packet of documents containing the following:

- a. A summary of the County Board's position.
- b. A copy of the notice of lapse mailed to the Society.
- c. A copy of a memorandum from Mr. Seger to Ms. Musgrave regarding the Society's exemption request.
- d. A copy of *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996) with portions highlighted.
- e. A copy of a plat map with the subject property marked
- f. A copy of the June 6, 1997 County Board minutes.
- g. A copy of the County Board's notice of disapproval of exemption.

7. The property subject to this appeal is a two-story frame building and land located at 1304 Willow Road, Evansville, Pigeon Township, Vanderburgh County. The Petitioner is seeking exemption for 1996. The Hearing Officer did not view the subject property.

8. The Society is an Indiana not-for-profit corporation organized for the purpose of furthering the interest “individually or collectively, in the Art of Lapidary, Gemstones, and Mineralogy, and to provide an opportunity for the exchange of ideas and the enjoyment of fellowship with one another.” (Petitioner’s Ex. 2)
9. The Society sponsors a youth group known as the Junior Rock Hounds. The youth group is identified in the Society’s By-laws as an educational group for the area youth. The youth group is taught by a licensed earth-science teacher and a member of long standing of the Society. The youth group meets weekly during the school year and participates in at least six (6) field trips each year. (*Chudzik testimony.*)
10. The Society participates in field trips, classes, lectures, Junior Rock Hounds, educational displays, and tours for school and community groups. The classes offered by the Society include wire wrapping, faceting, silversmithing, goldsmithing, bead stringing, and cabuchoning. These classes are six (6) week sessions and are divided into basic or beginner’s level and advanced level. The silversmithing class from the University of Southern Indiana also visits the Society to obtain information at a more advanced level than that available through the University. (*Chudzik testimony.*)
11. The Society is funded through membership dues, proceeds from fundraisers such as a gem and mineral show or a rummage sale. The proceeds from these fundraisers are used to maintain the subject property. (*Chudzik testimony.*)
12. The Society is made up of people with a wide variety of educational backgrounds who have come together to share knowledge and further the study of earth science. (*Grimm testimony.*)
13. The Society believes the subject property is exempt from property taxation because it is used by the Society to provide an educational resource to the

community that is otherwise not available. (*Chudzik testimony.*)

14. The County Board denied the exemption application because it believes the Society's activities are more recreational and hobby related rather than educational. The County Board relied on the Court's ruling in NAME as support for its decision. (*Seeger testimony.*)

### **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.

### **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).

### **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.

### **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).

### **Conclusions Regarding the Exemption Claim**

13. The Society believes that its property is exempt from taxation under educational purposes. The Society maintains that its activities are educational in nature and, thus, meets the requirements for property tax exemption. The County Board contends that the Society's activities, while appearing to have some educational

bearing, are more recreational and hobby related than educational.

14. To qualify for exemption for educational purposes, an organization must show that it provides at least some substantial part of educational training that would otherwise be furnished by tax-supported schools. *NAME*, 671 N.E. 2d at 221 (citing *State Board of Tax Commissioners v. Fort Wayne Sports Club*, 258 N.E. 2d 874, 882 (Ind. App. 1970)).
15. The educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax-supported institutions of higher learning and public schools because, to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction. *Fort Wayne Sports Club*, 258 N.E. 2d at 881-882.
16. Thus, to obtain property tax exemption, the Society must demonstrate that its activities provide training comparable to that available in tax-supported schools. The evidence presented does not give any indication that the instruction provided through the Society is like that found in public supported education. Although the Society does provide education in the areas of silversmithing, goldsmithing, and so on, the evidence does not show that the general public benefits from the kind of instruction provided by the Society.
17. The Society points to the sponsorship of a youth group as part of its educational program. While this may be a worthy endeavor, worthy or noble endeavors are not enough to justify the diversion of property tax burden.
18. The Society also points to the use of the subject property by students from a local university enrolled in a silversmithing class as proof of educational activity. However, merely because the silversmithing class from a local university attends advanced workshops offered at the subject property does not mean that the subject property is providing instruction like that offered in the public educational system.

19. Certainly, the class from the university takes its instruction from classes offered at the university, a publicly supported institution. The university's use of the subject property does not, alone, translate into the provision of education.
20. Under *NAME* and *Fort Wayne Sports Club*, the Society was required to show how its activities provide education to the public rather than simply making information available to the public. "Merely showing that information and instruction are available to the public is not sufficient to qualify for an educational exemption." *NAME*, 671 N.E. 2d at 222.
21. In exemption requests, the taxpayer has the burden of showing that the property falls specifically within the exemption statute. The Petitioner has not met this burden. The evidence submitted does not show that the type of instruction or training available through the Society is the type that could relieve the State of some of its financial burden for education. Rather, the evidence tends to show that the Society's activities, if educational in nature, are merely incidental to the activities that further the hobbies of the membership.
22. Ind. Code § 6-1.1-10-36.3 requires that the property be predominately used or occupied for the exempt purpose. The Petitioner has not shown that the subject property is not predominately used for educational activities.
23. Therefore, the Society has not met the burden of showing that it qualifies for property tax exemption under an educational claim. Thus, the subject property is wholly subject to property taxation for 1996 payable 1997.

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.

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Chairman, Indiana Board of Tax Review