

REPRESENTATIVES FOR PETITIONER:

Paul M. Jones, Jr., Ice Miller LLP
Matthew J. Ehinger, Ice Miller LLP

REPRESENTATIVE FOR RESPONDENT:

John C. Slatten, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

International Royal Order of)	Petition Nos.: 49-600-08-2-8-00010
Jesters, Inc.)	49-600-10-2-8-01551
)	
Petitioner,)	Parcel Nos.: 6029143
)	F555769 (Personal Property)
v.)	
)	County: Marion
Marion County Assessor,)	Township: Pike
)	
Respondent.)	Assessment Year: 2008 and 2010

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

January 9, 2012

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

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner was entitled to an exemption for charitable, educational and religious purposes pursuant to Indiana Code § 6-1.1-10-16 for the 2008 and 2010 assessment years.

PROCEDURAL HISTORY

2. On May 5, 2008, Alex Rogers, the Executive Director of International Royal Order of Jesters, Inc. (the Jesters), filed a Form 136, Application for Property Tax Exemption on behalf of the Petitioner, seeking an exemption for property owned by the Jesters for the 2008 assessment year. On October 23, 2009, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 120, Notice of Action on Exemption Application, finding that the Petitioner's real and personal property was 100% taxable for 2008. On December 1, 2009, Paul M. Jones of Ice Miller LLP, as representative of the Jesters, filed a Form 132, Petition for Review of Exemption, with the Board claiming the Petitioner's real and personal property should be 100% exempt under Indiana Code § 6-1.1-10-16 for 2008.
3. On May 14, 2010, Mr. Rogers filed a Form 136, Application for Property Tax Exemption on behalf of the Petitioner, seeking an exemption for the Jesters' property for the 2010 assessment year. On December 28, 2010, the PTABOA issued a Form 120, Notice of Action on Exemption Application, finding that the Petitioner's real and personal property was 100% taxable for 2010. On February 8, 2011, Mr. Jones filed a Form 132, Petition for Review of Exemption, with the Board claiming the Petitioner's real and personal property should be 100% exempt under Indiana Code § 6-1.1-10-16 for 2010.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4, Carol Comer, the duly designated Administrative Law Judge authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on October 11, 2011, in Indianapolis, Indiana.

5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Alex Rogers, Executive Director,

For the Respondent:¹

Melissa Tetrick, Marion County Deputy Assessor

Nicole Webb, Marion County Deputy Assessor

6. The Petitioner submitted the following exhibits:²

Petitioner Exhibit A – Application for Property Tax Exemption – Form 136 for 2008, and Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order,

Petitioner Exhibit B – Notice of Action on Exemption Application – Form 120 for 2008,

Petitioner Exhibit C – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for 2008, Internal Revenue Service letter, Notice of Action on Exemption Application – Form 120 for 2008, Application for Property Tax Exemption – Form 136 for 2008, Marion County Assessor appeals database sheet, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order, Certificate of Incorporation, Articles of Incorporation, Bylaws, financial statements for 2004, 2005, and 2006,

¹ Ms. Tetrick and Ms. Webb did not present any testimony at the hearing.

² Mr. Jones requested the Board take judicial notice of the Internal Revenue Service Publication 557, concerning 501 (c)(10) “Fraternal Beneficiary Societies and Domestic Fraternal Societies.”

- and Notice of Appearance for Mark J. Richards, Paul M. Jones, Jr., and Matthew J. Ehinger,
- Petitioner Exhibit D – Application for Property Tax Exemption – Form 136 for 2010, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order,
- Petitioner Exhibit E – Notice of Action on Exemption Application – Form 120 for 2010,
- Petitioner Exhibit F – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for 2010, Notice of Action on Exemption Application – Form 120 for 2010, Application for Property Tax Exemption – Form 136 for 2010, Indiana Board of Tax Review Final Determination, dated January 3, 2007, with attached Settlement Agreement and Order, Internal Revenue Service letters, and financial statements for 2007, 2008, and 2009,
- Petitioner Exhibit G – Petitioner’s Memorandum of Law,
- Petitioner Exhibit H – The Petitioner’s property’s property record card,
- Petitioner Exhibit I – Photographs of the subject property,
- Petitioner Exhibit J – Dedication program, brochure, newsletter and floor plan for the building,
- Petitioner Exhibit K – Business Tangible Personal Property Assessment Return – Form 103-Long for 2008, 2009, and 2010,
- Petitioner Exhibit L – Certification of Incorporation and Articles of Incorporation for the Jesters,
- Petitioner Exhibit M – Bylaws of the Jesters,
- Petitioner Exhibit N – Letters from the Internal Revenue Service, dated April 15, 2008, and March 3, 2004, respectively,
- Petitioner Exhibit O – Constitution, Bylaws and Edicts of the National Court, Royal Order of Jesters,
- Petitioner Exhibit P – Letter from the Internal Revenue Service, dated December 13, 1978,
- Petitioner Exhibit Q – U.S. National Masonic Appendant Bodies.

7. The Respondent did not submit any exhibits.

8. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petitions with attachments,
 Board Exhibit B – Notices of Hearing on Petition, dated September 22, 2011.

9. The property under appeal is a 5,081 sq. ft. office building and a parking lot located at 5725 Liberty Crossing Drive, Indianapolis, in Pike Township, Marion County.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2008 and 2010, the PTABOA determined the Petitioner's real and personal property to be 100% taxable.
12. For 2008 and 2010, the Petitioner contends its real and personal property should be 100% tax-exempt.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BASIS OF EXEMPTION AND BURDEN

14. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

15. 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 in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
16. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 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 Ct. 1990)).
17. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PETITIONER'S CONTENTIONS

18. The Petitioner's counsel contends that the Petitioner's real and personal property should be 100% exempt from property taxation under Indiana Code § 6-1.1-10-16. *Jones argument; Petitioner Exhibit G*. According to Mr. Jones, the Petitioner's property is owned, occupied and used for charitable, educational and religious purposes. *Id*.
19. The Petitioner's witness testified that the Jesters was founded on February 20, 1911, by a group of Shriners on a transatlantic journey. *Rogers testimony; Petitioner Exhibit J*. It is

a Texas non-profit corporation that was granted permission to conduct business in Indiana May 24, 2004. *Petitioner Exhibit L*. The current headquarters of the Jesters and a museum commemorating the Jesters' history was dedicated on May 12, 2006. *Petitioner Exhibit J*.

20. The Petitioner's exhibits show that the Jesters is exempt from federal taxation under 501(c)(3) and 501(c)(10) of the Internal Revenue Code. *Petitioner Exhibits N and P*. According to the Petitioner's counsel, the Jesters is a "domestic fraternal organization operating under a lodge system devoted entirely to religious, charitable, educational and fraternal purposes" that does not "provide payment of life, sick, accident or other benefits to its members." *Jones argument; Petitioner Exhibit G*. Mr. Rogers testified there are 191 subordinate courts in the United States, Canada, Mexico and the Republic of Panama, with approximately 20,500 members. *Id.; Petitioner Exhibit J*.
21. The Jesters is part of the Masonic fraternity, which Mr. Rogers testified, is the "highest respected fraternal organization there is in the world."³ *Rogers testimony*. According to Mr. Rogers, the Masons is a "character building organization" whose purpose is to "strengthen the individual character of a man through its rituals and through its teachings." *Id*. The purpose of the Jesters is spreading the gospel of mirth, merriment and cheerfulness, promoting fellowship and fraternity among members, and extending good cheer and assistance to the general public, which furthers the Masonic principles of brotherly love, belief and truth. *Id.; Petitioner Exhibit L*. "Mirth is king explains to the world the purpose of our existence. There has always been plenty of heartache and misery." *Rogers testimony*.
22. The International Royal Order of Jesters was incorporated in 2003 to purchase the subject property for the Jesters' headquarters. *Roger testimony*. Mr. Rogers testified the Jesters'

³ To be a Jester, one must first be a Mason and then a Shriner. *Rogers testimony*. Although there is an off-shoot organization that involves women, the Masonic fraternity is a male fraternity. *Id*. Therefore, Mr. Rogers testified, women are not allowed to be members of the Jesters. *Id*.

building serves two purposes: it is the headquarters for the National Court, Royal Order of Jesters, and it is also the museum for the International Royal Order of Jesters. *Id.* Mr. Rogers testified that the building at issue in this appeal has 5,000 square feet. *Id.*; *Petitioner Exhibit J.*

23. Mr. Rogers testified that the National Court leases 1,800 square feet of the subject building from the Jesters. *Rogers testimony.* The National Court holds Board of Directors meetings three times a year in various locations. *Id.* In 2011, the meeting was conducted at the property. *Id.* However, general membership meetings for the Jesters are conducted by the individual lodges or courts. *Id.* Mainly, the property at issue in this appeal is used for administration, such as collecting financial information, sending out reports to the various subordinate courts and answering questions about the bylaws. *Id.*
24. The remaining area of the building houses the museum. *Rogers testimony.* Mr. Rogers testified that the building is open five days a week from 8:30 a.m. to 5:00 p.m. and on Saturdays by appointment. *Id.* The museum displays historical artifacts, photographs, various Jester statuettes, and other items related to Masonry.⁴ *Rogers testimony; Petitioner Exhibits G and I.* The museum began operation on June 1, 2007, and is open to the public during regular business hours. *Rogers testimony; Petitioner Exhibit G.* In response to questions, however, Mr. Rogers testified that the museum is not on the national museum registry. *Rogers testimony.* Further, Mr. Rogers testified there is no exterior signage or outreach to the community advertising the museum. *Id.* The museum's hours of operation are only publicized in a newsletter that is distributed to the Jester members.⁵ *Id.*
25. In response to questioning about the property's charitable use, Mr. Rogers testified that "the basic Masonic fraternity is looked upon as charitable." *Rogers testimony.* When

⁴ Mr. Rogers testified that the personal property also includes items such as showcases, chairs, tables, computers, telephone system, and basic office equipment. *Rogers testimony; Petitioner Exhibit K*

⁵ Mr. Rogers testified that typically it is Jesters members that tour the museum. *Rogers testimony.* However, on one occasion some Pike Township school teachers visited. *Id.*

pressed about contributions the Jesters make to support charitable endeavors, Mr. Rogers testified that individual members of the Jesters on their own behalf make contributions to the Shrine Hospital and other charities, but the Jesters organization itself had not “written” any checks to the Shrine Hospital or any other charities. *Rogers testimony*. According to Mr. Rogers, it is the individual members contributing to the “charitable welfare” of the country. *Id.* Mr. Rogers admitted that the Jesters “don’t hold ourselves out and publicize ourselves as givers or as charitable benefactors.” *Id.*

26. Similarly, when asked about the Jesters’ educational and religious activities, Mr. Rogers testified that education would “probably” be through the newsletters the organization sends to its members. *Rogers testimony*. For example, Mr. Rogers testified, a newsletter recently addressed the history of Shakespeare because the Jesters bases its rituals on Shakespearean plays. *Id.* Moreover, Mr. Rogers admitted that the Jesters does “not have any strictly religious activities.” *Id.* However, he argues that all members have a faith and a belief in a supreme being. *Id.* “In order to be a Jester... you have to have some kind of belief in some type of deity, no matter what it may be... belief in God, but we don’t have religious services as such like you would in a church.” *Id.*

27. The Petitioner’s counsel argues that Indiana case law recognizes that the Masonic order is a charitable institution and that Masonry falls within the categories of a religious, educational and charitable institution. *Jones argument*. According to Mr. Jones, Masonic organizations and their activities are exempt even if they primarily confine their benefits to individuals or members of a particular group or order. *Jones argument; Petitioner Exhibit G; citing City of Indianapolis v. The Grand Master Etc. of the Grand Lodge of Indiana, 25 Ind. 518 (1865); and State Board of Tax Commissioners v. Trustees of Adoniram Lodge, 250 N.E.2d 605 (Ind. Ct. App. 1969)*. The Petitioner’s counsel further argues a property leased by a charitable organization to another exempt organization qualifies for property tax exemption if it is owned, occupied and used for exempt purposes. *Jones argument*. Moreover, the property may be exempt from property tax if it is occasionally used by a for-profit organization. *Petitioner Exhibit G*.

According to Mr. Jones, an organization qualifies for property tax exemption if the property is found to be “reasonably necessary” for the maintenance or effective welfare of the organization’s exempt purposes, including office and administrative space.

Petitioner Exhibit G; citing St. Mary’s Medical Center v. State Board of Tax Commissioners, 571 N.E.2d 1247 (Ind. 1991); and National Federation of Music Clubs v. Johnson County Assessor, Petition No. 41-041-09-2-8-00008 (June 1, 2011).

28. Finally, the Petitioner’s counsel argues that the Petitioner was granted a 100% tax exemption on its real property and personal property for the years of 2005, 2006 and 2007. *Jones argument; Petitioner Exhibits A and C.*

RESPONDENT’S CONTENTIONS

29. The Respondent’s counsel argues that the Petitioner is not entitled to an exemption on its property for either 2008 or 2010. *Slatten argument.* According to Mr. Slatten, the Petitioner’s property is only used for “administrative purposes.” *Id.* Therefore, the Petitioner failed to show that its property was predominately used for any exempt purpose. *Id.*
30. Mr. Slatten also argues that the Petitioner has not shown a public benefit that would justify the loss of tax revenue. *Slatten argument.* Mr. Slatten argues the purpose of the Jesters and the National Court is for “mirth” and entertainment for its members. *Id.* Because the organization does not serve the class of people that are legitimate subjects of charity and because the government has no obligation to provide entertainment, merriment or “mirth,” Mr. Slatten argues, the property does not relieve any government burden. *Id.* According to Mr. Slatten, the Jesters are a “recreational group” that is predominantly a social club. *Id.*
31. Finally, the Respondent’s counsel argues the Jesters is not engaged in any charitable activities and any educational activities are limited to the membership of the Jesters.

Slatten argument. Therefore, Mr. Slatten argues, the Petitioner has not established an educational or charitable purpose. *Id.* Moreover, the museum is not advertised or promoted as being open for the public's use. *Slatten argument; citing National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax 1996); and *Fort Wayne Sport Club, Inc. v. State Board of Tax Commissioners*, 258 N.E.2d 874, 881 (1970). Therefore, the museum simply serves the purposes of the Jesters and its members like in the *National Association of Miniature Enthusiasts* case. *Id.*

ANALYSIS OF THE ISSUE

32. Indiana Code § 6-1.1-10-16(a) provides that “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.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(a). “Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16 (e). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

33. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State*

Board of Tax Commissioners, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

34. The test used to determine whether all or a portion of a property qualifies for an exemption is the “predominant use” test. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Indiana Code § 6-1.1-10-36.3(a) states that “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 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.” Indiana Code § 6-1.1-10-36.3(c) further provides that “[p]roperty 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.” Ind. Code § 6-1.1-10-36.3(c)(3).
35. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

36. Here, the Petitioner is a non-profit organization whose purpose is spreading mirth and cheerfulness, promoting good fellowship, extending assistance and good cheer to others, promoting fraternalism, and providing a museum for items and articles of mirth, comedy and laughter. *Petitioner Exhibit L*. The Jesters is part of the Masonic fraternity, which the Petitioner's counsel argues has been held to be a religious, charitable and educational organization for almost a hundred and fifty years. *Jones argument*.
37. The Petitioner presented two cases in support of its argument that, because the Jesters is part of the Masonic fraternity, the Jesters is a religious, charitable and educational organization and its property is therefore used for exempt purposes. The first case, *City of Indianapolis v. The Grand Master of the Grand Lodge of Indiana*, 25 Ind. 518 (Ind. 1865), held that the fact that the Masonic lodge confined its benefits to members who paid a fee for such benefits did not deprive the lodge of its charitable character and the property was therefore entitled to exemption. The second case, *State Board of Tax Commissioners v. Trustees, Adoniram Lodge, Scottish Rite*, 250 N.E.2d 605 (Ind. App. Ct. 1969) similarly held that Masonic property was exempt. In that case, the Court of Appeals cited the Supreme Court of Nebraska in finding that "Masonry falls entirely, without exception, within the three categories of charity, educational purpose, and religious purpose. It has no other function or purpose and does no other work." 250 N.E.2d at 607, citing *S.R. of Freemasonry v. Board of County Commissioners*, 241 N.W. 93 (Neb. 1932). The Petitioner also referred to a 1932 Attorney General opinion recognizing the exempt status of property used for the Indiana Masonic Home.⁶ 1932 Op. Atty. Gen. 783.

⁶ Contrary to the Petitioner's memorandum, the Petitioner's *Adoniram* case cites to a 1944 Attorney General opinion. This does not change the Board's analysis.

38. The Court of Appeals based its findings in the *Adoniram Lodge* case on the concept of legislative acquiescence. 250 N.E.2d at 608. According to the Court, the Attorney General in 1944 interpreted the exemption statute in existence at that time to exempt the property of Masonic organizations which was owned occupied and used for the purposes of such organizations. *Id.* “This interpretation has been followed and adhered to for more than 20 years by those agencies dealing with tax exemptions. The Legislature has not, to date, changed the substantive law regarding such exempt property which shows a clear acquiescence of this interpretation.” *Id.* at 608 and 609.
39. A similar argument was raised by the taxpayer in *Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988). In that case, the property owner had received a charitable exemption on its property for ten years prior to the assessment year at issue. The Tax Court, in that case, held that the property, used “to strengthen the bonds of fraternalism and social activities between members; to promote patriotic, humanitarian and fraternal teaching of the F.O.E. and to inculcate among the members a sense of service to their state and to their nation; and to work and raise funds for charitable and humanitarian funds set up specifically for the purpose by the F.O.E.” was exempt from property tax based on the doctrine of legislative acquiescence.
40. Upon review, the Indiana Supreme Court reversed Judge Fisher’s decision. According to the Court, “the percentage of income (2.8) given as charitable donations can hardly be claimed to cloak the appellee with charitable immunity. When one measures this against the various recreational activities... engaged in by the appellee on the premises, it can hardly be said that they comply with the [exemption] statute; nor do they come within the ruling of” *Sahara Grotto v. State Board of Tax Commissioners*, 261 N.E.2d 873 (Ind. 1970). 521 N.E.2d at 681. Thus, the Supreme Court held “invoking the doctrine of legislative acquiescence upon the facts in the case at bar overbroadens its scope.” *Id.* According to the Court, “to so broaden the doctrine would be to trap administrative

agencies in their own mistakes and in the absence of legislative change would force them to continue their errors *ad infinitum*.”⁷ *Id.*

41. Here, the Petitioner presented no evidence that the Masonic fraternity as it exists today operates in the same manner, performs the same functions and retains the same position in society as it did 150 years ago when the Indiana Supreme Court found that its property was exempt. Nor did the Petitioner show that the exemption statute at issue here is the same or substantially similar to the exemption statute applied by the Court in 1865. Likewise, the Petitioner failed to show that the Jesters operates in the same manner, performs the same functions and retains the same position in society as the Masons. Thus, to the extent the *Grand Master of the Grand Lodge of Indiana* remains good law 150 years later, the case merely found property owned by the Free Masons to be exempt. Nowhere in that decision was there any analysis of property owned, occupied and used by the Jesters.

42. In addition, the *Adoniram Lodge* decision – which addressed property owned by the Scottish Rite rather than the Jesters – was issued in 1969 by the Court of Appeals which currently has no jurisdiction over tax matters. More importantly, contrary to the Appellate Court’s legislative acquiescence argument in that case, when the legislature promulgated a statute that exempted the property of various named organizations, neither

⁷ The Court observed that “if, for instance in the case at bar the legislature had become alarmed by the fact the taxing authorities were allowing appellee to enjoy a tax free status, what would have been their course of action? The wording of the statute clearly did not apply to appellee’s situation. The taxing authorities simply were not following the statute in that instance. Is the legislature to more firmly enact the same general principle? Are they to pass legislation to specifically correct a single situation?” 521 N.E.2d at 681.

the Masons nor any member of the Masonic fraternity was cited as exempt.⁸ *See* Ind. Code § 6-1.1-10-25. That statute was amended in 1977, 1980 and 1983. Yet still the legislature has not granted an exemption to the Masons in general; nor to the Jesters specifically.

43. Because property owned by Masonic organizations has not been legislated to be *per se* exempt, the Petitioner must show that its property is predominantly owned, occupied and used for exempt purposes. *See 6787 Steelworkers Hall v. Scott*, 933 NE.2d 591, 597 fn. 9 (“because the use of property for union activities was not a *per se* exemption qualifier ... Local 6787 needed to provide additional support in order to demonstrate those activities were indeed educational and charitable in nature.”)
44. The evidence shows that the Jesters lease 1,800 square feet of its building to the National Court and both the National Court and the Jesters use the property to maintain membership information, financial records and address changes and processing Jester related membership certificates to subordinate courts. The property also has a museum in the remaining 3,200 square feet of the building, which displays historical artifacts, photographs, various Jester statuettes, and other items related to Masonry. The Petitioner

⁸ **Miscellaneous organizations** (a) Subject to the limitations contained in subsection (b) of this section, tangible property is exempt from property taxation if it is owned by any of the following organizations:

- (1) The Young Men's Christian Association.
 - (2) The Salvation Army, Inc.
 - (3) The Knights of Columbus.
 - (4) The Young Men's Hebrew Association.
 - (5) The Young Women's Christian Association.
 - (6) A chapter or post of Disabled American Veterans of World War I or II.
 - (7) A chapter or post of the Veterans of Foreign Wars.
 - (8) A post of the American Legion.
 - (9) A post of the American War Veterans.
 - (10) A camp of United States Spanish War Veterans.
 - (11) The Boy Scouts of America, one (1) or more of its incorporated local councils, or a bank or trust company in trust for the benefit of one (1) or more of its local councils.
 - (12) The Girl Scouts of the U.S.A., one or more of its incorporated local councils, or a bank or trust company in trust for the benefit of one (1) or more of its local councils.
- (b) This exemption does not apply unless the property is exclusively used, and in the case of real property actually occupied, for the purposes and objectives of the organization.

argues that the purpose of the Jesters is charitable, educational and religious. The evidence, however, does not support such a finding.

45. While the Petitioner's witness testified to the charitable purposes of other Masonic organizations – such as the Shrine hospitals – Mr. Rogers testified to no specific charitable purpose for the Jesters. In fact, Mr. Rogers testified that the Jesters “exist” but “we don't hold ourselves out and publicize ourselves as givers” or as charitable benefactors. Even if the Jesters could claim credit for its members' charitable contributions, the amount of charitable contributions of an organization is not probative of the entity's predominant use of its property. See *Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners*, 733 N.E.2d 32, 36 fn. 6 (Ind. Tax Ct. 2000) (“This is not to infer, however, that the determination of an organization's exempt status turns on the percentage of its gross income used for charitable, educational or other benevolent purposes. ... While the State Board invites this Court to establish a bright-line test based on an organization's percentage of charitable giving, the Court respectfully declines such an invitation and points out that neither the legislature, nor the State Board has adopted such a test.”) The Jesters' main function, as Mr. Rogers repeatedly testified, is to promote the members' fraternalism, spreading mirth and cheerfulness and promoting good fellowship. To the extent charity exists in that mission, the Board holds that it is insufficient to support a finding that the property owned by the Jesters is exempt.
46. In addition, the Petitioner contends its property is used for educational purposes. However the only examples Mr. Rogers provided was that a recent newsletter included a history of Shakespeare and that the museum depicts the history of the Jesters.
47. An analogous situation was addressed by the Tax Court in *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). In that case, the National Association of Miniature Enthusiasts (NAME) owned a house and outbuilding that was used for a museum, library and administrative offices to “stimulate and enhance the interest and understanding of the general public in

the construction and collection of miniatures as historical and creative art forms;... to provide instruction and training to those members of the general public interested in miniature building and collections through publications, workshops, permanent and temporary exhibitions, programs, conferences and conventions... recognize outstanding achievement in the creation and promotion of miniatures as an art form ... stimulate the exchange of information through the support of regional groups of persons interested in miniature building and collecting ... and develop a permanent collection and museum devoted to the art of miniature construction for the benefit of the general public.” 671 N.E.2d at 220. NAME published a quarterly periodical – the *Miniature Gazette* – sponsored houseparties, promoted local clubs, maintained a permanent collection and museum at its headquarters, and conducted miniature workshops. *Id.*

48. In its decision, the Tax Court found that NAME’s property was not entitled to a charitable exemption because “operating a museum for the public and enhancing the public’s knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering.” *National Association of Miniature Enthusiasts*, 671 N.E.2d at 221. In addition, the Court found that the property was not entitled to an educational exemption because “to qualify for an educational purpose exemption, NAME must show that it ‘provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.’” *Id.*, citing *State Board of Tax Commissioners v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874 (Ind. Ct. App. 1970). According to Judge Fisher, “publishing a magazine and newsletter, as well as organizing and supporting houseparties and local clubs are the focus of NAME’s activities and efforts. Any educational training provided through NAME’s museum, library, workshops, local clubs, and houseparties are merely incidental to its recreational and hobby activities.” *Id.* at 222. “To meet its burden, NAME would have needed to demonstrate how its activities educated the public on art, history, nature, science, or other subjects of instruction furnished by tax supported schools. Merely showing, as NAME has done, that information and instruction with respect to miniatures are available to the public is not sufficient to qualify for an educational exemption.” *Id.*

49. The Petitioner’s museum does not purport to be a history of Shakespeare or of Shakespearean works. Nor does the Petitioner claim that its statutes or memorabilia have artistic merit. To the contrary, Mr. Rogers testified that its artifacts represent the history of the Jesters. The Board finds that such artifacts do not educate the public on “art, history, nature, science, or other subjects of instruction furnished by tax supported schools” and, in fact, are intended mainly for the Jesters’ own members and members of the Masonic fraternity. This finding is supported by Mr. Rogers’ testimony that there is no exterior sign for the museum and the museum hours are only published in the Jesters’ newsletters. Merely showing that information is available to the public about the Jesters or the Masons in general “is not sufficient to qualify for an educational exemption.” *National Association of Miniature Enthusiasts*, 671 N.E.2d at 222. See also *Department of Local Government Finance v. Roller Skating Rink Operators Associations*, 853 N.E.2d 1262, 1266 (Ind. 2006) (“Education that primarily serves the private interests of an organization’s members does not warrant public subsidy. It does not meet the ‘public benefit’ test established in Indiana case law.”)
50. The Petitioner’s counsel claims the Petitioner’s property is also owned, occupied and used for religious purposes. *Jones argument; Petitioner Exhibit G*. Mr. Rogers testified that all members of the Jesters have a faith and a belief in a supreme being. *Rogers testimony*. “In order to be a Jester... you have to have some kind of belief in some type of deity, no matter what it may be... belief in God, but we don’t have religious services as such like you would in a church.” *Id.* In fact, Mr. Rogers admits, the Jesters does “not have any strictly religious activities.” *Id.* Anyone who seeks an exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventist v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). The Petitioner has the burden to establish a predominant religious use during the time period

that is relevant or probative for 2008 and 2010. The record contains no such probative evidence that the property under appeal was used for any religious purposes.

51. Finally, the Petitioner's counsel argues that the Petitioner's property was granted a property tax exemption in 2005, 2006 and 2007, implying that the property should therefore also be exempt for 2008 and 2010. However, the Petitioner's previous exempt status is not probative of whether the Petitioner owned, operated and used its property for exempt purposes in 2008 and 2010. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). See also *Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988) (Lodge's exempt status for ten years prior to the assessment date at issue did not entitle the Lodge to a continued exemption where the property did not meet the requirements of the exemption statutes).
52. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

53. The Petitioner failed to establish a prima facie case that it was entitled to an exemption under Indiana Code § 6-1.1-10-16. The Board finds in favor of the Respondent and holds the Petitioner's real and personal property is 100% taxable for the March 1, 2008, and March 1, 2010 assessment years.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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>.