

REPRESENTATIVE FOR PETITIONER:

Yahya Q. Rasheed, CEO, Mecca Rites of Passage Institute, Inc.

REPRESENTATIVE FOR RESPONDENT:

Deborah Smith, Lake County Non-profit Department

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Mecca Rites of Passage	)	Petition No.: 45-004-04-2-8-00014
Institute, Inc.,	)	
	)	
Petitioner,	)	Parcel No: 1-25-40-0082-0001
	)	
v.	)	
	)	
	)	
Lake County Property	)	County: Lake
Tax Assessment Board of	)	Township: Calumet
Appeals,	)	
	)	
Respondent.	)	Assessment Year: 2004
	)	

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

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**October 8, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

1. The issue presented for consideration by the Board is whether the subject property should be granted a 100% charitable exemption under Ind. Code § 6-1.1-10-16.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. Mecca Rites of Passage Institute, Inc. (Mecca) filed a Form 136 Application for Property Tax Exemption on May 3, 2004. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the exemption on October 12, 2006. On October 17, 2006, Mecca filed a Form 132 Petition for Review of Exemption requesting the Board conduct an administrative review of the petition.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on July 10, 2008, in Crown Point, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:	Yahya Q. Rasheed, CEO, Mecca Rites of Passage Solomon Haymon
For the Respondent:	Deborah Smith, Non-Profit Department, Lake County Assessor's Office Wilma Wright, Secretary, Lake County Assessor's Office
5. The Petitioner submitted the following exhibits:

Petitioners Exhibits 1-42 – Photographs of damage to the subject property.

6. The Respondent did not submit any exhibits.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The 132 Petition,  
Board Exhibit B – Notices of Hearing dated June 5, 2008,  
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,  
Board Exhibit D – Hearing sign in sheet.

8. The subject property is a building located at 3900 Broadway, in Gary, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2004, the Lake County PTABOA determined the subject property's land and improvements to be 100% taxable.
11. The Petitioner contends the property is entitled to 100% exemption.

#### **JURISDICTIONAL FRAMEWORK**

12. 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

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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).
14. 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. Wash. 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”).
15. 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.

### Basis of Exemption and Burden

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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 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).

19. Worthwhile activities or noble purpose alone is not enough for tax exemption. 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 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

### **Petitioner's Contentions**

22. The Petitioner contends the entire property should be 100% exempt under Ind. Code § 6-1.1-10-16 as a charitable or religious organization.<sup>1</sup> The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends that it is a 501(c)(3) organization. *Rasheed testimony*. According to the Petitioner, the building is currently under construction, but Mecca plans to use the entire building as a training center and will conduct job search training, international export seminars, and workshops on economic

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<sup>1</sup> The application for exemption seeks a charitable and educational exemption. *Board Exhibit 1*.

development strategies. *Id.* Currently, Mecca is only able to use two classrooms on the first floor because the basement and the upstairs still have to be renovated. *Id.* Despite this, the Petitioner argues, Mecca has helped about 4,000 people in Gary over the years at absolutely no charge. *Id.*

- B. Mr. Rasheed testified that Mecca purchased the building in 1997, but was unable to complete the repairs on the structure until the city repaired a main line break. *Rasheed testimony.* Further, the Petitioner argues, it has no grants or funding. *Id.* According to Mr. Rasheed, the Petitioner has funded its renovation and work through income generated from activities such as plant sales. *Id.* Mecca plans on completing the renovation process and estimates it will take another 8 to 12 months to complete the remaining repairs. *Id.*
- C. The Petitioner argues that it is unfair to penalize the organization because of failure to complete the renovations within a three year time frame. *Rasheed testimony.* The Petitioner contends it started the renovations in 1998. *Id.* According to Mr. Rasheed, the Petitioner completed the tuck-pointing on the building, put on a new roof and fenced the property. *Id.* Mecca, however, could not continue with the plumbing and heating repairs because the entrance to the basement collapsed due to a cracked sanitary line and that was the only access to the basement boiler room. *Id.* In support of this contention, the Petitioner presented photographs showing the damage done as a result of the broken main. *Petitioner Exhibits 8-13, 28, 32 and 35.* Mr. Rasheed testified that four years passed before the construction company hired by the City of Gary came out to repair the broken main. *Rasheed testimony.*
- D. Finally, the Petitioner contends it supplied all the information the PTABOA requested, including a letter from the Gary Sanitary District that showed the extent of the repairs and the authorization date in 2006. *Rasheed testimony.*

## Respondent's Contentions

23. The Respondent contends the PTABOA denied the Petitioner's exemption request because the property was not being used for an exempt purpose at the time of the assessment. *Smith testimony*. According to the Respondent, the Petitioner was tax exempt in 2003. *Id.* The Petitioner, however, failed to provide information related to its 2004 exemption request. *Id.*

## Analysis of the Issue

24. "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).
25. When interpreting the exemption provided by Ind. Code § 6-1.1-10-16(a), "the term 'charitable purpose' is to be defined and understood in its broadest constitutional sense." *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826N. E. 2d 177,182 (Ind. Tax Ct. 2005)(citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522,521 N.E.2d 673, 682 (1969). As a result, "[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 of a benefit that will inure to the public by the accomplishment of such acts." *Id.* (quoting *Indianapolis Elks*, 251 N. E.2d at 683).
26. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes, is the "predominant use" test. *New Castle Lodge #147, Loyal Order of Moose, Inc.* 765N.E.2d 1257, 1259 (Ind. 2002). Ind. 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. Ind. Code § 6-1.1-10-36.3(c) further provides that “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.” Ind. Code § 6-1.1-10-36.3(c).

27. Here, the Petitioner failed to establish the property was owned, occupied, and used for an exempt purpose. The Petitioner testified that it was a 501(c)(3) organization. However, 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. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
  
16. The only evidence regarding the Petitioner’s use of the property came as a result of prompting by the administrative law judge. In response to her questions, Mr. Rasheed testified that the Petitioner uses the subject property to conduct job search training, economic development workshops, and international export seminars. While the Board may be able to infer that job search training is educational and potentially charitable, whether economic development workshops are educational or charitable is less clear. Further, the Board knows of no basis to determine international export seminars are an exempt use and the Petitioner presented no evidence to support such a determination. Even if the Board were to



assume all of the Petitioner's activities are exempt, the Petitioner provided no evidence of the number of classes held or the number clients served during 2004. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis". See *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).

30. While evidence of the Petitioner's difficulties with the broken sanitary line may serve to prove that the six years it had been working on the property's renovation was reasonable and should not detract from its exempt status, the Petitioner failed to first prove that it was entitled to an exemption. Thus, the Petitioner failed to establish a prima facie case.
31. Where the Petitioner has failed to make a prima facie case, the Respondent's burden to support its determination 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**

32. The Petitioner failed to establish a prima facie case that the property is entitled to exemption. The Board finds in favor of the Respondent and holds the property is 100% taxable.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

- Appeal Rights -

You may petition for judicial review of this final determination under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>