

REPRESENTATIVE FOR PETITIONER:
Todd Mikel, President

REPRESENTATIVE FOR RESPONDENT:
Kim Gephart, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RIDERS MOTORCYCLE CLUB,)	Petition Nos.: 57-006-08-2-8-00001
INC.,)	57-006-08-2-8-00002
)	
Petitioner,)	Parcel Nos.: 57-03-18-400-001.000-006
)	57-03-18-400-004.000-006
v.)	
)	
NOBLE COUNTY PROPERTY)	County: Noble
TAX ASSESSMENT BOARD)	
OF APPEALS,)	Township: Elkhart
)	
Respondent.)	Assessment Year: 2008

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

May 21, 2009

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

Introduction

1. Riders Motorcycle Club claims that its property is exempt from property taxes mainly because Riders itself is exempt from federal income-tax liability. But a not-for-profit entity's exemption from federal income taxation does not automatically make its property exempt from state property taxes; instead, that entity must prove that its property was owned, occupied, and used for an exempt purpose. Riders predominately used the subject property for social and recreational purposes, neither of which qualifies for exemption.

Background and Procedural History

2. On May 12, 2008, Riders applied to exempt two parcels, which the Board refers to collectively as the "subject property," from property taxation. On August 13, 2008, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations finding that the subject property was 100% taxable. As a result, on September 23, 2008, Riders filed Form 132 petitions asking the Board to review Riders' exemption requests. The Board has jurisdiction over Riders' appeals under Ind. Code § 6-1.1-11-7, Ind. Code § 6-1.1-15 and Ind. Code §6-1.5-4-1.
3. On February 25, 2009, Jennifer Bippus, the Board's designated Administrative Law Judge, held a hearing on Riders' appeals. She did not inspect the subject property.
4. The following people were sworn in at the hearing:

For Riders:

Todd Mikel, President

For the Noble County Assessor:

Kim Gephart, Noble County Assessor
George Clifford, PTABOA President

5. The parties submitted the following exhibits:

For Riders:

Petitioner Exhibit 1 – Riders’ Constitution and By-Laws as of February 12, 2009

For the Noble County Assessor:

Respondent Exhibits 1, 2 – PTABOA hearing sign-in sheet¹

Respondent Exhibit 3 – Riders’ exemption application

Respondent Exhibit 4 – The PTABOA’s determinations

Respondent Exhibit 5 – Form 132 petition

Respondent Exhibit 6 – Property record cards for both parcels

Respondent Exhibit 7 – Riders’ Constitution and By-laws as of March 14, 2002

6. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A – Form 132 petitions

Board Exhibit B – Notice of hearing, dated January 16, 2009

Board Exhibit C – Exemption Hearing Order

Board Exhibit D – Hearing sign-in sheet

7. The subject property is located at 100 North, Ligonier, Indiana.

8. For 2008, the PTABOA denied Riders’ request for an exemption and found that the subject property was 100% taxable.

9. Riders requests a 100% exemption.

Findings of Fact

10. Riders is a not-for-profit club that provides a safe environment for individuals and families to ride motorcycles, four wheelers, and all-terrain vehicles. *Mikel testimony; Pet’r Ex. 1*. The club was established in 1954. *Id.* Riders is exempt from federal income tax under Internal Revenue Service Code § 501(c)(7). *Mikel testimony*.

¹ Although it consists of only one page, Ms. Gephart identified this document as two separate exhibits.

11. Riders' income comes from membership dues. *Id.* In 2008, Riders had approximately 42 members and the dues were \$40 per family. *Id.* In the past, Riders has been involved with community-oriented projects such as a state highway cleanup project, and its members have poured concrete motorcycle-parking pads at the Elkhart County fairgrounds. *Id.* In 2008, the Elkhart County 4-H Club used the subject property once for an ATV ride. *Id.* In 2009, at least five 4-H clubs want to use the subject property. Riders also plans to provide motorcycle safety courses in 2009. *Id.* It had provided similar courses in the past, but not for the last couple of years. *Id.*
12. Riders did not identify any Indiana statute under which it claims that the subject property is exempt. Although the Form 136 application that Riders filed provides a space for listing that authority, Riders simply wrote "Motorcycle Club." *Board Ex. A.* When asked the same question on its Form 132 appeal petition, Riders wrote "501C7." *Id.*

Conclusions of Law and Analysis

13. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1.1-2-1. But the Indiana General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const. Art. 10, § 1. The General Assembly has exercised that power by enacting a number of statutes exempting various types of property from taxation. The broadest of those statutes exempts buildings and land that they are situated on, if those buildings are owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. *See* Ind. Code § 6-1.1-10-16(a)-(c); Ind. Code § 6-1.1-10-36.3. Elsewhere, that same statute exempts vacant tracts of land purchased to erect a building that is to be owned, occupied, and used for more than one of those exempt purposes. *See* Ind. Code § 6-1.1-10-16(d). The exact meaning of the statute and its predecessors has spawned a significant amount of litigation. But broadly speaking, courts have linked a property's right to exemption to the property being used to provide a public benefit. *See, e.g., Fort Wayne Sports Club, Inc. v. State Bd. of Tax Comm'rs*, 147 Ind. App. 129, 258 N.E.2d 874, 881(1970) ("In our view, the well-established and obvious purpose for

legislative conferral of tax exemptions requires a showing of some public benefit as a condition precedent to the granting of such exemption.”).

14. In any event, a taxpayer bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004). Here, Riders did not point to any Indiana statute authorizing an exemption for its property. At most, it pointed to a federal statute—501(c)(7) of the Internal Revenue Code (26 U.S.C. § 501(c)(7)). That statute exempts a club “organized for pleasure, recreation, and other nonprofitable purposes” as long as no part of the club’s net earnings inures to any private shareholder’s benefit. 26 U.S.C. § 501(c)(7).
15. But the fact that an organization is exempt from federal income taxation does not necessarily entitle the organization’s property to a property-tax exemption. By itself, a federal income-tax exemption says little about how an organization’s property is used. Plus, the social and recreational purposes underlying a 501(c)(7) exemption do not jibe with Indiana’s constitutional and statutory scheme for property tax exemption. As explained above, that scheme is generally based on a property being used for public benefit. And Indiana Courts have held that purely social and recreational activities do not qualify. *E.g., Sahara Grotto & Styx v. State Bd. of Tax Comm’rs*, 147 Ind. App. 471, 261 N.E.2d 873, 878-89 (1970); *State Bd. of Tax Comm’rs v. Fort Wayne Sports Club*, 147 Ind. App. 129, 258 N.E.2d 874, 882 (1970).
16. In fact, Riders offered little evidence that the subject property was used for anything but its members’ social and recreational activities. Riders did allow the Elkhart 4-H club to ride on its property once in 2008. *Mikel testimony*. Even assuming that allowing the 4-H Club to use the subject property was charitable within the meaning of Ind. Code § 6-1.1-10-16(a), the property was not predominately used for that purpose. *See* Ind. Code § 6-1.1-10-36.3 (explaining that a property is predominately used for exempt purposes if it is used or occupied for those purposes more than 50% of the time that it is used or occupied in the year that ends on the property’s assessment date). Riders apparently plans to allow 4-H clubs to use the property more often in 2009 and to offer safety training courses as

well. The Board offers no opinion about whether those uses would qualify as educational or charitable because they did not occur in 2008—the year at issue in this appeal.²

Summary of Final Determination

17. Because Riders did not prove that the subject property qualified for an exemption under any Indiana statute, the Board denies Riders’ appeal and finds for the Noble County Assessor. The subject property is 100% taxable.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

² Riders’ exemption application and Form 132 petitions referenced assessment years 2008 and 2009. Riders may have been relying on Ind. Code § 6-1.1-11-3.5(a)-(b), which allow a not-for-profit corporation to receive an exemption in an odd-numbered year without re-applying, provided that the corporation received the exemption for the preceding year and the property’s use remains unchanged. The county auditor then automatically applies the exemption to the next year unless notified that the taxpayer is no longer eligible. Ind. Code § 6-1.1-11-3.5(d). An exemption application, however, is still only for the year in which it is filed. In this case, that year was 2008.

- 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>>