

REPRESENTATIVES FOR PETITIONER: Peter G. Mallers, Attorney at Law

REPRESENTATIVES FOR RESPONDENT: Kim Miller, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

COMMUNITY HOSPITAL OF)	Petition No.: 57-020-02-2-8-00038
NOBLE COUNTY, d/b/a)	
PARKVIEW NOBLE HOSPITAL,)	
)	
Petitioner)	County: Noble
)	
v.)	Township: Wayne
)	
NOBLE COUNTY PROPERTY)	Parcel No.: 07103044817
TAX ASSESSMENT BOARD OF)	
APPEALS,)	
)	
Respondent)	Assessment Year: 2002
)	

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

November 20, 2003

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

Issues

1. The issues presented for consideration by the Board were:

Issue No. 1: Whether the Form 132 Petition for Review of Exemption filed by Community Hospital of Noble County (Parkview Noble) should be considered timely filed.

Issue No. 2: Whether the personal property located at 951 East Hospital Drive and owned by Parkview Noble should be 100% exempt.

Procedural History

2. The Form 136, Application for Property Tax Exemption, was postmarked on May 15, 2002. Both parties agree the Form 136 application should be considered timely filed based on the postmark.
3. The determination (Form 120) of the Noble County Property Tax Assessment Board of Appeals (PTABOA) on the Form 136 application was postmarked on December 26, 2002. The PTABOA determined the land, improvements, and personal property to be 91% exempt and 9% taxable.
4. Pursuant to Ind. Code § 6-1.1-15-3, Darrell Gerig, Director of Treasury Management, filed a Form 132, Petition for Review of Exemption, on behalf of Parkview Noble petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on February 24, 2003. Parkview Noble is appealing the personal property only. Parkview Noble contends that the personal property should be 100% exempt.

Hearing Facts and Other Matters of Record

5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 27, 2003 in Albion, Indiana before Patti J. Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
6. The following persons were present at the hearing:

For the Petitioner: Peter G. Maller, Attorney, Beers, Maller, Backs and Salin
Darrell Gerig, Director, Treasury and Cash Management
for Parkview Health
Tami Patton, Manager, Treasury Management for Parkview
Health

For the Respondent: Kim Miller, Noble County Assessor
Delbert Linn, Noble County PTABOA

7. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Darrell Gerig
Tami Patton

For the Respondent: Kim Miller
Delbert Linn

8. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – An envelope postmarked 12/26/02 sent by the Noble County PTABOA, which contained their Notice of Action on Exemption (Form 120).

Petitioner's Exhibit 2 – Letter from Mr. Gerig, dated March 27, 2003, stating Parkview Noble's contentions regarding the IBTR defect notice and a certified mail receipt regarding the timeliness of the Form 136, dated May 15, 2002.

Petitioner's Exhibit 3 – Copy of the Certification of Incorporation for Parkview Health System, Inc., dated 5/24/95.

Petitioner's Exhibit 4 – Copy of Notice from IRS, dated 1/21/97 regarding Parkview Health's exempt status from federal income tax under 501(c)(3).

Petitioner's Exhibit 5 – Bylaws for Parkview Health System, Inc., dated January 2002.

Petitioner's Exhibit 6 – Copies of the Articles of Incorporation, dated 9/13/99 for Community Hospital of Noble County, Inc.

Petitioner's Exhibit 7 – Bylaws, dated October 2001, for Community Hospital of Noble County, Inc.

Petitioner's Exhibit 8 – Copy of notice from IRS, dated 3/1/00 regarding Community Hospital of Noble County's status as a 501(c)(3) tax-exempt organization.

9. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 132 Petition with attachments.
 - Board Exhibit B – The Notice of Hearing on Petition.

10. The personal property at issue is located at 951 East Hospital Drive in Kendallville, Wayne Township, and Noble County. The Administrative Law Judge did not view the subject personal property.

Jurisdictional Framework

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

12. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

13. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230

(Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

14. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
15. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

17. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.

18. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
19. 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 property is used, but on how 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 predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

20. In Indiana, the general rule is that all property in the State is subject to property taxation. See Ind. Code § 6-1.1-2-1.
21. The courts of some states construe constitutional and statutory tax exemption 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).
22. 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 property would otherwise have paid, and this should never be seen as an inconsequential shift.
23. This is why worthwhile activities or noble purpose is not enough for 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)).

24. 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).
25. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issues

ISSUE No 1: *Whether the Form 132 petition filed by Parkview Noble should be considered timely filed.*

26. Parkview Noble contends that the timeliness of the subject Form 132 Petition for Review of Assessment (Form 132 petition) is at issue because Noble County failed to mail the Notice of Action on Exemption Application (Form 120 notice) to the attention of Darrell Gerig. Mr. Gerig is the authorized representative who signed both the Form 136 Application for Property Tax Exemption (Form 136 application) and the Form 132 petition.
27. The Respondent contends the Form 120 notice was appropriately sent to the address listed on the Form 136 application. The Form 120 notice was sent in care of Angie Merkler, the person who signed the cover letter attached to the subject property tax

exemption application and to whom the Respondent had spoken several times regarding questions on Parkview Noble's applications for exemption.

28. The applicable rules governing this Issue are:

Ind. Code § 6-1.1-15-3(c)

In order to obtain a review by the Indiana Board of Tax Review under this action, the party must file a petition for review with the appropriate county assessor within thirty (30) days after the notice of the Property Tax Assessment Board of Appeals' action is given to the taxpayer.

29. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The Noble County PTABOA reviewed the Form 136 application. The Petitioner's claim for full 100% exemption was denied, but the PTABOA allowed 91% exemption for the land, improvements and personal property. Noble County signed the Form 120 notice on December 23, 2002 and sent the determination to the Petitioner. *See Form 120, Attachment to Board Exhibit A.*
- b. Mr. Gerig filed the subject Form 132 petition with the Noble County Assessor on February 24, 2003, well after the statutory deadline. The Form 132 petition is to be filed within thirty (30) days after notice of assessment is given to the taxpayer.
- c. The Board defected the Form 132 petition and sent the prescribed Notice of Defect on March 4, 2003 stating that both the Form 132 petition and its underlying Form 136 application appeared to be untimely filed.
- d. In response to the defect notice, the Petitioner submitted a certified mail receipt to verify the Form 136 application was postmarked on May 15, 2002, and therefore, should be considered timely received. *Board Exhibit A; Petitioner's Exhibit 2.*
- e. Regarding the timeliness of the Form 132 petition, the Petitioner contended that the Form 120 notice issued by the Noble County PTABOA was not mailed until December 26, 2002 and offered evidence of their contention at the Board hearing. *Petitioner's Exhibit 1.*
- f. Further, the Petitioner claimed the Form 120 notice was mailed to the attention of a clerical employee, who was on a leave of absence at the time the Form 120

notice was sent and upon her return was not aware of the significance of the mailing. *Petitioner's Exhibit 1 & 2; Gerig Testimony.*

- g. The Petitioner asserts the clerical employee returned to work from the leave of absence "sometime" in January. *Gerig & Patton Testimony.*
- h. The Petitioner contends that Noble County should be held responsible for Parkview Noble's late-filed Form 132 for failing to mail the Form 120 notice to Mr. Gerig, the authorized representative for Parkview Health System, Inc. *Petitioner's Exhibit 2.*
- i. The Petitioner quoted Title 52 IAC, which states that service to a person, not an individual, must be made to the party's authorized representative. The Petitioner asserts that Darrell Gerig is said authorized representative listed on both the Form 136 application and Form 132 petition. *Mallers Testimony.*
- j. The Respondent contends the County Assessor mails the Form 120 notice to the address that is listed on the Form 136 application. Unless directed to do otherwise, the county does not normally send the Form 120 notice to anyone's attention. Therefore, it would have been sent to Parkview Noble at 951 East Hospital Drive in Kendallville, as that is the address of the property owner listed on the form without the attention of anyone, if Ms. Merkler had not represented herself as the contact person. *Miller Testimony.*
- k. The Respondent claims they do not generally send the Form 120 notice to the attention of the representative who signed the form, because so many times in the past important documents have been returned undelivered because the representative is no longer employed with the company. *Miller Testimony.* The Respondent did testify, however, that the Form 120 notice was sent to the attention of Ms. Merkler in this case because she was the "contact person" the County had written or spoken to several times regarding Parkview's exemption applications. *Id.*
- l. Further, the Respondent contends that according to the cover letter sent by Ms. Merkler on May 15, 2002, as well as in phone conversations, Ms. Merkler, whose title is Financial Analyst for Parkview Health System, requested that Noble County send any questions regarding the exemption applications to her attention. *Miller Testimony; Attachment to Board Exhibit A.*

Analysis of the Issues

Issue No. 1: *Whether the Form 132 petition filed by Parkview Noble should be considered timely filed.*

30. The Petitioner claims the Form 132 petition should be considered timely filed, even though it is date-stamped after the statutory 30-day filing period. The Petitioner asserts Noble County was in error to send the Form 120 notice to the attention of a clerical employee who was unfamiliar with the appeal process. Further, the Petitioner contends that Noble County is obligated to send all official correspondences to the attention of the authorized representative, who signed the underlying applications.
31. In this case, the Petitioner is incorrect to believe that the late-filed Form 132 petition is due to the negligence of Noble County. To the contrary, Noble County was merely following the Petitioner's own instructions, when they forwarded the Form 120 notice in the care of Ms. Merkler.
32. The cover letter, which was attached to the Form 136 application instructed Noble County to not only return the date-stamped copies of the subject applications to Ms. Merkler, but also to contact her if there were any questions regarding the application. Clearly, by the cover letter and the phone conversations regarding the Form 136 application, Ms. Merkler held herself out to be the contact person. In fact, Ms. Merkler's title listed on the cover letter is that of Financial Analyst, which would imply that she was not an uniformed clerical employee as referred to by the Petitioner, but the appropriate contact for Parkview Noble's financial records and documents.
33. In addition, the Petitioner claims that Ms. Merkler was on a leave of absence when the Form 120 notice was mailed out to her attention and therefore the form sat on her desk for an undisclosed amount of time. However, when the Hearing Officer queried the Petitioner regarding the date she returned to work from her leave of absence, Petitioner replied that it was sometime in January. The deadline for submittal of the Form 132

petition was January 25, 2003. Even assuming that Ms. Merkler's absence was a valid excuse for missing the deadline, Petitioner neglected to show that she was on leave prior to the Board's thirty-day deadline for the receipt of the Form 132 petition.

34. The Petitioner contends Mr. Gerig is the authorized representative, in that he signed the subject Form 136 application, and therefore all documentation should be mailed in care of him. The Petitioner claims that according to the Board's rules under 52 IAC, "the authorized representative is defined as an attorney or another party who files an appearance." The Petitioner further asserts the Form 136 application states that an authorized representative is to sign the form. Therefore, the Petitioner claims that Mr. Gerig, whose signature is on the Form 136 application, is the person to whom any notice of action should have been sent.

35. The Petitioner is incorrect in their claims that Mr. Gerig, who signed as the authorized representative on the Form 136 and Form 132, is therefore deemed the sole contact for Parkview Noble. Mr. Gerig, like Ms. Merkle, was an employee of the Petitioner. He is not a certified tax representative operating independently of the Petitioner and therefore in need of express authority to represent them. The Petitioner appears to have taken the term "authorized representative" from 52 IAC 1 out of context. Furthermore 52 IAC 2-3-3, as cited by the Petitioner, is a proposed rule and was not in effect at the time of this proceeding. In addition, the proposed rules do not apply to appeal procedures at the county level.

36. Again, the administrative rules and standards established in 52 IAC represent the proposed rules that solely govern proceedings before the Indiana Board of Tax Review. Therefore, the Form 120 notice, initiated by the County Board, is not applicable to the same procedural rules issued for the Board's appeal procedures. Indiana code, rules, and standards have countless definitions for the meaning of authorized representative, each applicable to its own section or article. The Petitioner's citation to 52 IAC 2-3-3 is not applicable to the filing of the Form 136 application and subsequent Form 120 notice.

37. For all the reasons listed above, the Form 132 petition is denied as untimely and therefore will not be reviewed by the Board.

Issue No. 2: *Whether the personal property located at 951 East Hospital Drive and owned by Parkview Noble should be 100% exempt.*

38. The Board will not examine the merits of the Petitioner's claims regarding the percentage of exemption warranted. For the reasons stated above, the Form 132 petition was deemed untimely filed. As such, there is no change to the percentage of allowed exemption for the personal property at appeal.

Summary of Final Determination

Determination of Issue 1: *Whether the Form 132 petition filed by Parkview Noble should be considered timely filed.*

39. The Form 132 Petition requesting a review of exemption was filed with the Board after the 30-day statutory deadline and is denied as untimely filed for assessment year 2002.

Determination of Issue 2: *Whether the personal property owned by Parkview Noble should be 100% exempt.*

40. Due to the untimely filing of the Form 132 appeal petition, the Board will not consider the Petitioner's contentions regarding the percentage of exemption. There is no change to the personal property exemption. The determination of the Noble County PTABOA stands at 91% exempt and 9% 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.

Chairman, 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.