

REPRESENTATIVES FOR PETITIONER: Mr. V. Partenheimer, Attorney-at-Law and Mr. Jack L. Tichenor, Vice President for Development, Oakland City University

REPRESENTATIVES FOR RESPONDENT: Ms. Juanita Beadle, Gibson County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

OAKLAND CITY UNIVERSITY)	
)	
Petitioner,)	
)	
v.)	Petition No. 26-006-01-2-8-00001
)	
)	County: Gibson
)	
GIBSON COUNTY PROPERTY TAX)	Township: Columbia
ASSESSMENT BOARD OF APPEALS)	
)	Parcel No. 0030089100
Respondent.)	
)	Assessment Year: 2002 ¹

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

August 21, 2003

¹ Information contained in Board's Exhibits A and B raised a question regarding the assessment year under review. The Administrative Law Judge sought clarification from the parties, and after discussion, the parties agreed that the assessment year under review is 2002.

FINAL DETERMINATION

The Indiana Board of Tax Review,² 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 issues presented for consideration by the Board are:

Issue No. 1: *Whether the application for exemption complies with the statutory procedures for obtaining property tax exemption.*

Issue No. 2: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Oakland City University (the Petitioner) filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on September 12, 2002. The determination of the Gibson County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 14, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was held on May 22, 2003 in Princeton, Indiana, before Kay Schwade, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.

² For convenience of reference, the Indiana Board of Tax Review is hereafter referred to as the "Board."

4. The following persons were present at the hearing:

For the Petitioner:

Mr. V. Partenheimer, Attorney-at-Law;

Mr. Jack L. Tichenor, Vice President for Development for Oakland City University.

For the Respondent:

Ms. Juanita Beadle, Gibson County Assessor/Secretary of the PTABOA.

5. The following persons were sworn in as witnesses and presented testimony at the hearing:

For the Petitioner:

Mr. Jack L. Tichenor, Vice President of Development for Oakland City University.

For the Respondent:

Ms. Juanita Beadle, Gibson County Assessor/Secretary of the PTABOA.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A copy of a Final Determination, Form 118, issued by the Board on March 26, 2003;

Petitioner's Exhibit B – A copy of a land purchase contract between Oakland City University and the Shoultz Living Trust dated September 3, 1998.

For the Respondent:

No exhibits were presented.

7. 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 – Notice of Hearing on Petition.

8. The Respondent did not present a list of witnesses and a list of testimony and evidence to be presented during the administrative proceedings to the Petitioner. The Petitioner elected to move forward with the proceedings providing that, should the Respondent present new information, the hearing would be continued to a later date allowing the Petitioner an opportunity to review the new information.
9. The real property at issue is a residential dwelling and land located at 615 College Street in Oakland City, Columbia Township, Gibson County. The property was held 100% subject to property taxation for 2002.

Jurisdictional Framework

10. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
11. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

State Review and Petitioner's Burden

12. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
13. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
['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, 1024-1025 (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 generally, Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See e.g., Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *Clark v. Dep’t of Local Gov’t Fin.*, 779 N.E.2d 1277 (Ind. Tax Ct. 2002).
17. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax 1998); *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 Board (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 Board 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

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

19. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

20. In Indiana, the 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. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. Of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

21. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

22. 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 – 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. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

23. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 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 exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of the Issues

Issue No. 1: *Whether the application for exemption complies with the statutory procedures for obtaining property tax exemption.*

25. The Shoultz Living Trust holds legal title to the property.
26. The Petitioner is purchasing the property from The Shoultz Living Trust under a contract that calls for title to transfer upon payment in full.
27. The President/Chancellor of Oakland City University, Mr. James W. Murray signed the exemption application on behalf of the Petitioner.
28. The applicable statutes and case law governing this issue are:

Indiana Code § 6-1.1-1-9(b)

The holder of legal title in fee to real property is the owner of that property.

Indiana Code § 6-1.1-11-3(a) & (b)

The owner of property is required to file an application for exemption with the county auditor. The authority to sign the exemption application cannot be delegated to another except by an executed power of attorney.

Indiana Code § 6-1.1-11-1

An exemption is a privilege that may be waived if the owner of property that would qualify for exemption fails to comply with the statutory procedures for obtaining property tax exemption. If the exemption is waived, the property is subject to taxation.

Word of His Grace Fellowship, Inc. v. State Bd. of Tax Comm'rs, 711 N.E.2d 875 (Ind. Tax Ct. 1999)

The legal title holder, as owner of the property, must file the application for exemption.

29. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The legal title holder as of the assessment date was The Shoultz Living Trust.
Tichenor testimony; Beadle testimony.
 - (b) Petitioner is in the process of purchasing the property from The Shoultz Living Trust, and will continue to make payments until October 1, 2004. *Tichenor testimony; Petitioner's Exhibit B.*
 - (c) Upon completion of the payment schedule, legal title will transfer to the Petitioner.
Tichenor testimony; Petitioner's Exhibit B.
 - (d) James W. Murray, President/Chancellor of Oakland City University, signed the application for exemption on behalf of the Petitioner. *Board Exhibit A.*
 - (e) The PTABOA denied the exemption because the holder of legal title – The Shoultz Living Trust – was not the one that filed the application for exemption. *Beadle testimony.*

Issue No. 2: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

30. The Petitioner contends that equitable title is sufficient to satisfy the ownership requirement to obtain property tax exemption. Petitioner also contends that the property is used and occupied for educational purposes.
31. The Respondent contends that property tax exemption must be denied because the Petitioner does not hold fee simple title to the property.
32. The applicable statutes and case law governing this issue are:
Indiana Code § 6-1.1-10-16
Property owned, used, and occupied for educational purposes is exempt from property taxation.

Indiana Code § 6-1.1-1-9(b)

The holder of legal title in fee to real property is the owner of that property.

Analysis of the Issues

Issue No. 1: *Whether the application for exemption complies with the statutory procedures for obtaining property tax exemption.*

33. In order for a property to obtain an exemption, the *owner* must file a certified application for exemption. Ind. Code § 6-1.1-11-3(a).
34. If the owner does not comply with the statutory procedures for obtaining the exemption, the privilege of property tax exemption is waived and the property is subject to taxation. Ind. Code § 6-1.1-11-1.

35. Ind. Code § 6-1.1-1-9(b) provides that “the holder of . . . the legal title in fee to real property[] is the owner of that property.” *Id.*
36. It is undisputed that The Shoultz Living Trust held legal title to the property as of the assessment date. *Tichenor testimony; Beadle testimony.* The Shoultz Living Trust is therefore the owner of the property for purposes of this appeal.
37. The Shoultz Living Trust did not file an application for exemption of this property.
38. The Petitioner, who filed the exemption application at issue, is not the owner and is not the proper party to file the application for exemption. Ind. Code § 6-1.1-11-3(a).
39. The record is void of any evidence that The Shoultz Living Trust authorized the Petitioner to act in its behalf pursuant to Ind. Code § 6-1.1-11-3(b).
40. Due to the fact that the owner did not file the application for exemption, the statutory procedures have not been followed. Any potential entitlement to an exemption is therefore waived. Ind. Code § 6-1.1-11-1.
41. The application for exemption is denied for failure to comply with the statutory procedures for obtaining exemption.

Issue No. 2: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

42. The Board will not examine the merits of the Petitioner’s claim regarding the exemption. For the reasons stated above, the application for exemption does not comply with the statutory procedures for obtaining the exemption. As such, the exemption has been waived. Ind. Code § 6-1.1-11-1. For this reason, the exemption is denied without delving into the issue of whether the property qualifies for exemption pursuant to Ind. Code § 6-1.1-10-16.

Summary of Final Determination

Determination of Issue No. 1: *Whether the application for exemption complies with the statutory procedures for obtaining property tax exemption.*

The application for exemption is denied as it does not comply with the statutory procedures for obtaining exemption. The property is 100% taxable.

Determination of Issue No. 2: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

The exemption was denied for a procedural defect without examining the merits of the case. The property is 100% taxable.

The above stated findings of fact and conclusions of law 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 21st day of August , 2003.

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. 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.