

REPRESENTATIVE FOR PETITIONER: Daniel D. Bobilya, Attorney, Locke Reynolds LLP

REPRESENTATIVE FOR RESPONDENT: Kim Gephart, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

A.M. REALTY, INC.,)	Petition No.: 57-007-06-2-8-00002
)	
Petitioner,)	Noble County
)	
v.)	Wayne Township
)	
NOBLE COUNTY PROPERTY)	Parcel No.: 57-07-29-200-014-000-020
TAX ASSESSMENT BOARD OF)	
APPEALS,)	Assessment Year: 2006
)	
Respondent.)	

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

August 23, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

Issue: Does the subject real property qualify for exemption from property tax under Ind. Code § 36-1-10-18?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. A.M. Realty, Inc., (Petitioner) filed an Application for Property Tax Exemption (Form 136) for the 2006 assessment on May 15, 2006. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the exemption and finding the real property 100% taxable on July 24, 2006.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Petition for Review of Exemption (Form 132) on August 22, 2006, seeking an administrative review of the PTABOA determination.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, Patti Kindler, the designated Administrative Law Judge, held the hearing in Albion on June 5, 2007. She did not conduct an on-site inspection of the property.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner - David Bobilya, Secretary/Treasurer, A.M. Realty,
Tim Holcomb, Coordinator for Four County Area Vocational
Cooperative,
Alan Middleton, Superintendent, Butler-Keyser-Garrett
Schools.

For the Respondent - Kim Gephart, Noble County Assessor and PTABOA
Secretary,
Delbert Linn, PTABOA member,
Mary Beth Lemings, PTABOA member,
George Clifford, PTABOA member.

5. The Petitioner presented the following exhibits at the hearing:
 - Petitioner Exhibit 1 – Lease for the subject property,
 - Petitioner Exhibit 2 – Memorandum from the Indiana Department of Education.

6. The Petitioner also submitted a brief containing the following exhibits with the Form 132 Petition and requested that these items be part of the record:
 - Petitioner Exhibit A – Grounds for appeal,
 - Petitioner Exhibit B – Form 136 Petition, webpage from the Indiana Department of Education, copy of several sections of Ind. Code § 36-1, subject lease agreement, educational standards for career and technical programs,
 - Petitioner Exhibit C – Form 120 denying exemption,
 - Petitioner Exhibit D – PTABOA minutes with attached Form 136 Petition and the subject property record card.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Minutes from the PTABOA hearing.

8. The following additional items are part of the record of proceedings:
 - Board Exhibit A – Form 132 Petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet,
 - Board Exhibit D – Order Regarding Conduct of Exemption Hearing.

9. The subject property is a 2.13-acre site with a building occupied by the Four County Area Vocational Cooperative (Four County) located at 221 Angling Road in Kendallville, Indiana.

10. The Petitioner is the owner and lessor of the property. It seeks an exemption under Ind. Code § 36-1-10-18. The Petitioner specified that it does not seek exemption under Title 6. *Daniel Bobilya argument; Pet'r Ex. B.*

11. The Petitioner leases the property to CF & B Associates, Inc., who sub-leases it to the Garrett-Keyser-Butler Community School District (GKB) for Four County. *Pet'r Ex. A at 1*. GKB is the fiscal and education agent for Four County. *Holcomb testimony*. Leasing the structure is more economically feasible than building a similar facility through the issuance of bonds. *Middleton testimony*. The lease agreement identifies both GKB and Four County as the tenants of the property. *Pet'r Ex. 1*.
12. The Petitioner argues that Four County is responsible for real property taxes as part of its monthly rent payments. Therefore, according to the Petitioner, it will not benefit from a tax-exempt status, but allowing the exemption will reduce the financial burden on Four County. *Daniel Bobilya argument; Pet'r Ex. A at 2*. The specific provisions in the lease regarding rent and taxes are as follows:

(Included in said monthly rental payments is the sum of Four Hundred Fifty Dollars (\$450.00) per month for property taxes; in the event said taxes are abated by the State of Indiana then said monthly rental payments shall be reduced by said Four Hundred Fifty Dollars (\$450.00).)

It is agreed and understood that Landlord shall pay all taxes and assessments on said real estate payable during the full term of this lease; provided however, that the Tenant will pay Landlord each year, commencing in the year 2002 and [sic.] an amount equal each year that the property taxes exceed the property taxes for the 2000 payable in 2001.

Pet'r Ex. 1 at 2, 10.

13. Four County uses the subject real estate for the sole purpose of teaching students vocational skills. The teaching staff at Four County are all state certified and licensed. The State of Indiana recognizes Four County as School Corporation #1333 and offers educational support and funding as with any other public school in the state. *Holcolm testimony; Pet'r Ex. 2; Pet'r Ex. A at 2-3*.

14. According to the Petitioner, no public school in Indiana pays property taxes. Indiana Code § 36-1-10-3 permits both for-profit and not-for-profit corporations to enter into such leases, which can be more economically feasible for school finance purposes. The Petitioner argues that when a political subdivision (in this instance, a public school) leases a property from a private business, the leased property is exempt from taxation. The Petitioner argues A.M. Realty's for-profit status is not a relevant consideration. *Daniel Bobilya argument.*
15. The Respondent agreed that if the school owned the building, the parcel would be exempt. In this case, however, the owner of the property is a for-profit corporation that leases multiple buildings. The Respondent argues that A.M. Realty is not entitled to an exemption because it will continue to make money from this lease whether or not the school has tax-exempt status. In addition, the Respondent argues that A.M. Realty is in the rental business and has other rental properties leased to for-profit tenants. Because these other properties are not leased to a school, the Respondent determined the Petitioner is not eligible for exemption. *Gephart testimony; Resp't Ex. 1.*

Analysis

16. The Petitioner claims the following exemption:
- Ind. Code § 36-1-10-18**
Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision or agency under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation.
17. The following additional statute is relevant to this analysis:
- Ind. Code § 36-1-10-3**
Any of the following persons may lease property to a political subdivision or agency under this chapter:
- (1) A profit or not-for-profit corporation organized under Indiana law or admitted to do business in Indiana.

18. Undisputed evidence establishes that the subject property is leased by a school district (GKB) and used for the sole purpose of providing vocational education. The definition of a “political subdivision” includes municipal corporations. Ind. Code § 36-1-2-13. The definition of a “municipal corporation” includes school corporations. Ind. Code § 36-1-2-10. There was no dispute that the building is a structure that is leased to a political subdivision.¹ This evidence is sufficient to make a prima facie case for the exemption that the Petitioner seeks.
19. Furthermore, undisputed evidence established that the school would be responsible for any property taxes that might be due. If property taxes were to be paid on the subject property, the source of the payment would ultimately be other taxes. Such a result would be absurd because it would amount to nothing more than taking money from one pocket and putting it into another.
20. The Respondent denied the exemption because the Petitioner is a for-profit entity that would receive income from the subject property and other properties. The Respondent cited no legal authority to support its position for denying the exemption on that basis. In addition, the Respondent’s reasoning is irrelevant and inconsistent with the statutes. Indiana Code § 36-1-10-3 states that the lessor can be a for-profit or not-for-profit corporation. Indiana Code § 36-1-10-18 clearly contemplates the lessor will receive rental income from the exempt property by stating that rents earned by the lessor are subject to taxation. The for-profit status of A.M. Realty clearly is not relevant to the claim for exemption.
21. The Respondent offered no other basis for denying the exemption.

¹ While Ind. Code § 36-1-10 contains various other requirements regarding entering a lease and the evidence is less than clear that all of those requirements were strictly followed for the lease of the subject property, the Respondent made no claim that the exemption should be denied because the lease did not conform to those requirements. The Board will not make that case for the Respondent. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 480 (Ind. Tax Ct. 2003) (stating that the Indiana Board exceeds its statutory authority if it attempts to make a case for an assessor).

22. The Respondent failed to overcome the Petitioner's prima facie case.

Conclusion

23. The subject property is exempt from property tax.

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

Commissioner, Indiana Board of Tax Review

- 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>>