

REPRESENTATIVE FOR PETITIONER:

Gary W. Wiggans, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Charles Todd, Jr., Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Gary W. Wiggans,	)	Petition No.:	89-030-07-2-8-00001
	)		
Petitioner,	)	Parcel:	50-05-420-105.000-29
	)		
v.	)		
	)	County:	Wayne
Wayne County Assessor	)	Township:	Wayne
	)		
Respondent.	)	Assessment Year:	2007
	)		

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

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**February 22, 2008**

**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**

1. Property leased by a state university in order to carry on its public-service programs is exempt from taxation. The Indiana University Trustees leased a portion of Gary Wiggans's property to use as offices for one of the university's divisions—the Area 9 Agency. The Area 9 Agency, in turn, provided a public service by caring for the elderly and disabled. The Board therefore grants Wiggans's exemption claim, but only for the portion of his property covered by the university's lease.

### **PROCEDURAL HISTORY**

2. On May 11, 2007, Gary W. Wiggans filed an exemption application. On July 6, 2007, the Wayne County Property Tax Assessment Board of Appeals ("PTABOA") denied Wiggans's application and determined that his property was 100% taxable. Wiggans then filed his Form 132 Petition for Review of Exemption asking the Board to reverse the PTABOA's determination and grant him an exemption.
3. Indiana Code § 6-1.5-4-1 grants the Board jurisdiction to hear Wiggans's petition. Thus, on November 27, 2007, the Board held a hearing through its Administrative Law Judge, Alyson Kunack (ALJ). Neither the Board nor the ALJ inspected the subject property.
4. The following persons were sworn and presented testimony at the hearing:

For Gary Wiggans:

Gary W. Wiggans, Petitioner  
Tony Sheperd, Executive director, Area 9 Agency

For the Wayne County Assessor:

Marie Elstro, PTABOA member  
Joseph L. Kaiser, PTABOA president  
Dan Williams, PTABOA member

5. Wiggans offered the following exhibits:<sup>1</sup>
  - Petitioner's Exhibit 1 – Copy of IBTR determination in *P & A, LLC*, petition no. 45-030-00-2-8-00001
  - Petitioner's Exhibit 2 – Form 136 Application for Exemption and portions of leases
  
6. The Wayne County Assessor offered the following exhibits:
  - Respondent's Exhibit 1 – Subject Property Record Card (PRC)
  - Respondent's Exhibit 2 – Copy of Indiana Code § 21-34-1-1 through -10-1 and repealed § 20-12-6 et seq.
  
7. The Board recognizes the following documents as part of the record of proceedings and labels them as Board Exhibits:
  - Board Exhibit A – The Form 132 Petition
  - Board Exhibit B – Notice of Hearing dated October 10, 2007
  - Board Exhibit C – Hearing Sign-in sheet
  - Board Exhibit D – Respondent's List of Witnesses and Exhibits and Notice of Appearance
  - Board Exhibit E – Notice of Appearance for Respondent
  - Board Exhibit F – Respondent's Summary of Witness Testimony and Exchange of Evidence
  
8. For 2007, the PTABOA determined that the property was 100% taxable. Wiggans, by contrast, requests a 100% exemption.

#### **FINDINGS OF FACT**

9. The subject property contains a 12,703-square-foot single-story building with both office and storage space. It is located at 520 South 9<sup>th</sup> Street in Richmond, Indiana. *Resp't Ex. 1; Wiggans testimony.*
  
10. In 1994, Wiggans began renting a portion of the subject property to the Indiana University Trustees. Wiggans leased the property in three phases. The university originally leased only 3,230 square feet. Eventually, Wiggans and the university

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<sup>1</sup> Wiggans originally attached both of his exhibits to his Form 132 petition.

expanded the leasehold to include approximately 9500 square feet. *Wiggans testimony*. Thus, at the time of his exemption application, the university leased 75% of the building.

11. Because the university leased the premises in phases, the leases terminated at different times. *Wiggans testimony*. Eventually, Wiggans and the university entered into one lease for the entire 9,500 square feet. *Id.* The record is silent about that lease's term; however, the earlier leases ran for five and ten years, respectively. The Board therefore infers that the operative lease's term is roughly equivalent. In any event, the Board finds that the lease term is less than 40 years.
12. The university used the leased premises as offices for the "Area 9 Agency." That agency is not a separately organized entity. Instead, it is an arm of the university, akin to an academic department. It fulfills the university's public service mission by providing long-term care and health services for the elderly and disabled. The university employs all of the people who work at the leased premises. *Sheperd testimony*.

#### CONCLUSIONS OF LAW

13. Generally, all tangible property in Indiana is taxable. IND. CODE § 6-1.1-2-1. The Indiana General Assembly, however, may exempt from taxation any property used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
14. But all property receives protection, security, and services from the government. And those governmental services carry with them a corresponding obligation of pecuniary support. When property is exempted from taxation, the burden of paying for those services shifts to non-exempt parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs* ("NAME"), 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996). Therefore, worthwhile activities or noble purposes alone do not justify exempting a property from taxation. Instead, exemption is appropriate only where a property is being used to provide a public benefit. *NAME*, 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)).

15. For those reasons, the Board must construe exemptions against the taxpayer and in favor of taxation. And a taxpayer must prove that its property falls specifically within the statute under which it claims an exemption. *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax. Ct. 1987).
16. In both his Form 132 petition and his original exemption application, Wiggans claimed a charitable-use exemption under Ind. Code § 6-1.1-10-16. He also cited to a decision from 2002 in which the Board granted an exemption under Indiana Code section 20-12-6-11. At the Board's hearing, he proceeded solely under that second statute.
17. At the time Wiggans applied for his exemption, Title 20, Article 12 of the Indiana Code provided authority for state higher educational institutions to acquire property.<sup>2</sup> And that statute exempted from taxation any property that a state university leased for 40 years or less in order to carry on public service programs. Thus, Ind. Code § 20-12-6-2 authorized a state university to "acquire," through a lease not exceeding 40 years, real and personal property that its governing board deemed necessary for the purposes set forth in Ind. Code § 20-12-6-1. Those purposes included operating a facility that the university's governing board deemed necessary for "carrying on the educational research, the public service programs, or the statutory responsibilities" of the university or of the various divisions under its jurisdiction. IND. CODE § 20-12-6-1(2004). And Ind. Code § 20-12-6-11 provided that "all property acquired under the authority of [Ind. Code § 20-12-6] or used for the purposes provided in [Ind. Code § 20-12-6] and the income therefrom shall be exempt from taxation. . . ." IND. CODE 20-12-6-11(2004).
18. Wiggans proved that approximately 75% of the subject building met the statutory requirements for exemption. The Trustees of Indiana University leased that portion of

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<sup>2</sup> The General Assembly repealed that statute and recodified it, with only minor changes, at Indiana Code Title 21, Article 34. See P.L. 2-207 §§ 275, 390.

the building to operate the Area 9 Agency—one of the university’s divisions. And the Area 9 Agency offered a public service by providing long-term care and health services to the elderly and disabled. Thus, Wiggans is entitled to a 75% exemption for his land and improvements.

**SUMMARY OF FINAL DETERMINATION**

19. Gary Wiggans, proved that his property should receive a 75% exemption under I.C. 20-12-6-11. The Board therefore finds in Wiggans’s favor and orders that a 75% exemption be applied to the subject property for 2007.

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

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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>