

REPRESENTATIVES FOR PETITIONER: Steven K. Emery, Esq., BUNGER & ROBERTSON.

REPRESENTATIVES FOR RESPONDENT:

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| ALPHA PSI ALUMNI CORP., | ) | Petition Nos.: 53-004-00-2-8-00001 |
|                         | ) | 53-004-00-2-8-00002                |
| Petitioner              | ) | 53-004-01-2-8-00001                |
|                         | ) | 53-004-01-2-8-00002                |
| v.                      | ) | County: Monroe                     |
|                         | ) | Township: Bloomington              |
| MONROE COUNTY PROPERTY  | ) | Parcel Nos.: 2130068000            |
| TAX ASSESSMENT BOARD    | ) | 0135200004                         |
| OF APPEALS,             | ) | Assessment Years: 2000 & 2001      |
|                         | ) |                                    |
| Respondent              | ) |                                    |
|                         | ) |                                    |

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

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**March 24, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The 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 1 – *Whether the Petitioner timely filed an appeal for an exemption.*

### Procedural History

2. The Petitioner filed Form 133s in all these matters with the Monroe County Auditor on October 16, 2002. These petitions were all denied on October 30, 2002 for being untimely filed. On November 12, 2002, the Petitioner filed for review of this decision before the Board.
3. On December 3, 2002, the Board sent a Notice of Defect to the Petitioner indicating the petition was defective because there was no Form 136, Application for Property Tax Exemption attached to the appeal, and because there was no copy of the PTABOA determination on the property tax exemption (Form 120) attached to the appeal.
4. On December 13, 2002, the Board received a letter from the Petitioner explaining their position.

### Constitutional and Statutory Basis for Exemption

5. 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.
6. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

7. In Indiana, 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 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**

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. The courts of some states construe constitutional and statutory tax exemptions 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).
10. An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.

### **Discussion of Issues**

#### ISSUE 1: *Whether the Petitioner timely filed an appeal for an exemption.*

11. The Petitioner contends “the crux of this dispute is that the taxpayer believed they provided adequate notice of their change of address in the filing of their personal property returns for 1999 and 2000. Notwithstanding those notifications to the county, no Form 136 was mailed to the taxpayer in 2000 for either personal property tax or real property

tax.” See letter dated December 11, 2002 to Jane Chrisman, Indiana Board of Tax Review.

12. The Respondent contends the petitions were not timely filed. See Form 133 petition.

13. The applicable rule(s) governing this Issue 1 is (are):

**Ind. Code § 6-1.1-11-5.**

(a) The auditor of the county in which property is located shall, in a particular year, mail a notice to the owner of the property if:

- (1) the owner has not applied for a tax exemption for that year;
- (2) a tax exemption for the property was in effect for the immediately preceding year; and
- (3) the owner is required to file an application for the exemption for that year under section 3 or 3.5 [Ind. Code § 6-1.1-11-3 or –3.5] of this chapter.

(b) The notice required by this section must:

- (1) identify the property by key number, if any, and street address, if any, or other common description of the property other than legal description; and
- (2) state that the property will be placed on the county tax duplicate unless the owner applies for an exemption within fifteen (15) days after the date the notice is mailed.

The county auditor shall mail any notice required by this section on or before June 15 of the year in which the exemption application should have been filed

(c) A county auditor’s failure to give the notice required by this section does not continue an exemption unless an exemption application is filed by the owner and approved by the county property tax assessment board of appeals on or before the first Monday in November of the year following the year in which the application should have been filed.

## Analysis of ISSUE 1

14. The Petitioner presents two arguments in this case. First, the Petitioner opines that the County Auditor should have changed the address in 1999 when a new treasurer began filing Form 103 personal property returns for the subject property. Second, the Petitioner claims that according to Ind. Code § 6-1.1-11-5 the County Auditor should have mailed notice to the subject property regarding their exemption.<sup>1</sup> The Petitioner claims that as the result of errors of omission by a county official, the taxpayer was not given credit for an exemption permitted by law.
  
15. The Petitioner's theory is flawed for a number of reasons. First, the Form 103, personal property return, is originally filed with the Township Assessor. *See Form 103*. The Township Assessor and County Auditor have no statutory duty to compare addresses for persons or entities filing returns. In fact, in many circumstances, the Township Assessor's office will not be in the same city as the County Auditor. To impose such a duty on Township Assessors and County Auditors is not in the authority of the Board.
  
16. Second, the reason for the Form 133, "Through error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law," is not applicable in this case. According to 50 IAC 4.2-3-12(g), "...if an exemption or deduction application was acted upon by the appropriate official or officials and was wholly or partially denied, the Form 133 does not apply. In that situation, the taxpayer's only avenue of relief is through an appeal to the appropriate body. The Form 133 applies if the exemption or deduction was wholly or partially approved, but there was an omission which resulted in the taxpayer not being given credit."
  
17. In the present case, there was no application for exemption filed by the Petitioner, and thus, no decision by the appropriate body. The Form 133 is not the appropriate method to appeal in this case.

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<sup>1</sup> While the Petitioner never claims that the subject property was exempt in 1999, it is *assumed* for the purposes of this final determination that the subject was in fact exempt in 1999.

18. Furthermore, the Petitioner was required to file an exemption application on or before May 15, 2000. Ind. Code § 6-1.1-11-3.5. If the property was exempt the preceding year, and the Petitioner failed to file an exemption application by May 15, the County Auditor is required to send notice to the taxpayer by June 15. Ind. Code § 6-1.1-11-5(b).
19. Assuming for purposes of this Final Determination that the property was in fact exempt in 1999, the Petitioner was still required to file an exemption application (Form 136) on or before May 15, 2000. The Petitioner did not file the exemption application. The County Auditor was required, if the property was exempt in 1999, to send notice to the taxpayer by June 15, 2000.
20. The Petitioner claims that this notice was either not sent at all, or sent to the incorrect address. According to Ind. Code § 6-1.1-11-5(c), in the event an Auditor does not send the required notice, the taxpayer still has until the first Monday in November of the following year to have the exemption application acted upon by the PTABOA.
21. Assuming the auditor did not send notice, the Petitioner had until November 5, 2001 to file and get approved an exemption application for tax year 2000. Furthermore, the Petitioner should have received tax bills prior to the May due date and even a tax bill prior to the November due date in 2001 for tax year 2000. However, at no time did the Petitioner file a Form 136 exemption application. The Petitioner instead, waited until October 16, 2002 to file a Form 133 petition with the County Auditor.
22. The Petitioner did not file within the statutory deadlines required in seeking an exemption for tax year 2000. The Petitioner was required to file an exemption application by May 15, 2000. Furthermore, the Petitioner had until November 5, 2001 to get an exemption application acted upon by the PTABOA if they were exempt in 1999 and the auditor did not mail the notice required by Ind. Code § 6-1.1-11-5(b). Therefore, the Petitioner has waived the exemption for tax year 2000.

23. Similarly, if the property is not exempt in 2000, the Petitioner would need to file an exemption application for 2001. This was not done within the time frames allowed. Therefore, the exemption for 2001 has been waived also.
24. The Petitioner failed to timely apply for an exemption, and the exemption has been waived.

### **Summary of Final Determination**

Determination of ISSUE 1: *Whether the Petitioner timely filed an appeal for an exemption.*

25. The Petitioner did not timely file an exemption application; therefore, the exemption has been waived.

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

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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.**