

REPRESENTATIVES FOR PETITIONER: Dan Patterson, Attorney-at-Law

REPRESENTATIVES FOR RESPONDENT: Linda Kovacich, Jennings County Assessor;
James J. Mick, Center Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CITY OF NORTH VERNON,)	Petition No.: 40-003-02-2-8-00001
)	
Petitioner,)	County: Jennings
)	
v.)	Township: Center
)	
JENNINGS COUNTY PROPERTY)	Parcel No.: 092300000900011
TAX ASSESSMENT BOARD OF)	
APPEALS,)	Assessment Year: 2002
)	
Respondent.)	

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

May 26, 2004

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 1 – *Whether the City of North Vernon should have received a notice of assessment for the property.*
 - ISSUE 2 – *Whether the local officials were required to give notice of revocation of exemption.*
 - ISSUE 3 – *Whether the property is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-5 as municipal property or Ind. Code § 8-22-3-28; Ind. Code § 8-21-12-19; Ind. Code § 8-22-2-12 as aviation related property.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Dan A. Patterson, attorney-at-law filed a Form 133, Petition for Correction of Error, on behalf of H&B, LLC petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on June 16, 2003. All parties agree that this is a review of an exemption. Attached to the Form 133 is an exemption application. The PTABOA denied the exemption on July 3, 2003.

Hearing Facts and Other Matters of Record

3. The subject property is a golf course owned by the Board of Aviation Commissioners of the City of North Vernon (Aviation Board). The golf course was not taxed from 1998 through 2001 because it was exempted as municipal property. As a result of the reassessment, the property was placed on the tax rolls and notice of assessment was sent to H&B, LLC.
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on January 14, 2004 in Vernon, Indiana, before Kay Schwade, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-4-1 and § 6-1.5-3-3.

5. The following persons were present at the hearing:

For the Petitioner: Dan Patterson, attorney-at-law
Brent Hammer, H&B, LLC
Greg Bishop, H&B, LLC

For the Respondent: Linda Kovacich, Jennings County Assessor
James Mick, Center Township Assessor

6. At the hearing, all persons except Dan Patterson were sworn in as witnesses.

7. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit A – A copy of the lease between the Aviation Board and H&B, LLC.

Petitioner Exhibit B – A copy of the Certificate of Organization, with the Articles of Organization for H&B, LLC

8. The following additional items are officially recognized as part of the record of proceedings:

Board Item A – The Form 133 petition, with attachments

Board Item B – Notice of Hearing

Jurisdictional Framework

9. 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.

10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-4-1.

State Review and Petitioner's Burden

11. 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).

12. 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.]
13. 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.]
14. 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 Board 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.]
15. 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

16. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
17. Article 10, §1 of the Indiana Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

Basis of Exemption and Burden

18. 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.
19. 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).
20. 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).
21. 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 Issues

Issue 1: *Whether the City of North Vernon should have received a notice of assessment for the property.*

22. H&B, LLC contends that the City of North Vernon (City), as the owner of the property, should have received notice of the assessment. H&B, LLC expressed concern that because the City did not receive notice of assessment, the City's lack of participation could result in procedural improprieties.
23. The Respondent asserts that notice of assessment was served to H&B, LLC based upon the property tax clause contained in the lease agreement between the City and H&B, LLC, which indicated H&B, LLC's liability for property tax obligations.
24. The applicable law governing this issue is:
 - Ind. Code § 6-1.1-2-4(a)**
The owner of real property is liable for taxes imposed for that year unless the property is held, possessed, controlled, or occupied by a person on the assessment date of that year is liable for the taxes under a memorandum of lease or other contract that is recorded with the county recorder before January 1, 1998.
 - Ind. Code § 6-1.1-4-1**
Real property is assessed to the person liable for the taxes under Ind. Code § 6-1.1-2-4
 - Ind. Code § 6-1.1-4-22**
If an assessing official assesses or reassesses real property, the assessing official must give notice to the taxpayer, by mail, of the amount of assessment.
25. Evidence and testimony considered particularly relevant to this determination include the following:
 - a. The City is the owner by deed of record. *Kovacich testimony; Bishop testimony.*
 - b. H&B, LLC leases 160 acres from the Aviation Board for the construction and operation of a golf course. *Bishop Testimony; Petitioner's Exhibit A.*

- c. A memorandum of the lease between the Petitioner and the Aviation Board is recorded in the Office of Recorder of Jennings County. *Bishop testimony; Petitioner's Exhibit A.*
- d. H&B, LLC, as lessee, is responsible and agrees to pay any property tax, real or personal, assessed after December 31, 1998. The Aviation Board, as lessor, accepts responsibility for any property tax assessed prior to December 31, 1998. *Petitioner's Exhibit A, Paragraph 7.*
- e. H&B, LLC received notice of assessment because, under the recorded lease, they have the responsibility to pay the real property taxes assessed. *Kovacich testimony.*

Analysis of Issue 1

- 26. The relevant facts are undisputed. The City owns the property. H&B, LLC leases the property from the Aviation Board for the purpose of constructing and operating a public golf course. The lease is recorded by memorandum of lease in the Office of Recorder of Jennings County. *See Bishop testimony; Kovacich testimony.*
- 27. An assessing official is required to give notice to a taxpayer of the assessment if property is assessed or reassessed. Ind. Code § 6-1.1-4-22. The liability for the payment of property taxes lies with the property owner unless that liability is conveyed to the lessee of property under a recorded memorandum of lease or contract prior to January 1, 1998. Ind. Code § 6-1.1-2-4(a). In this case, H&B, LLC, was the entity liable for the property taxes on the subject property by virtue of a recorded memorandum of lease filed in the Office of Recorder in Jennings County. This lease was entered into on November 1, 1996 – clearly before the January 1, 1998 date.
- 28. While the assessing official could have given notice to the Aviation Board as the owner of the property, the assessing official was not required to do so. The assessing official was required to give notice to H&B, LLC as the party liable to the pay the taxes. While it may be prudent to notify both entities in case of a change in assessment, failure to do so is not a violation of the law.

29. The local assessing officials were not statutorily obligated to give notice of assessment to the actual owner of the property in this case due to a recorded memorandum of lease identifying H&B, LLC, as the party responsible for the taxes.

Issue 2: *Whether the local officials were required to give notice of revocation of exemption.*

30. H&B, LLC contends that because the property was exempt from property taxation prior to 2002, the Aviation Board should have been notified of revocation of the exemption.
31. The Respondent maintains that because the property did not have an exemption in effect for the years 1998 through 2001, the exemption was not revoked. From 1998 through 2001 the assessment was removed from the tax rolls. The property did not have taxes due for those years because the local officials were under the impression that the property was a municipal golf course owned and operated by the City.
32. The applicable statutes governing this issue are:
Ind. Code § 6-1.1-11-3.5
Ind. Code § 6-1.1-11-4(a)
Ind. Code § 6-1.1-11-5
33. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The property was exempt from taxation from 1998 through 2001. *Bishop testimony.*
 - b. The property was assessed and placed on the assessment rolls for assessment year 2002 with taxes payable in 2003. H&B, LLC was given notice of the assessment. *Bishop testimony; Kovacich testimony.*
 - c. The property was not granted property tax exemption as a result of an application for exemption for the years 1998 through 2001. The property assessment was removed from the tax rolls because the County was under the impression that the

property was municipally owned and operated by the Aviation Board. *Kovacich testimony.*

- d. The property was not placed on the tax rolls as a result of a review of an exemption; the property was placed on the tax rolls as a result of the reassessment process. *Kovacich testimony.*

Analysis of Issue 2

34. The relevant facts are undisputed. The property was exempt for tax years 1998 through 2001. In 2002, the property was assessed and placed on the tax rolls.¹
35. If the property had an exemption in effect for the immediately preceding year, the property owner has not filed a new application, and the property owner is required to file an exemption application under Ind. Code § 6-1.1-11-3.5, then the county assessor is required to notify the property owner that, in order to maintain the exemption, and application must be filed within 15 days of the notice.
36. Ind. Code § 6-1.1-11-3.5 is not applicable in the present case because that section deals with not-for-profit organizations. The subject property does not qualify as a not-for-profit organization. Furthermore, the property was exempt the previous year as a municipally owned property. Because the property was not exempt as a not-for-profit property, the local officials were not statutorily required to give the property owner notice.
37. However prudent it may be for the local officials to send notice to the owner of municipal property when placing it on the tax rolls for the first time, the Board finds that they are not statutorily required to do so.

¹ The Petitioner claims the property was exempt while the Respondent claims the property was removed from the tax rolls. Both parties agree that municipal property should not be taxed and that is the basis of the dispute in this case. For purposes of this case, the Board assumes the property was removed from the tax rolls because the Respondent believed it qualified for an exemption as municipally owned property.

Issue 3: *Whether the property is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-5 as municipal property or Ind. Code § 8-22-3-28; Ind. Code § 8-21-12-19; Ind. Code § 8-22-2-12 as aviation related property.*

38. H&B, LLC claims that the property qualifies for property tax exemption as a municipal property or as aviation related property.

39. The Respondent contends the property does not serve any municipal or aviation related purposes.

40. The applicable law governing this issue is:

Ind. Code § 6-1.1-10-5

(a) Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service.

(b) For purposes of this section, property used to provide a municipal service includes:

(1) a public school or library;

(2) A municipally owned park, golf course, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium, or gymnasium; and

(3) Any other municipally owned property, utility, or institution.

Ind. Code § 8-21-12-19

Ind. Code § 8-22-1-4.5

Ind. Code § 8-22-2-12

Ind. Code § 8-22-3-28

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

a. The property is owned by the City of North Vernon through its Board of Aviation Commissioners. *Bishop testimony; Kovacich testimony.*

b. H&B, LLC, does not claim ownership of the property and does not claim to have any interest in the property. *Bishop testimony.*

c. H&B, LLC, and the Aviation Board entered into a lease agreement for 160 acres of land on November 1, 1996. *Petitioner's Exhibit A.*

- d. H&B, LLC, leased the land for the purpose of construction and operation of a golf course. The primary purpose of H&B, LLC, is the operation and management of a golf course and related business. *Bishop testimony; Petitioner's Exhibits A and B.*
- e. The income from the lease agreement is used by the Aviation Board for airport operating expenses. The lease agreement provides for a payment of \$10,000 annually plus a percentage of annual gross income exceeding \$400,000. *Bishop testimony; Petitioner's Exhibit A.*
- f. The budgeting decisions for the golf course are at the sole discretion of H&B, LLC. Funding for the golf course operation is generated by revenue received as a result of fees charged to the clientele making use of the services available at the property. The Aviation Board does not have any oversight pertaining to the approval or disapproval of the operating budget for the golf course, nor does the Aviation Board provide or contribute to the funding of the golf course operation. *Bishop testimony.*

Analysis of Issue 3

Ind. Code § 6-1.1-10-5

- 42. According to Ind. Code § 6-1.1-10-5(a), property is exempt if it is owned by a city or town to provide a municipal service. The ownership of the property is not in dispute as all parties to this appeal agree that the owner of the property is the City of North Vernon.
- 43. Ind. Code § 6-1.1-10-5(b) states:
 - For purposes of this section, property used to provide a municipal service includes:
 - (1) A public school or library;
 - (2) A municipally owned park, *golf course*, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium, or gymnasium; and
 - (3) Any other municipally owned property, utility, or institution.

Id. (emphasis added).

44. This section applies to the subject property. The property is a golf course, owned by a city. Therefore, the property is used to provide a municipal service and is exempt from taxation. The fact that the Aviation Board does not have any active control in the budget process of the facility is irrelevant under Ind. Code § 6-1.1-10-5. The fact that an entity other than the Aviation Board constructed and manages the facility is irrelevant under Ind. Code § 6-1.1-10-5.
45. The Respondent suggests that the property does not serve any municipal purpose. However, Ind. Code § 6-1.1-10-5(b) clearly states that for the purposes of this section, property used to provide a municipal purpose includes a municipally owned golf course. The record does not contain any evidence that the City did not intend for Ind. Code § 6-1.1-10-5 to be applicable to the subject property. Furthermore, the Respondent did not present any other argument indicating the subject property should not be exempt.²
46. There was sufficient evidence presented at the hearing to show that the City is the owner of the subject property. The Respondent did not refute the facts in the record that suggest Ind. Code § 6-1.1-10-5 applies in this case. Therefore, the subject property is entitled to a 100% exemption.

IC § 8-21-12-19; IC § 8-22-1-4.5; IC § 8-22-2-12; IC § 8-22-3-28

47. Because the subject property is exempt under Ind. Code § 6-1.1-10-5, the Board need not analyze whether an exemption is appropriate under Ind. Code § 8-21-12-19, Ind. Code § 8-22-1-4.5, Ind. Code § 8-22-2-12, or Ind. Code § 8-22-3-28.

² It is conceivable to the Board that Ind. Code § 6-1.1-10-37 might serve as a basis for an argument refuting or rebutting that Ind. Code § 6-1.1-10-5 applies to the facts of this case, but the Respondent did not raise the issue at the hearing, and neither a factual or legal analysis of its potential application was established on the record. The Petitioner did indicate on the Petition form its view that Ind. Code § 6-1.1-10-37 applies only to non-profit corporations. Although the Board questions that view, it will decline to issue a determination based on Ind. Code § 6-1.1-10-37 given that the facts on the record do not conclusively establish its application, the Respondent neglected to assert the issue, and the Petitioner has not been afforded the opportunity to challenge its application.

Summary of Final Determination

Determination of Issue 1: *Whether the City of North Vernon should have received a notice of assessment for the property.*

48. There was no statutory failure on behalf of the local assessing officials.

Determination of Issue 2: *Whether the local officials were required to give notice of revocation of exemption.*

49. There was no statutory failure on behalf of the local assessing official.

Determination of Issue 3: *Whether the property is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-5 as municipal property or Ind. Code § 8-22-3-28; Ind. Code § 8-21-12-19; Ind. Code § 8-22-2-12 as aviation related property.*

50. The subject property is entitled to a 100% exemption under Ind. Code § 6-1.1-10-5. The Board makes no findings as to whether the property would qualify as aviation related property.

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

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.