

**STATE OF INDIANA
Board of Tax Review**

COLUMBUS AIRWAYS, INC.)	On Appeal from the Bartholomew
)	County Property Tax Assessment
)	Board of Appeals
Petitioner,)	
)	
v.)	Petition for Review of Exemption
)	Form 132
BARTHOLOMEW COUNTY)	Petition No. 03-003-00-2-8-10000
PROPERTY TAX ASSESSMENT)	Parcel No. 1996061100A1
BOARD OF APPEALS)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

1. Whether the real property owned by Columbus Airways, Inc. qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-15, § 8-22-2-12, and § 8-22-12-12.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Indiana Code §6-1.1-11-3(a), Columbus Airways, Inc. (the Petitioner) filed an application for exemption, Form 136, with the Bartholomew County Property Tax Board of Appeals (PTABOA). The PTABOA denied the application on November 29, 2000 and gave the Petitioner notice of denial.
3. Pursuant to Indiana Code §6-1.1-11-7, the Petitioner filed a petition for review of exemption, Form 132, with the State seeking a review of the PTABOA action. The Form 132 was filed on December 18, 2000.
4. Pursuant to Indiana Code §6-1.1-15-4, a hearing was held on September 5, 2001 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Phillip Woods, Tina Jaquess, and William Garber represented the Petitioner. Clara Claycamp, Bartholomew County Assessor, and Robert Blessing represented the County. Linda Taylor represented Columbus Township.
5. At the hearing, the subject Form 132 petition was made a part of the record Board Exhibit A; the Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit A – Copy of the lease agreement between the Board of Aviation Commissioners and Columbus Airways, Inc.

Petitioner's Exhibit B- A brochure advertising Columbus Airways' business

Petitioner's Exhibit C - Copy of Indiana Code § 6-1.1-10-15

Petitioner's Exhibit D - Copy of Indiana Code § 8-22-2-12
Petitioner's Exhibit E - Copy of Indiana Code § 8-22-1-4.5
Petitioner's Exhibit F - Copy of the Air Carrier Certificate issued to
Raytheon Aircraft Charter & Management, Inc.

6. The subject property is an airport hangar located at 4801 N. Warren Drive (Columbus Municipal Airport), Columbus, Bartholomew County, Columbus Township).
7. The correct assessed value for March 1, 2000 is:
Land: \$0 Improvements: \$39,430 Total: \$39,430
8. The Hearing Officer did not view the subject property.

Issue - Whether the real property owned by Columbus Airways, Inc. qualifies for property tax exemption pursuant to Indiana Code § 6-1.1-10-15 under the classification of airport hangar.

9. Columbus Airways is an Indiana Corporation formed in 1997. Operations started in September of 1997, with the acquisition of aircraft equipment. In April 1999, Columbus Airways entered into a lease agreement with the Board of Aviation Commissioners at the Columbus airport for 3.1568 acres; as of March 1, 2000, Columbus built a hangar and taxiway on the premises. The company provides charter service and flying lessons.
Garber Testimony. Petitioner's Exhibits A and B.
10. At the time of the application for exemption, Columbus Airways provided charter services at the request of companies and individuals. Columbus Airways is considered an airline business and is under contract with Raytheon, one of the largest charter companies in the United States.
Garber and Woods Testimony. Petitioner's Exhibit F.

11. The subject hangar and taxiway are exempt under the following statutes:
Indiana Code § 6-1.1-10-15, Public Airports;
Indiana Code § 8-22-2-12, Airport and landing field operations deemed of public necessity and benefit; tax exemption of leasehold interests;
Indiana Code § 8-22-1-4.5 "Aviation related property and facilities".
Garber Testimony. Petitioner's Exhibit's. C, D, and E.

12. The statutes clearly apply to anyone at the airport who operates in the public interest and particularly provides a service. Columbus Airways is comparable to American Airlines in offering a service to the public. Columbus Airways conducts business from 8:00 a.m. - 5:00 p.m. daily, and is on call 24 hours a day. Many flights are flown at night for hospitals and other emergencies. *Garber, Woods, and Jaquess Testimony.*

13. The County and Township assumption in denying the exemption is that Columbus Airways is a "for-profit" business and that taxes should be paid. Every hangar at the airport not owned by the City pays taxes on their hangars. *Taylor, Claycamp, and Blessing Testimony.*

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Indiana Code § 6-1.1-15-3.

A. Burden

2. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board

has the ability to decide the administrative appeal based upon the evidence presented.

3. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also, Ind. Code § 4-21.5-2-4(a)(10)(Though the State Board is exempted from the Indiana Administrative Orders 7 Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
6. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at

1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

7. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.
8. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. at 1116-21.
9. In *Orr v. Baker* (1853) 4 Ind. 86, 88, the Indiana Supreme Court found that tax exemption for one class of persons puts an additional burden upon other classes of property. Hence, the courts do not favor exemptions. Statutes that exempt property from taxation must be strictly construed.
10. "Because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property, an exemption from taxation is strictly construed" against the taxpayer and in favor of the State. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218, 220 & 221 (citing *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd* 571 N.E. 2d 1247 (Ind. 1991))
11. In property tax exemption claims, the taxpayer bears the burden of proving that the property is entitled to an exemption. *Monarch Steel Co., Inc v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993). In determining whether the property qualifies for an exemption, the

dominant use of the property by an organization must be “predominately and primarily educational, literary, scientific, religious or charitable within the broad constitutional definition of those words.” *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*, 251 N.E. 673, 679 (Ind. App. 1969). Furthermore, Ind. Code § 6-1.1-10-36.3 provides that “property is predominately used or occupied for one or more stated purposes if it is used or occupied for one of more of those purposes during more than fifty percent (50%) of the time that is used or occupied in the year that ends on the assessment date of the property.”

B. Property Tax Exemptions

12. Generally, all property in the State is subject to property taxation. Indiana Code § 6-1.1-2-1.

13. Article 10, §1 of the Indiana Constitution provides for property tax exemption and reads, in part:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal. The General Assembly may exempt from property taxation any property in the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious or charitable purposes.

14. Article 10, §1, of the Constitution is not self-enacting. The General Assembly must enact legislation granting exemption. Indiana Code § 6-1.1-10-15 provides that the acquisition and improvement of land for use by the public as an airport is a municipal purpose regardless of whether the airport is owned or operated by a municipality. The owner of any airport located in this state, who holds a valid and current public airport certificate issued by the Indiana department of transportation, may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes.
15. Generally, there is an expectation that a benefit will inure to the public by reason of exemption. *Foursquare Tabernacle v. State Board of Tax Commissioners*. 550 N.E. 2d at 854.
16. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.
17. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938, (Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present

benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.

18. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

19. The procedures for claiming an exemption from taxation are set forth by the legislature in Indiana Code § 6-1.1-11-3. That statute reads in pertinent part:

(a) The owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property is located. The application must be filed annually *on or before May 15* on forms prescribed by the State Board of Tax Commissioners. Except as provided in sections 1, 3.5, and 4 of this chapter, the application applied only for the taxes imposed for the year in which the application is filed. (emphasis added).

20. Indiana Code § 6-1.1-11-3 sets forth the information to be provided by the taxpayer in the application for exemption:

(c) An exemption application which is required under this chapter shall contain the following information:

- (1) A description of the property claimed to be exempt in sufficient detail to afford identification.
- (2) A statement showing the ownership, possession, and use of the property.
- (3) The grounds for claiming the exemption.

- (4) The full name and address of the applicant.
- (5) Any additional information which the State Board of Tax Commissioners may require.

21. Indiana Code § 6-1.1-11-1 establishes exemptions as privileges and sets for the precise penalty if the statutory procedures are not followed:

Sec. 1. 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.

22. An exemption unclaimed is forever lost. *Dav-Con, Inc. v. State Board of Tax Commissioners*, 644 N.E. 2d 192 (Ind. Tax 1994); *Kentron, Inc. v. State Board of Tax Commissioners*, 572 N.E. 2d 1366 (Ind. Tax 1991); *Stanadyne v. Indiana State Board of Tax Commissioners*, 435 N.E. 2d 278,283 (Ind. App. 1982). All persons are charged with the knowledge of the rights and remedies prescribed by statute. *Middleton Motors, Inc. v. Indiana Department of State Revenue* (1978), 269 Ind. 282, 285, 380 N.E. 2d 79, 81. The unauthorized acts and statements of government officials cannot circumvent the procedures and timetables established by the General Assembly. *Id.*, at 284 and 285, 380 N.E. 2d at 81.

C. Conclusions Regarding Claim Under Indiana Code § 6-1.1-10-15.

23. The Petitioner claims exemption under Indiana Code § 6-1.1-10-15. This statute plainly exempts tangible property from taxation if the "land used for public airport purposes" includes the following:
- (3) Real property used in providing for the shelter, storage, or care of aircraft, including hangars.

24. The Petitioner leases the land from the Columbus Municipal Airport, owned by the City of Columbus. Indiana Code § 6-1.1-10-15 exempts property from taxation regardless of whether the airport is owned or operated by a municipality. The owner of any airport located in this state, who holds a valid and current public airport certificate issued by the Indiana department of transportation, may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes. Section (c)(1) states "that part of the airport land used for the taking off or landing of aircraft, taxiways, runway and taxiway lighting, access roads, auto and aircraft parking areas, and all buildings providing basic facilities for the traveling public". Section (c)(3) states "real property used in providing for the shelter, storage, or care of aircraft, including hangars.
25. The Petitioner leases the property from the Board of Aviation in Columbus, holds an Air Carrier Certificate through Raytheon, and serves the public as an airline business.
26. Thus, the Petitioner meets the requirements established by Indiana Code § 6-1.1-10-15. The taxiway and airport hangar built on leased ground are exempt from taxation under this statute.
27. The Petitioner also claims exemption citing the following *West's Annotated Indiana Codes*:
Indiana Code § 8-22-2-12 Airport and landing field operations deemed of public necessity and benefit; tax exemption of leasehold interests.
Indiana Code § 8-22-1-4.5 "Aviation related property or facilities".
28. Section (b) of Indiana Code § 8-22-12-12 states "notwithstanding any other statute, the leasehold estate of any lessee created pursuant to a lease by the board of its aviation related property or facilities, together with

any permanent structure erected on the property by the lessee is exempt from property taxation.

29. Section 4.5 (a) of Indiana Code § 8-22-1-4.5 states "aviation related property or facilities" means those properties or facilities that are utilized by a lessee, or a lessee's assigns, who provides services or accommodations:
 - (1) for scheduled or unscheduled air carriers and air taxis, and their passengers, air cargo operations, and related ground transportation facilities;
 - (2) for fixed based operations;
 - (3) for general aviation or military users; and
 - (4) as aviation maintenance and repair facilities.

30. Although commercial (or for-profit) use of the property is relevant to the evaluation of whether the subject property qualifies for exempt status, it is not the sole consideration. Under the applicable statutes, if the nature and predominant use of the property is "aviation related", and the lease reflects that the aviation authority that leases the property has authorized the lessee to conduct aviation related operations on the property, the property may be found exempt to the extent it is used for those purposes.

31. No evidence was presented to rebut the Petitioner's contention that their use of the property is entirely for aviation related purposes, as authorized under the lease.

32. The evidence presented by the Petitioner demonstrates that it leases property from the Columbus Board of Aviation, is an unscheduled air carrier, has a fixed based operation, is used for general aviation, and has the facility for maintenance and repair. The Petitioner has met the

requirements established by Indiana Codes §§§ 8-22-2-12, 8-22-3-28 and 8-22-1-4.5 (a) for tax exemption.

33. For all of the reasons set forth above, the taxiway and airport hangar owned by the Petitioner and used in its operations at the Columbus airport qualify for tax exemption under Indiana Codes §§§ 6-1.1-10 - 15, 8-22-3-28 (b), and 8-22-1-4.5 (a).

34. The subject property owned by the Petitioner is 100% tax exempt.

The above stated findings and conclusions 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 ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review