

REPRESENTATIVE FOR PETITIONER:  
Ziaaddin Mollabashy, Barnes & Thornburg LLP

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Meighen & Associates, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Correctional Management	)	Petition Nos.:	34-002-07-2-8-00001
Company, LLC,	)		34-002-07-2-8-00002
	)		
Petitioner,	)	Parcel Nos.:	34-92-00-809-000.000-002 (Personal Property)
	)		34-03-35-331-001.000-002
v.	)		
	)		
Howard County Assessor,	)	County:	Howard
	)	Township:	Center
Respondent.	)		
	)	Assessment Year:	2007

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Appeal from the Final Determination of  
Howard Property Tax Assessment Board of Appeals

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April 13, 2010

**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**

### **Issue**

1. The issue presented for consideration by the Board is whether the Petitioner's real and personal property is exempt from taxation pursuant Indiana Code § 6-1.1-10-16 because its property is predominantly used for educational purposes.

### **Procedural History**

2. Mr. Ziaaddin Mollabashy, Barnes & Thornburg, LLP, on behalf of Correctional Management Company, LLC (Correctional Management) filed Form 136, Applications for Property Tax Exemption, with the Howard County Property Tax Assessment Board of Appeals (PTABOA) on May 15, 2007. The Howard County PTABOA issued its determinations denying the exemptions on July 17, 2008. On August 4, 2008, Mr. Mollabashy filed Form 132 Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Indiana Code § 6-1.1-15-4, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on August 6, 2009, in Kokomo, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

William A. Carr, Member, Correctional Management  
Steve Anderson, Principal, Kokomo Academy  
Ann Freeman, Facility Director, Kokomo Academy

For the Respondent:

Jamie L. Shepherd, Howard County Assessor

Susan Kordel, Howard County Deputy Assessor  
Shelia Pullen, Center Township Assessor  
Tonya Stephenson, Center Township Deputy Assessor / PTABOA Member  
Steven R. Rogers, Chief Deputy, Howard County Sheriff's Department

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1 – Correctional Management's Certificate of Organization, dated July 31, 1996, and Articles of Organization, dated July 29, 1996,
- Petitioner Exhibit 2 – Correctional Management's Operating Agreement, dated July 29, 1996,
- Petitioner Exhibit 3 – Correctional Management's Application for Property Tax Exemption – Form 136 for Parcel No. 34-03-35-331-001.000-002, dated May 15, 2007,
- Petitioner Exhibit 3A – Correctional Management's Certificate of Organization, dated July 31, 1996, and Articles of Organization, dated July 29, 1996,
- Petitioner Exhibit 3B – Correctional Management's Operating Agreement, dated July 29, 1996,
- Petitioner Exhibit 3C – Correctional Management's balance sheets and income statements for December 31, 2004, December 31, 2005, and December 31, 2006,
- Petitioner Exhibit 4 – Correctional Management's Application for Property Tax Exemption – Form 136 for Parcel No. 34-92-00-809-000.000-002, dated May 15, 2007,
- Petitioner Exhibit 4A – Correctional Management's Certificate of Organization, dated July 31, 1996, and Articles of Organization, dated July 29, 1996,
- Petitioner Exhibit 4B – Correctional Management's Operating Agreement, dated July 29, 1996,
- Petitioner Exhibit 4C – Correctional Management's balance sheets and income statements for December 31, 2004, December 31, 2005, and December 31, 2006,
- Petitioner Exhibit 5 – Correctional Management's Notice of Action on Exemption Application – Form 120 for Parcel No. 34-03-35-331-001.000-002, dated July 17, 2008,
- Petitioner Exhibit 6 – Property record card for Parcel No. 34-03-35-331-001.000-002,
- Petitioner Exhibit 7 – Correctional Management's Notice of Action on Exemption Application – Form 120 for Parcel No. 34-92-00-809-000.000-002, dated July 17, 2008,

- Petitioner Exhibit 8 – Correctional Management’s Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for Parcel No. 34-03-35-331-001.000-002, dated August 4, 2008,
- Petitioner Exhibit 8A – Correctional Management’s Certificate of Organization, dated July 31, 1996, and Articles of Organization, dated July 29, 1996,
- Petitioner Exhibit 8B – Correctional Management’s balance sheets and statements of income for December 31, 2004, December 31, 2005, and December 31, 2006,
- Petitioner Exhibit 8C – Correctional Management’s Operating Agreement, dated July 29, 1996,
- Petitioner Exhibit 9 – Correctional Management’s Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132 for Parcel No. 34-92-00-809-000.000-002, dated August 4, 2008,
- Petitioner Exhibit 9A – Correctional Management’s Certificate of Organization, dated July 31, 1996, and Articles of Organization, dated July 29, 1996,
- Petitioner Exhibit 9B – Correctional Management’s Operating Agreement, dated July 29, 1996,
- Petitioner Exhibit 9C – Correctional Management’s balance sheets and statements of income for December 31, 2004, December 31, 2005, and December 31, 2006,
- Petitioner Exhibit 10 – 2006 pay 2007 Business Tax Statements for Parcel Nos. 34-92-00-809-000.000-002 and 34-03-35-331-001.000-002 and 2007 pay 2008 Business Tax Statements for Parcel No. 34-03-35-331-001.000-002,
- Petitioner Exhibit 11 – Interior photograph of a Kokomo Academy classroom,
- Petitioner Exhibit 12 – Interior photograph of a Kokomo Academy classroom,
- Petitioner Exhibit 13 – Interior photograph of Kokomo Academy’s gymnasium,
- Petitioner Exhibit 14 – Exterior photograph of Kokomo Academy’s recreational yard,
- Petitioner Exhibit 15 – Exterior photograph of Kokomo Academy’s recreational yard,
- Petitioner Exhibit 16 – Exterior photograph of Kokomo Academy’s recreational yard,
- Petitioner Exhibit 17 – Exterior photograph of Kokomo Academy’s recreational yard,
- Petitioner Exhibit 18 – Interior photograph of Kokomo Academy’s student living quarters,
- Petitioner Exhibit 19 – Interior photograph of Kokomo Academy’s student living quarters,
- Petitioner Exhibit 20 – Kokomo Academy’s Education Goals for 2009,
- Petitioner Exhibit 21 – Kokomo Academy’s Comprehensive Education Budget for the 2009 Calendar Year,
- Petitioner Exhibit 22 – Kokomo Academy’s Education Staffing Plan for 2009,

- Petitioner Exhibit 23 – Kokomo Academy’s curriculum and course descriptions,
- Petitioner Exhibit 24 – A copy of Kokomo Academy’s Education Transcript,
- Petitioner Exhibit 25 – Excerpts from Kokomo Academy’s textbook *Passport to Algebra and Geometry*,
- Petitioner Exhibit 26 – Excerpts from Kokomo Academy’s textbook *Economics*,
- Petitioner Exhibit 27 – Excerpts from Kokomo Academy’s textbook *Basic Science for Living*,
- Petitioner Exhibit 28 – Kokomo Academy’s school schedule and community expectations,
- Petitioner Exhibit 29 – A copy of the State of Indiana’s General Educational Development (GED) Diploma,
- Petitioner Exhibit 30 – Letter from Paul Bougher, Freeway School Liaison to Steve Anderson, Director, Kokomo Academy, dated October 3, 2007, and State Board of Education Request for Freeway School Accreditation,
- Petitioner Exhibit 31 – Copy of Freeway School Accreditation requirements from the Indiana Department of Education website,
- Petitioner Exhibit 32 – Letter from Leslie Ballard, Director, AdvancED to Steven Anderson, Principal, Kokomo Academy, dated July 9, 2009, and a letter from Mark A. Elgart, President/CEO, AdvancED,
- Petitioner Exhibit 33 – Handout from the Kokomo Center Schools’ website.

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1 – Property record card for Parcel No. 34-03-35-331-001.000-002,
- Respondent Exhibit 2 – Notice of Action on Exemption Application – Form 132 for Parcel Nos. 34-03-35-331-001.000-002 and 34-92-00-809-000.000-002,
- Respondent Exhibit 3 – Real Estate Lease and Amendment to Lease Agreement between Howard County Board of Commissioners and Correctional Management,
- Respondent Exhibit 4 – Howard County Sherriff’s Department’s run report from January 1, 2006, through July 23, 2009, and eight supplementary reports for 623 South Berkley Road,
- Respondent Exhibit 5 – Copy of Indiana Code § 6-1.1-10-16, § 6-1.1-10-36.3, § 6-1.1-10-36.5, § 6-1.1-10-37, § 6-1.1-11-1 and § 6-1.1-11-3.

7. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 132 petitions with attachments,

Board Exhibit B – Notices of Hearing on Petitions,  
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,  
Board Exhibit D – Hearing sign-in sheets.

8. The Petitioner submitted a hearing transcript, post-hearing brief, and proposed findings of facts and conclusions of law on September 18, 2009, (the Petitioner's brief). The Respondent also submitted its post-hearing brief and proposed findings of facts and conclusions of law on September 18, 2009, (the Respondent's brief).
9. The property under appeal consists of Parcel No. 34-03-35-331-001.000-002, a 19.90 acre parcel developed with a 2,304 square foot salt storage building, a 12,255 square foot Civil Defense building, the 19,182 square foot Kokomo Juvenile Academy building, the 2,067 square foot Highway Department Office, 23,257 square feet of Highway Department garage and shop, seven pole buildings and three utility sheds. The only portion of the property at issue in this appeal is 3.14 acres improved with the Kokomo Juvenile Academy building, two pole buildings and a utility shed located at 623 South Berkley Road, Kokomo, in Center Township, Howard County; and all of the Petitioner's personal property (Parcel No. 34-92-00-809-000.000-002).
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2007, the PTABOA determined the real estate to be land 12% taxable and the improvements 76% taxable.<sup>1</sup> The PTABOA determined the Petitioner's personal property to be 100% taxable.
12. For 2007, the Petitioner contends that its real and personal property should be 100% tax-exempt.

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<sup>1</sup> Ms. Shepherd testified the PTABOA determined that 88% of the land and 24% of the improvements are occupied and used by Howard County. The remaining 12% of the land and 76% of the improvements are leased to Correctional Management and therefore taxable.

## **Jurisdictional Framework**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1 (a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1 (b); Ind. Code § 6-1.1-15-4.

## **Administrative Review and Petitioner's Burden**

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

## **Basis of Exemption and Burden**

17. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or

charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.

18. 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 in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
19. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
20. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

### **Petitioner's Contentions**

21. The Petitioner contends its real and personal property should be exempt under Indiana Code § 6-1.1-10-16 because the property is owned, occupied, and used for educational purposes.
22. The Petitioner presented the following evidence in regard to this issue:
  - A. The Petitioner contends that it should be considered the owner of the property for the purposes of applying for a property tax exemption because the Petitioner has exclusive



possession, control and rights of use and enjoyment of the real property.<sup>2</sup> *Petitioner post-hearing brief (Petitioner brief) at 23; Carr testimony; Mollabashy argument.* According to the Petitioner’s witness, on October 22, 1996, the Petitioner entered into a capital lease with Howard County to lease 2.72 acres of land and the building that once served as the Howard County jail, which the Petitioner presently operates as the Kokomo Academy.<sup>3</sup> *Petitioner brief at 7; Carr testimony.* The Petitioner’s “Real Estate Lease” is for a minimum of 25 years, and the Petitioner has the exclusive and irrevocable right to renew the lease under the same terms for an additional 25 years. *Petitioner Exhibit 4 at Tab C pg. 9; Carr testimony.* Further, Mr. Carr testified, the Petitioner invested over \$3 million dollars in construction and renovation of the building on the property. *Petitioner brief at 14; Carr testimony.*

B. The Petitioner argues that under Indiana Code § 6-1.1-10-37 and the terms of the lease, the Petitioner is taxed and assessed as if it was the owner of the real property.<sup>4</sup> *Petitioner Exhibit 10; Carr testimony; Mollabashy argument.* The Petitioner’s counsel argues that in *Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*, 711 N.E.2d 875, 877 (Ind. Tax Ct. 1999), the Indiana Tax Court ruled that the owner of real property was “defined (with some exceptions not applicable in [that case]) by Ind. Code § 6-1.1-1-9.” *Petitioner brief at 5 22; Mollabashy argument.* According to the Mr. Mollabashy, Indiana Code § 6-1.1-10-37 is an exception to Indiana Code § 6-1.1-1-9, because it provides that “[i]f real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.” *Id.*

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<sup>2</sup> The Petitioner contends that, according to *Thompson on Real Property*, Thompson Editions § 14.02 by David A Thomas, Matthew Bender & Company, Inc., 2 (2009), “Assessment of property and liability of ownership for the payment of taxes on the property is evidence of ownership. The assessment of real estate by taxing authorities as the property of a named person justifies a presumption of ownership.” [citation omitted]. *Petitioner brief at 24.*

<sup>3</sup> On July 6, 2001, Correctional Management and Howard County entered into an Amendment to Real Estate Lease, whereby the amount of land being leased was increased from 2.72 acres to 3.14 acres. *Petitioner brief at 7.*

<sup>4</sup> The Petitioner’s counsel also argues that prior to the lease agreement between Correctional Management and Howard County that the building was unused. Therefore Howard County did not receive any revenue or taxes on the structure. *Mollabashy argument.*

- C. The Petitioner contends the property, operated as the Kokomo Academy, is predominantly used for educational purposes and is therefore exempt. *Mollabashy argument*. The Petitioner’s counsel argues that cases decided by the Indiana Tax Court support the Petitioner’s request. *Mollabashy argument, citing National Association of Miniature Enthusiast v. State Board of Tax Commissioners, 671 N.E.2d 218 and Trinity School of Natural Health Inc. v. Kosciusko County Property Tax Assessment Board of Appeals, 799 N.E.2d 1234*. Mr. Mollabashy argues to qualify for an educational exemption, a taxpayer must demonstrate that the predominant use of the property is educational and that the courses offered provide instruction and training equivalent to that provided by taxpayer supported schools. *Mollabashy argument*.
- D. The Petitioner’s witness testified that the Petitioner is an Indiana limited liability company. *Petitioner brief at 5, Petitioner Exhibit 1; Carr testimony*. According to the Petitioner’s Operating Agreement, the business of the Petitioner is to “engage in the ownership, operation and management (or any of the them) of juvenile detention centers, juvenile correction facilities, adult correction facilities, jails and the provisions of other services such as community placement, diagnostic evaluation, education and job training, drug and alcohol rehabilitation or any one or more of them, and to deal in each and all ways with services, real property, personal property or every kind, nature and description.” *Petitioner brief at 5; Petitioner Exhibit 2 at 6; Carr testimony*.
- E. Correctional Management leases a 3.14 acre property from Howard County that contains a building with seven classrooms, a general educational development (GED) room, a gymnasium, kitchen, administrative offices, student living quarters and outdoor recreational area. *Petitioner brief at 6; Petitioner Exhibits 11-19; Carr and Anderson testimony*. Correctional Management owns the personal property, which consists of desks, televisions, picnic tables, athletic equipment, textbooks, whiteboards, markers, gardening tools, educational videos and camera monitors. *Petitioner brief at 7; Petitioner Exhibits 11-19 and 21; Anderson testimony*.

F. According to the Petitioner’s witnesses, the Kokomo Academy is a juvenile detention facility for at-risk males between the ages of 11 to 18. *Petitioner Exhibit 2; Carr, Anderson and Freeman testimony*. The juveniles are placed in the Kokomo Academy by court order based on referrals from probation departments and departments of child services. *Petitioner brief at 8; Carr, Anderson and Freeman testimony*. Mr. Carr testified that 80% of juveniles at the Academy are from Indiana and the remaining 20% are from either Ohio or Michigan. *Carr testimony*. The Petitioner argues that Kokomo Academy is designed as an educational and counseling treatment facility for students who have failed in public schools. *Petitioner brief at 8 and 9; Carr and Anderson testimony*. According to the Petitioner’s witnesses, Kokomo Academy’s purpose is to provide a controlled, structured and disciplined environment for students to receive a high school education, as well as, counseling to help them become better equipped to pursue opportunities to succeed educationally and socially in life.<sup>5</sup> *Id.* Mr. Mollabashy argues that Kokomo Academy’s purposes, objectives and programs are very similar to ones incorporated by the Kokomo-Center Schools. *Petitioner Exhibit 33; Mollabashy*.

G. Finally, the Petitioner argues, Kokomo Academy is an accredited educational institution. *Anderson testimony*. In support of this contention, the Petitioner submitted the Indiana State Board of Education accreditation requirements for “Freeway School Accreditation” and a letter of accreditation, dated July 9, 2009, from Advanced Education, Inc.<sup>6</sup> (“AdvancED”). *Petitioner brief at 13-14; Petitioner Exhibits 30-32; Anderson testimony*. Kokomo Academy’s Principal, Steve Anderson, testified that on October 3, 2007, Kokomo Academy was approved by the Indiana Department of Education as a “Freeway” school pursuant to

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<sup>5</sup> Ms. Freeman testified that because the juveniles come to Kokomo Academy with specific behavioral problems, there are occasions when the local law enforcement is called to report a runaway from the facility or if one student acts out violently toward another student and it requires off-site treatment. *Freeman testimony*.

<sup>6</sup> Mr. Anderson testified that in 2009 Kokomo Academy became a “recipient of federal funding under Title 1 (Title 1) – Improving the Academic Achievement of the Disadvantaged pursuant to the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 6301 *et seq.*). *Petitioner brief at 11-13; Anderson testimony*. According to Mr. Anderson, the Title 1 funding is being used to incorporate PLATO Learning products into its classroom instructions. *Petitioner brief at 13; Anderson testimony*. Mr. Anderson testified that PLATO Learning is an online web-based educational system that offers 50 online courses accredited by the State of Indiana. *Id.*

Indiana Code § 20-26-15.<sup>7</sup> *Petitioner Exhibits 30-31; Anderson testimony.* Mr. Anderson further testified that Kokomo Academy is also accredited by AdvancED, which is a thirty state organization dedicated to advancing education through accreditation, research and professional services.<sup>8</sup> *Petitioner brief at 13-14; Anderson testimony.*

H. The Petitioner argues that the facility's curriculum, photographs, staff plan, student schedule, grading scale and textbooks demonstrate that the facility offers a broad range of instruction relating to academics. *Petitioner brief at 9-11; Petitioner Exhibits 11-28; Anderson testimony.* According to Mr. Anderson, classes at the Kokomo Academy are conducted for six periods a day running from 8:30 a.m. to 3: 15 p.m. and students attend school five days a week, year round, with the exception of six to eight days a year.<sup>9</sup> *Petitioner Exhibit 28; Anderson testimony.* Mr. Anderson testified that Kokomo Academy's academic courses include classes in language arts, mathematics, science, social studies, health, and consumer economics. *Id.* Kokomo Academy also concentrates on preparing its students for taking the Indiana Statewide Testing for Education Progress-Plus examination (ISTEP). *Petitioner brief at 5; Anderson testimony.* Further, the Academy offers students the opportunity to obtain a General Educational Development diploma. *Petitioner Exhibit 29; Anderson testimony.*

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<sup>7</sup> A "Freeway" school is a non-public school that is accredited with the same rights and privileges as a school accredited under the Indiana Department of Education standard accreditation system. *Id.*

<sup>8</sup> Mr. Anderson testified that while the AdvancED letter states the Kokomo Academy was granted accreditation on June 25, 2008, the Kokomo Academy has held accreditation with AdvancED the entire 6 ½ years that he has been employed by Kokomo Academy. *Anderson testimony.*

<sup>9</sup> Mr. Anderson testified that at the end of the school day, the students stay with their class and they either go outside, stay at the dorm or go to classrooms for activities. *Petitioner brief at 9; Anderson testimony.* The students also attend group therapy and individual counseling five days per week. *Id.* Mr. Anderson testified that the boys only have approximately one hour of down time per day before they go to bed. *Anderson testimony.*

## Respondent's Contentions

23. The Respondent contends the Petitioner is not entitled to an exemption on the real property and personal property because the owner of the property failed to apply for an exemption.<sup>10</sup> Alternatively, the Respondent argues, the property is not “predominantly used” for educational purposes.
24. The Respondent presented the following evidence in support of its contention:
- A. The Respondent contends that the owner of the real property failed to file an exemption application for the property and therefore the exemption was waived. *Respondent brief at 1; Meighen argument.* The Assessor testified that Howard County entered into a lease agreement with Correctional Management on February 17, 1997. *Respondent Exhibit 3; Shepherd testimony.* According to Ms. Shepherd, the lease agreement states the “landlord warrants and represents as per the title policy and survey that it is the owner of the Leased Premises free and clear of all restrictions, liens, assessment and encumbrances ...” *Id.* The lease agreement further states that the “tenant agrees to pay all real estate taxes and assessments.” *Id.* According to the Respondent, the lease agreement clearly shows Howard County is retaining ownership of the real property under appeal.<sup>11</sup> *Id.*
  - B. The Respondent argues that, because the Petitioner did not own the real property at issue in this appeal, it lacked the statutory authority to apply for an exemption on the real property.

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<sup>10</sup> The Petitioner’s counsel argued that the PTABOA’s only reason for denying the Petitioner’s exemption was because the Petitioner failed to show the educational use of the property. *Mollabashy argument.* Mr. Mollabashy therefore objected to the Respondent introducing evidence that the Petitioner was not the proper party to file for the exemption on the real property under appeal. *Id.* Once a taxpayer has properly invoked the Board’s jurisdiction, however, its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4 (m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioner may feel it was deprived of a complete explanation of the PTABOA’s denial of its request for exemption, it does not hinder the Petitioner’s ability to present its case to the Board. More importantly, to the extent Mr. Mollabashy wished to fully explore the Respondent’s bases for its denial, the Petitioner had ample opportunity to serve discovery on the Respondent pursuant to 52 IAC 2-8-3 and evidently chose not to. The Petitioner’s objection is over-ruled and the Board will consider the Respondent’s evidence regarding the proper party to file an exemption on the real property.

<sup>11</sup> Ms. Shepherd agreed that the Petitioner owns the personal property located at the Kokomo Academy. *Shepherd testimony.*

*Respondent Exhibit 3; Meighen argument.* The Respondent’s counsel argues that the law is clear – the owner of a property must apply for the exemption or the exemption is waived. *See* Ind. Codes § 6-1.1-11-1 and § 6-1.1-11-3.<sup>12</sup> *Respondent brief at 5; Meighen argument (citing Word of His Grace Fellowship v. State Board of Tax Commissioners, 711 N.E.2d 875 (Ind. Tax Ct. 1999); PPG Industries, Inc. v. State Board of Tax Commissioners, 706 N.E.2d 611, 613 (Ind. Tax Ct. 1999); Dav-Con, Inc. v. State Board of Tax Commissioners, 644 N.E.2d 192, 198 (Ind. Tax Ct. 1994); Indiana University Foundation v. State Board of Commissioners, 527 N.E.2d 1166, 1168 (Ind. Tax Ct. 1988) (recognizing that ownership requires legal title for the purpose of this exemption); Community Christian Church v. State Board of Tax Commissioners, 523 N.E.2d 462, 465 (Ind. Tax Ct. 1988) (denying exemption for property where the church did not hold legal title to it)).*

- C. The Respondent’s counsel acknowledges that because Correctional Management as the lessee of the property is responsible for the taxes, it might appear that the waiving of the exemption is inappropriate. *Respondent brief at 9; Meighen argument.* Ms. Meighen argues, however, that the Tax Court addressed this issue in *Word of Grace Fellowship*, stating “Although the general rule in this state is that the substance not the form of a transaction governs its taxability, *see Maurer v. Department of State Revenue, 607 N.E.2d 985, 987 (Ind. Tax 1993)*, when the General Assembly chooses to exalt form over substance in a particular case, that is its prerogative, and if, from a public policy perspective, such a choice is unwise, relief may be sought with the Indiana General Assembly, not the courts.” *Word of His Grace Fellowship, 711 N.E.2d at 878. Id.* Ms. Meighen argues that any exemption which the Petitioner may have been entitled to was waived because the owner of the property did not file the application for exemption. *Id.*
- D. The Respondent further argues that the property is not entitled to an exemption. *Respondent brief at 3; Meighen argument.* According to the Respondent’s counsel, the predominant use of the property is as a juvenile correctional facility, not a school. *Id.* Ms. Meighen argues

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<sup>12</sup> Ms. Shepherd testified that counties are required to file for an exemption if they do not own, occupy and use the property claimed to be exempt. *See* Ind. Code § 6-1.1-11-4 (a). *Respondent brief at 8; Shepherd testimony.*

that the Petitioner's educational activities are merely secondary to the primary use and purpose of the facility. *Id.* In support of the Respondent's argument, Ms. Meighen cites *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals*, 799 N.E.2d 1234, 1236-37 (Ind. Tax Ct. 2003) (The educational purpose exemption will be denied when educational training is merely incidental recreational and hobby activities). *Id.*

- E. Even if the Board finds some educational purpose, the Respondent contends, the Petitioner has not shown the predominant use of the property is for education as required by Indiana Code § 6-1.1-10-36.3. *Respondent brief at 10; Meighen argument.* According to Ms. Meighen, the property is used for educational purposes for approximately seven hours a day in a part of the facility even though the juveniles are detained at the property twenty-four hours a day. *Respondent brief at 11; Meighen argument.* Ms. Meighen acknowledges that the courses taught at Kokomo Academy are related to those found in tax supported public schools. *Id.* However, she argues, more is required to fall within the purview of "educational purpose." *Id.* The courses must be offered to the public and not further the business objectives of the taxpayer's own members and serve business purposes. *Id., citing Roller Skating Rink Operators Association*, 853 N.E.2d 1262, 1266 (Ind. 2006). Here, Ms. Meighen argues, the Petitioner does not offer educational courses to the public but exclusively to juveniles sent to the facility by the courts.<sup>13</sup> *Respondent brief at 13; Meighen argument.*
- F. In addition, the Respondent argues, although the operation of the Kokomo Academy may be seen as the fulfillment of a public purpose, in reality it operates under a typical lease between a landlord and a private business. *Respondent brief at 13-14; Meighen argument.* According to Ms. Meighen, the State must provide institutions for the correction and reformation of juvenile offenders under Article IX, Section 9 of the Indiana Constitution. *Respondent brief at 13; Meighen argument.* The Respondent argues that Kokomo Academy is operated solely

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<sup>13</sup> The Respondent's witness testified that the juveniles at the Kokomo Academy are not from Howard County. *Respondent brief at 13; Rogers testimony.* According to Mr. Rogers, Howard County has its own juvenile detention center, the Kinsey Youth Center. *Id.*

by a private corporation and not a government facility. *Respondent brief at 14; Meighen argument.* Neither, the Indiana Department Corrections or Howard County has any input in the operation the Kokomo Academy. *Id.* According to the Respondent, the Petitioner's operation is like a government contractor such as a road-construction company or security provider and "few would argue that those entities should receive exemptions." *Id.*; citing the Board's determination in *Fourth Freedom Forum, Inc. v. Elkhart County PTABOA*, Pet. No. 20-005-04-2-8-00001, *et seq.* (November 29, 2007).

- G. The Respondent contends the Petitioner owns the Kokomo Academy purely as a business venture. *Petitioner Exhibits 1 and 2; Meighen argument.* The Petitioner receives payments from the courts, state agencies and the federal government. *Respondent brief at 13; Meighen argument.* According to the Respondent, the Petitioner's evidence shows its revenue in 2006 was \$16,866,213. *Petitioner Exhibit 4 at Tab C; Id.* Ms. Meighen argues that while profit making does not automatically disqualify the company from exemption, the benefits received by an organization should not be ignored. *Id.* In support of this argument, Ms. Meighen cites *Roller Skating Rink Operators Association*, 853 N.E.2d at 1266 (education that primarily serves the private interest of an organization's members does not warrant public subsidy). *Respondent brief at 15; Meighen argument.*
- H. Finally, the Respondent contends the Petitioner is required to pay taxes under Indiana Code § 6-1.1-10-37. *Respondent brief at 15; Meighen argument.* According to the Respondent, the statute provides that if tax-exempt property is leased to another whose property is not exempt, then the leased property is assessed and taxed as if it is owned by the lessee. *Id.* The Respondent argues that if the General Assembly intended for property owned by a government entity leased to a private entity to be exempt from property tax, it would have created legislation exempting such property. *Id.* In support of the Respondent's argument, Ms. Meighen cites Indiana Code § 8-15.5-8-1, whereby the lessee of the Indiana Toll Road is exempt from all ad valorem property taxes and special assessments because under the terms of the "public-private agreement" the property is considered to be "public property devoted to an essential public and governmental function..." *Id. at 16.*



## Analysis

25. The Petitioner argues that its real and personal property is exempt because it is owned, operated and used for educational purposes. The Respondent, however, contends that the Petitioner lacked the statutory authority to apply for an exemption on the real property at issue in this appeal. *Meighen argument.* Thus, before determining whether the Petitioner's property meets the requirements of Indiana Code § 6-1.1-10-16 for an exemption, the Board must first determine whether the Petitioner complied with the statutory requirements for filing its exemption application as set forth in Indiana Code § 6-1.1-11.
26. Under Indiana Code § 6-1.1-11-9, property that is owned by the government or a political subdivision of the state is not assessed if the property is used, and in the case of real property occupied, by the owner. Ind. Code § 6-1.1-11-9. Further, no exemption application is required if exempt property is owned by the government or a political subdivision. Ind. Code § 6-1.1-11-4(a). "However, this subsection applies only when the property is used, and in the case of real property occupied, by the owner." *Id.* The undisputed evidence shows that the real property at issue in this appeal is owned by Howard County. However, it is occupied and used by Correctional Management. Thus, pursuant to Indiana Code § 6-1.1-11-4(a), an exemption application was required for the county's property to be exempt.
27. Indiana Code § 6-1.1-11-3 states that only the owner of a property may sign an exemption application to seek a property tax exemption, unless the authority for signing the application is delegated by an executed power of attorney. Ind. Code § 6-1.1-11-3(a) and (b). The owner of property for assessment and taxation purposes is defined as the person who holds legal title to personal property or the legal title in fee to real property.<sup>14</sup> *See* Ind. Code § 6-1.1-1-9. Clear and

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<sup>14</sup>Under Indiana Code § 6-1.1-1-9, there are certain exceptions where a person who does not hold the legal title is considered the owner of the property, including "(1) when title to tangible property passes on the assessment date of any year, only the person obtaining title is the owner of that property on the assessment date; (2) when the mortgagee of real property is in possession of the mortgaged premises, the mortgagee is the owner of that property; (3) when personal property is security for a debt and the debtor is in possession of the property, the debtor is the owner of that property; and (4) when a life tenant of real property is in possession of the real property, the life tenant is the owner of the property." The Petitioner, however, did not argue that any of these exceptions apply to the property at issue here.

unambiguous statutory language is not subject to interpretation or construction. *Huntington County Community School Corporation v. State Board of Tax Commissioners*, 757 N.E.2d 235, 240 (Ind. Tax Ct. 2001); *Zakutansky v. State Board of Tax Commissioners*, 758 N.E.2d 103 (Ind. Tax Ct. 2001); *Joyce Sportswear Company v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997).

28. The undisputed evidence shows that the Petitioner did not have fee simple title to the real estate, and therefore was not the “owner” of the property pursuant to Indiana Code § 6-1.1-1-9. Further, there is no evidence that the owner of the property, Howard County, executed a power of attorney delegating authority to the Petitioner to sign and file the application. Thus, the Petitioner did not have the statutory authority under Indiana Code § 6-1.1-11-3 to sign the exemption application filed in this matter.
29. The Petitioner argues that Indiana Code § 6-1.1-10-37 is an exception to Indiana Code § 6-1.1-1-9 because it provides that “[i]f real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.” Therefore, the Petitioner contends, because Correctional Management is the lessee of the real property and should be assessed and taxed as if it is the owner of the real property; it had the authority to file for the exemption. *Mollabashy argument*.
30. The Petitioner’s argument, however, is contrary to the clear language of the statute and the cases interpreting the law. In *Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*, 711 N.E.2d 875 (Ind. Tax Ct. 1999), the Tax Court stated, “the owner of the property must apply for the property tax exemption. The owner of real property is defined (with some exceptions not applicable here) by Ind. Code § 6-1.1-1-9 as the holder of legal title to the real property in fee.” 711 N.E.2d at 878. In that case, a church entered into a land contract to purchase a property from the land owner. *Id.* The Court held that it was the land owner that was required to apply for the

exemption.<sup>15</sup> *See also Community Christian Church, Inc. v. State Bd. of Tax Comm'rs*, 523 N.E.2d 462 (Ind. Tax Ct. 1988) (the Tax Court agreed that the church was not the “owner” of property purchased on contract because under Indiana Code § 6-1.1-1-9, “the vendor, who holds legal title to the property, is the owner” for exemption purposes). Thus, despite the language of Indiana Code § 6-1.1-10-37, the owner of the property is Howard County and the County therefore was required to file the exemption application under Indiana Code § 6-1.1-11-3.

31. To the extent that the Petitioner can be seen as arguing that this leads to an unfair result in light of its potential liability for taxes pursuant to Indiana Code § 6-1.1-10-37, the Tax Court addressed a similar argument in *Word of His Grace Fellowship*. 711 N.E.2d 875. According to the Tax Court:

It is true that in this case requiring [the land owner] to file the exemption application is exalting form over substance, especially in light of the fact that [the church] as a possessor, can be responsible for the property taxes at issue. However, because the legislature has stated in unmistakable terms that only a legal title holder may be an ‘owner’ for purposes of this case, the Court has no choice but to follow that legislative command. Although the general rule in this state is that the substance not the form of a transaction governs its taxability, when the legislature chooses to exalt form over substance in a particular case, that is its prerogative, and if, from a public policy perspective, such a choice is unwise, relief may be sought with the Indiana General Assembly, not the courts.

*Word of His Grace Fellowship*, 711 N.E.2d at 878 (citations omitted). Moreover, an “unfairness” argument rings somewhat hollow in light of the fact that there is no evidence that the Petitioner sought a power of attorney from Howard County or requested that the County file an exemption application on the Petitioner’s behalf. The Petitioner only argues that “it is conceivable that the Board of commissioners would refuse to file a Form 136 for [the] Petitioner to receive the educational exemption.”

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<sup>15</sup> The Tax Court found, however, that the State Board did not base its denial of the exemption on the church’s lack of authority to apply for the exemption. 711 N.E.2d at 878. Rather it denied the exemption because the church did not “own, operate and use” the property for religious purposes. *Id.* And because the church’s lack of authority to file for an exemption was a “post hoc rationalization,” the Tax Court held it was irrelevant to the case and reversed the State Board’s determination denying the exemption. 711 N.E.2d at 879.

32. “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.” Ind. Code § 6-1.1-11-1. Therefore, because the Petitioner had no statutory authority to file the application for exemption on the real property, the Board need not examine the merits of whether the real property is entitled to an exemption pursuant to Indiana Code § 6-1.1-10-16.
33. The parties, however, agreed that the Petitioner owned the personal property at issue. Therefore the Board must determine if the Petitioner’s personal property is exempt under Indiana Code § 6-1.1-10-16. Indiana Code § 6-1.1-10-16(e) provides that “Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Thus, it is clear from the statute that the Petitioner bears the burden of proving that its personal property is owned for an exempt purpose and used for an exempt purpose.
34. Here the Petitioner failed to provide a personal property tax return or an inventory of the Academy’s personal property. Similarly, the Petitioner failed to provide any details regarding the use of its personal property. The Petitioner’s witness only made vague statements about having broad categories of goods such as desks, TVs, picnic tables, athletic equipment, textbooks, whiteboards, markers, gardening tools, educational videos, and camera monitors located in classrooms, the gymnasium, the outside recreational area, and living quarters. Because the evidence presented shows that the Petitioner’s facility was used for both educational and detention purposes, the Board has no evidence on which to determine what portion of the Petitioner’s personal property was used for educational purposes and what property was related to the facility’s use as a detention center. Therefore, while some of the Petitioner’s personal property might very well qualify for exemption under Indiana Code § 6-1.1-10-16(e), the Petitioner’s failure to offer any probative evidence about the content and use of its personal property can only lead to a denial of an exemption for all of the property.

35. The Petitioner failed to establish it had the statutory authority to file an application for an exemption on the real property at issue here. Therefore the Petitioner's exemption application was not in compliance with the statutory filing procedures set forth by Indiana Code § 6-1.1-11-3(b) and any exemption the real property may have been entitled to was waived. Further, the Petitioner failed to show the content and use of its personal property to determine what portion of its personal property was predominantly used for educational purposes. Thus, the Petitioner failed to raise a prima facie case that its real or personal property was entitled to an exemption under Indiana Code § 6-1.1-10-16.

### **Summary of Final Determination**

36. The Board finds in favor of the Respondent and holds the Petitioner's real and personal property is 100% taxable for the March 1, 2007, assessment year.

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

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Chairman,  
Indiana Board of Tax Review

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Commissioner,  
Indiana Board of Tax Review

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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 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 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/bills/2007/SE0287.1.html>.**