

REPRESENTATIVES FOR PETITIONER: Steve St. John, President, Historic Hagerstown, Inc.
Clona Bond, Board Member of Historic Hagerstown, Inc.

REPRESENTATIVE FOR RESPONDENT: Charles K. Todd, Attorney-at-Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HISTORIC HAGERSTOWN, INC.)	Petition No.: 89-014-02-2-8-00028
)	Parcel No.: 0260051300
Petitioner,)	
)	
v.)	
)	
WAYNE COUNTY PROPERTY)	County: Wayne
TAX ASSESSMENT BOARD OF)	Township: Jefferson
APPEALS,)	Assessment Year: 2002
)	
Respondent.)	

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

December 22, 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

Issue

1. The issue presented for consideration by the Board was:
Whether the subject property is entitled to 100% exemption under Ind. Code § 6-1.1-10-16 as educational.

Procedural History

2. Historic Hagerstown, Inc. (Petitioner) filed a Form 136, Application for Property Tax Exemption, requesting 66.67% exemption for land and improvements, and 100% exemption for personal property.
3. The determination of the Property Tax Assessment Board of Appeals (PTABOA) was issued on September 8, 2003. The PTABOA granted 66.67% exemption on the land and improvements, and 100% exemption on the personal property.
4. Pursuant to Ind. Code § 6-1.1-11-7, Steve St. John filed a Form 132, Petition for Review of Exemption, on behalf of the Petitioner petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on November 24, 2003.

Hearing Facts and Other Matters of Record

5. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-4-1, a hearing was held on September 29, 2004 in Richmond, Indiana, before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
6. The following persons were present at the hearing:
 - For the Petitioner: Steve St. John, President of Historic Hagerstown, Inc.
Clona Bond, Board Member of Historic Hagerstown, Inc.
 - For the Respondent: Charles K. Todd, Attorney-at-Law
Michael P. Statzer, Wayne County Assessor
Joseph L. Kaiser, President of Wayne County PTABOA
7. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner: Steve St. John
Clona Bond
 - For the Respondent: Michael P. Statzer
Joseph L. Kaiser

8. No exhibits were presented at the hearing.
9. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A - Form 132 petition with attachments.
 - Board Exhibit B - Notice of Hearing.
10. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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 Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Administrative Review and the Petitioner's Burden

12. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. 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. Wash. Twp. 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”).
14. 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.

Constitutional and Statutory Basis for Exemption

15. 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.
16. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. 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) (non-profit status does not entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

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, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E.2d 218 (Ind. Tax 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 will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax 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 the exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

Analysis

Whether the subject property is entitled to 100% exemption under Ind. Code § 6-1.1-10-16 as educational.

22. The Petitioner contends the subject property was 100% exempt in the past, and should still be 100% exempt. The Petitioner contends that the subject property was granted a 66.67% exemption perhaps due to a misreading of the application.
23. The Respondent contends that the use of the property only entitles the Petitioner to a 66.67% exemption.
24. Before the Board can address the issues raised on the Form 132 petition, the Board must first determine whether the Petitioner followed the statutory procedures for filing this petition.
25. The Petitioner timely filed a Form 136 application for property tax exemption. On September 8, 2003, the PTABOA sent the Petitioner notice of their action on the application. The PTABOA granted the Petitioner a 66.67% exemption on the land and improvements, and 100% on the personal property.

26. If the Petitioner does not agree with the action of the PTABOA, the Petitioner has the opportunity to obtain a review by the Board of the PTABOA action. Within thirty (30) days after the notice of PTABOA action, the Petitioner must file a petition for review (Form 132) with the county assessor. *Ind. Code § 6-1.1-11-7(c) and Ind. Code § 6-1.1-15-3(c)*.
27. The notice of action on exemption application by the PTABOA was mailed September 8, 2003. The Petitioner did not file the Form 132 petition until November 24, 2003. The Form 132 petition was filed approximately 77 days after the PTABOA sent notice of its action to the Petitioner.
28. The legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner. *Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) citing *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760-761 (Ind. Tax Ct. 1993).
29. It should be noted that the County Assessor included a hand written note on the Form 132 petition, and stated at the hearing that he felt some responsibility for the lateness of the petition. However, there are no statutory provisions that allow for extending the appeal deadlines.
30. The statute is clear, the Petitioner must file the petition for review within thirty (30) days after notice of the PTABOA action. The Petitioner filed the Form 132 petition approximately 77 days after the notice of PTABOA action. The Petitioner failed to follow the statutory procedures to obtain an review by the Board.

Summary of Final Determination

31. The Board declines to consider the issues raised on the Form 132 petition due to the untimely filing of the petition. There is no change to the exemption.

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.