

**State of Indiana
Board of Tax Review**

Indianapolis Center for Advanced Research, Inc.,)	On Appeal from the Marion County Board of Review
)	
Petitioner,)	Petition for Review of Exemption Form 132
)	
v.)	
)	Petition No. 49-000-92-2-8-00137
Marion County Board of Review,)	Parcel No. 1078968
)	
Respondent.)	

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:

Issues

1. Whether the real property owned by Indianapolis Center for Advanced Research, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

2. Whether the real property owned by Indianapolis Center for Advanced Research, Inc. qualified for 100% property tax exemption pursuant to Ind. Code § 6-1.1-10-36.3.

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 Ind. Code § 6-1.1-11-3, Indianapolis Center for Advanced Research, Inc. (ICFAR) filed an Application for Property Tax Exemption, Form 136 with the Marion County Auditor. The Form 136 was filed on April 20, 1992. The Marion County Board of Review (County Board) denied the application and gave ICFAR notice on June 1, 1992.

3. Pursuant to Ind. Code § 6-1.1-15-3, ICFAR filed a Form 132 petition seeking a review by the State on June 29, 1992.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 16, 1995, before Hearing Officer Kay Schwade. Mr. Brian Fennerty, Attorney, and Mr. Sid Johnson, CEO of ICFAR, were present at the hearing on behalf of ICFAR. Ms. Liz Keele was present on behalf of the County Board.

5. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A and the Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Ex. 1 – Amended and Restated Articles of Incorporation for ICFAR.

Petitioner's Ex. 2 – By-laws of ICFAR.

Petitioner's Ex. 3 – ICFAR Financial Statements for the years ending June 30, 1994 and 1993.

Petitioner's Ex. 4 – ICFAR Financial Statements for the years ending June 30, 1993 and 1992.

Petitioner's Ex. 5 – A written history of ICFAR prepared March 4, 1994 by Mr. W. S. Johnson.

4. The property subject is a research building and land located at 611 North Capitol, Indianapolis, Marion County. The exemption under review is for the year 1992 with taxes due and payable in 1993.
5. ICFAR is an Indiana not-for-profit corporation organized for the purpose of facilitating educational activity and research in the medical and engineering fields. ICFAR is a cooperative effort between Indiana University and Purdue University in Indianapolis (IUPUI) organized by the Trustees of Indiana University, the Trustees of Purdue University, the City of Indianapolis, and the Indianapolis Chamber of Commerce. *Fennerty testimony*; Pet. Ex. 1.
6. From March 1980, until January 1992, ICFAR conducted its operation at the subject property. During this time period, ICFAR developed or oversaw numerous research divisions or laboratories, such as the Ultra Sound Division, the Fluid Dynamics Laboratory, and Indiana University's Aerospace Research Application Center (ARAC). ARAC continued its operations at the subject property as the sole occupant until the property sold in 1994. Pet. Ex. 5; *Fennerty testimony*.
7. ICFAR submits that the requirements of ownership, use, and occupancy set forth under Ind. Code § 6-1.1-10-16 is intended to prevent property owned by a not-for-profit organization for investment purposes from obtaining tax exempt status. The requirements are not meant to deprive the not-for-profit organization the benefit of exemption if the organization deems it necessary to sell its property. *Fennerty testimony*.
8. ICFAR also argues that, because ARAC was the sole occupant and of the subject property for the time period at issue, the subject property was exclusively

used and occupied for scientific research. ICFAR maintains that this exclusive use and occupancy qualifies for 100% exemption under Ind. Code § 6-1.1-10-36.3. Alternatively, ICFAR contends, citing Ind. Code § 6-1.1-10-36.3(b), the subject property should be, at the least, 83% exempt because ICFAR used and occupied the subject property for 10 months of the 1992 assessment year.

Fennerty testimony.

9. The County Board granted 7% exemption to ICFAR. The 7% exemption reflects the percentage of the subject property's total square footage used and occupied by ARAC. The County Board determined that the remaining 93% of the subject property was vacant and did not qualify for exemption. *Fennerty testimony; Keele testimony.*

Conclusions of Law

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

Burden

2. In reviewing the actions of the County Board (or 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.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable

position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

4. 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).

Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. 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 the property is used but on how much money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
10. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always 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. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough to justify tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 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 1990)).
12. 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*, 611 N.E. 2d

at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

Conclusions Regarding the Exemption Claim

13. ICFAR claims that the subject property is used and occupied for scientific and educational purposes, which qualify for property tax exemption under Ind. Code § 6-1.1-10-16. The County Board granted 7% exemption for the portion of the subject property used and occupied by ARAC. There is no dispute that the portion of the subject property occupied by the Petitioner is used for a tax-exempt purpose. The issue is whether that use constitutes the predominant use of the property.
14. ICFAR seeks 100% property tax exemption under the premise that, because ARAC was the sole occupant and user of the subject property, the subject property is exclusively used and occupied for scientific purposes. ICFAR argues that the exclusive use and occupancy by ARAC for scientific research falls within the parameters of Ind. Code § 6-1.1-10-36.3(b) to achieve 100% property tax exemption.
15. The County Board granted the property a 7% exemption because that is the percentage of square footage that was predominantly used for an exempt purpose during the year. The remaining square footage was vacant.
16. Property must be predominantly used for the exempt purpose. Ind. Code § 6-1.1-10-36.3. "Predominant use" is defined as property used or occupied for the exempt purpose more than 50% of the time. *Id.*
17. Again, the question is not whether the type of use and occupancy satisfies the requirements for property tax exemption. Rather the question is whether ARAC's use and occupancy of the subject property represents exclusive use and

occupancy for 100% exemption despite the fact that only a small portion of the subject property is used by ARAC for its scientific research.

18. Under the Petitioner's argument, a not-for-profit entity qualifying for an exemption would need to occupy and use one room in a vacant building and the building, no matter how large, would be exempt from taxation. The State cannot accept that IC 6-1.1-10-36.3 requires that the entire building should be exempt based on 7% use. Whether an exemption of less than 50% is permitted under the predominant use doctrine contained in IC 6-1.1-10-36.3 need not be addressed in this determination.
19. The Petitioner did not meet their burden of proof showing the building is entitled to a 100% exemption. Accordingly, we will not disturb the 7% exemption granted by the County Board. There is no change to the assessment as a result of this issue.

Summary of Final Determination

No change in the assessment. The subject property is 93% taxable.

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