

REPRESENTATIVES FOR PETITIONER:

William T. Enslen, Attorney, Enslen, Enslen & Matthews

Richard A. Paulsin, President of Indiana College of Commerce

REPRESENTATIVES FOR RESPONDENT:

Betty Wilusz, Deputy Non-profit Supervisor, Lake County

Sharon Fleming, Deputy Non-profit, Lake County

Bonnie Kirin, Real Estate Deputy, Lake County

William Rivich, Deputy Assessor, North Township

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

INDIANA COLLEGE OF	)	
COMMERECE,	)	
	)	
Petitioner	)	Petition No.: 45-023-95-2-8-00001
	)	County: Lake
v.	)	Township: North
	)	Property Parcel No.: 26-35-0076-0021
LAKE COUNTY PROPERTY TAX	)	Assessment Year: 1995
BOARD OF APPEALS,	)	
	)	
	)	
Respondent	)	
	)	

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

**March 7, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to

the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The 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 real estate and personal property should be tax exempt.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Richard A. Paulsin, President of Indiana College of Commerce filed a Form 132, Petition for Review of Exemption, on behalf of Indiana College of Commerce (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on April 19, 2001. The Petitioner was not provided a Form 120, Notice of Denial of Exemption, but as a result of a Court Order received a letter dated March 28, 2001 from the Lake County Property Tax Assessment Board of Appeals (PTABOA) stating the exemption had been denied on December 21, 1995.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 16, 2002 at the Lake County Administration Center, Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

William T. Enslen, Attorney, Enslen, Enslen & Matthews

Richard A. Paulsin, President, Indiana College of Commerce

For the Respondent:

Betty Wilusz, Deputy Non-profit Supervisor, Lake County

Sharon Fleming, Deputy Non-profit, Lake County

Bonnie Kirin, Real Estate Deputy, Lake County

William Rivich, Deputy Assessor, North Township.

5. The following persons were sworn in as witnesses:

For the Petitioner:

Richard A. Paulsin

For the Respondent:

Betty Wilusz

Sharon Fleming

Bonnie Kirin

William Rivich

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 - Copy of Petition for Review filed on April 19, 2001

Petitioner's Exhibit 2 - Copy of the Order of the Lake County Circuit Court dated  
September 25, 2001

Petitioner's Exhibit 3 - Copy of the Notice of Hearing for Lake County Circuit  
Court

Petitioner's Exhibit 4 - Copy of the Order of the Lake County Circuit Court dated  
March 12, 2001

Petitioner's Exhibit 5 - Copy of tax bill showing delinquent tax and penalty

Petitioner's Exhibit 6 - Notice of Tax Sale for September 2001

Petitioner's Exhibit 7 - Copy of certified mail letter dated July 20, 2001

Petitioner's Exhibit 8 - Copy of letter dated February 14, 1989 granting 100%

exemption

Petitioner's Exhibit 9 - Copy of Notice of Action on Exemption dated March 26, 1998 for tax years 1992, 1993 and 1994

Petitioner's Exhibit 10 - Copy of application for property tax exemption filed May 15, 1995 (five pages)

Petitioner's Exhibit 11 - Letter dated March 28, 2001 from the Lake County Property Tax Assessment Board of Appeals denying the exemption for 1995 (issued pursuant to court order)

Petitioner's Exhibit 12 - Notice from the Lake County Board of Review for the 1996 exemption

Petitioner's Exhibit 13 - Form 120, Notice of Action on Exemption Application, for 2000

Petitioner's Exhibit 14 - Form 136, Application for Property Tax Exemption, for 2001

Petitioner's Exhibit 15 - State of Indiana Commission on Proprietary Education Certificate for 1995 and 1996

Petitioner's Exhibit 16 - Letters from State of Indiana Commission on Proprietary Education dated October 17, 1990 and May 1, 1991

Petitioner's Exhibit 17 - Certificate of Incorporation and Articles of Incorporation

Petitioner's Exhibit 18 - Statement of assets and liabilities for 1993 and 1994

Petitioner's Exhibit 19 - Copy of correspondence with the Lake County Assessor dated May 10, 2001 (nine pages)

Petitioner's Exhibit 20 - Copy of correspondence with the Lake County Auditor dated May 17, 1995 and the agenda of the Lake County Board of Review for December 21, 1995 (forty pages)

For the Respondent:

No exhibits were presented

7. Mr. Enslen made a motion in limine<sup>1</sup> to exclude any testimony and exhibits from the Respondent since he had not received any submissions prior to the hearing. If testimony and evidence were to be submitted, he would need time to prepare a cross-examination and would move for a continuance.
  
8. The following additional items are officially recognized as part of the record of proceedings:
  - For the Board:
    - Board Exhibit A - Form 132 petition
    - Board Exhibit B - Notice of Hearing on Petition
  
9. The real estate and personal property are located at 7147 Kennedy Avenue, Hammond, North Township, Lake County. The Lake County Board of Review denied the exemption and the real and personal property was determined to be 100% taxable for 1995.

### **Jurisdictional Framework**

10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

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

11. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 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

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<sup>1</sup> A motion in limine is a motion used to exclude reference to anticipated evidence claimed to be objectionable until the admissibility of the questionable evidence can be determined. The motion seeks to avoid injection into trial of irrelevant, inadmissible, or prejudicial evidence at any point.

considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (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 State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
  
15. The State 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 Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Commissioners*, 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 State (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 State 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. Article 10, § 1 of the Constitution of Indiana.
17. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
18. 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) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

## **Basis of Exemption and Burden**

19. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
20. 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).
21. 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 property would otherwise have paid, and this should never be seen as an inconsequential shift.

22. This is why worthwhile activities or noble purpose is not enough for 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)).
23. 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).
24. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

### **Educational Purposes**

25. To qualify for exemption for educational purposes, an organization must show that it provides at least some substantial part of educational training which would otherwise be furnished by tax-supported schools. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, (“NAME”) (Ind. Tax 1996), 671 N.E.2d 218, 221, (citing *State Board of Tax Commissioners v. Fort Wayne Sports Club*, (1970), 147 Ind.App. 129, at 140, 258 N.E.2d 874, 882.



26. The educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction. *State Board of Tax Commissioners v. Fort Wayne Sports Club*, (1970), 147 Ind. App. 129, at 140, 258 N.E.2d 874, 881-882.

### **Discussion of the Issue**

#### *Whether the real estate and personal property should be tax exempt.*

27. The Petitioner contends the real property should be 85% tax exempt and the personal property 100% tax exempt. See Petitioner's Exhibit 10.
28. The applicable rules and case law governing this Issue are:

#### **Ind. Code § 6-1.1-11-3(a)**

The owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application with the auditor of a county in which the property is located. The application must be filed annually on or before May 15. Except as provided in section 3.5 of this chapter, the application applies only for the taxes imposed for the year for which the application is filed.

#### **Ind. Code § 6-1.1-11-3.5(a)**

A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 1988 for a year that follows 1988 by a multiple of four (4) years must file an application for the exemption in that year.

#### **50 IAC 4.2-12-1(e)**

These exemptions will be permitted to taxpayers who timely file and show the amount of their claim for exemption on the proper line of the prescribed returns forms, provided the

taxpayer is able to document all of the evidence required in subsection (a), or sections 9, 10, and 11, when required to do so by an assessing official or board.

**Ind. Code § 6-1.1-10-16(a)**

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

**Ind. Code § 6-1.1-10-20**

Tangible property is exempt from taxation if it is:

- (1) owned by a manual labor school, a technical high school, a trade school, or a college which is incorporated within this state; and
- (2) used, and in the case of real property actually occupied, for the purpose for which the institution is incorporated.

**Ind. Code § 6-1.1-10-36. 3(a)**

Property is predominately used or occupied for one of the stated purposes if it is used or occupied for one or more of those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

**Ind. Code § 6-1.1-10-36 (b)(2)**

Property that is predominately used or occupied for one or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

***State Board of Tax Commissioners v. International Business College, Inc., 251 N.E. 2d 39 (Ind. App. 1969)***

No requirement for educational institutions to be not-for-profit. The language of the statute granting the exemption makes no distinction between for-profit and not-for-profit institutions.

29. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Petitioner is a fully accredited educational institution by the State of Indiana Commission on Proprietary Education. *Petitioner's Exhibits 15 and 16.*
  - B. The Petitioner is incorporated in the State of Indiana and is a for profit institution. *Petitioner's Exhibit 17.*
  - C. The Petitioner operates on a quarterly basis with classes offered on Monday and Thursday from 5:00 P.M. to 10:00 P.M.; each quarter takes twelve (12) weeks to complete. *Petitioner's Exhibit 9.*
  - D. Service Publications, Inc, has published *The Bargain Finder*, a weekly publication, since 1992. Service Publications, Inc. rents space from the Petitioner. Rent is based on an allocation of space with approximately 15% rented to *The Bargain Finder*. *Petitioner's Exhibit 9.*
  - E. Prior to the 1995 tax year, the subject property was tax exempt. The Board determined the real property to be 77% tax exempt and the personal property to be 100% tax exempt for 1992, 1993, and 1994. *Petitioner's Exhibit 9.*
  - F. The subject property was declared tax-exempt by Lake County for 1996 and again for 2000. *Petitioner's Exhibits 12 and 13.*
  - G. The Petitioner timely filed an application for property tax exemption for 1995, but did not receive notice of denial until March 28, 2001. The notice stated that the petition for non-profit status was denied. *Petitioner's Exhibits 10 and 11.*
  - H. In 1995, the use of the property was the same as it was in 1992, 1993, and 1994.

#### Analysis of the Issue

30. The Petitioner, being an educational institution incorporated in the State of Indiana (Petitioner's Exhibits 15 and 17), timely filed a Form 136, Application for Property Tax

Exemption, on May 15, 1995 (Petitioner's Exhibit 10) for the 1995 year. The Petitioner contends that it did not receive a notice of denial of its application for exemption for 1995 until receiving a letter dated March 28, 2001 (Petitioner's Exhibit 11), from Paul G. Karras, PTABOA Secretary. This notification was sent as a result of an Order of the Lake County Circuit Court (Petitioner's Exhibit 4). The Lake County Circuit Court's Order stated that the Petitioner had not been provided with notice of denial for exemption as required by Ind. Code 6-1.1-11-7(c).

31. The notice from the PTABOA stated that, "According to the records of the Lake County Assessor's Office this petition for Non-Profit status was denied Dec. 21, 1995." Upon receipt of this court ordered notification, the Petitioner filed a Form 132 with the Board (Petitioner's Exhibit 1).
32. Though the letter states that the subject property's petition for "non-profit" status was denied, it should be noted that the property is "for-profit". Statutes granting the exemption make no distinction between non-profit and for-profit institutions. There is no requirement for educational institutions to be not-for-profit (See *International Business College, Inc.*, 251 N.E. 2d 39 (Ind. App. 1969)). The Board will not make a determination based purely on the denial of a "non-profit" status as opposed to a "for-profit" status. The fact that the exemption request was denied is the issue under review in this appeal.
33. The Petitioner contends that the subject property should be exempt as a proprietary educational institution. The Petitioner further contends that the property was exempt from 1968 to 1991. In 1992 the County determined the Petitioner was not exempt.
34. For 1992, 1993 and 1994, the Petitioner filed petitions with the Board for review. The Board granted the exemption status in the amounts of 77% for the real property and 100% exemption for personal property. See Petitioner's Exhibit 9.

35. In 1996 the County granted 100% exempt status (Petitioner's Exhibit 12) to the subject property. And again in 2000, the County granted exempt status in the amounts of 77% for real property and 100% personal property (Petitioner's Exhibit 13).
36. As stated in Ind. Code § 6-1.1-11-3.5(a) those that qualify for an exemption for 1988 or for a year that follows 1988 by a multiple of four (4) years must file an application for the exemption in that year. Such action taken in 1988 would require the filings of applications for exemption in 1992, 1996 and 2000.
37. When the Petitioner filed in 1992 for exemption status, the approval of such would have carried forward for four (4) years until the Petitioner was required to file again in 1996.
38. Though the County denied the exemption status for 1992, 1993 and 1994, the Board approved the exemption. This determination by the Board should have continued forward to 1995. If the County's own action for 1996 and 2000 (¶35) is taken into consideration, it is difficult to understand why the Petitioner, who was exempt prior to 1995 and after 1995, would not also be exempt for 1995 as well. It should be noted the Petitioner testified that the use of the property remained the same during these time frames.
39. At the hearing, the Respondent admitted their own research on this appeal failed to produce any documentation of the action taken by the people involved in the 1995 decision at the County level. The Respondent also stated that the people involved in the County's 1995 decision are not the same people representing the Respondent at this hearing.
40. In addition, the Respondent could not show that the Petitioner was timely notified of the denial of the application for exemption prior to that of the Circuit Court's ordered notification (Petitioner's Exhibit 4).

41. The taxpayer has a 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*, 512 N.E. 2d 936, 938 (Ind. Tax 1987). In addition, the taxpayer must be able to quantify the amount of exemption it seeks.
42. Further, the Petitioner, in order to qualify for an exemption based on educational purposes, must show that it provides at least some substantial part of educational training which would otherwise be furnished by tax-supported schools (See ¶25 and 26).
43. The Petitioner submitted probative evidence establishing a prima facie case for exemption status and met the requirements as stated in ¶25 and 26 as well as that in Ind. Code § 6-1.1-10-20, as a proprietary educational institution. The Respondent failed to present any documented evidence that rebutted the evidence submitted by the Petitioner.
44. Having submitted a case for exemption status, the Petitioner is then required to quantify the amount of the exemption it seeks. The Petitioner requests 85% for real property and 100% on the personal property but fails to present any evidence that would support these percentages.
45. The Petitioner testified that the use of the subject property was the same in 1995 as it was in 1992, 1993, and 1994. The Board determined that for those years the real property was 77% tax exempt and the personal property 100% exempt.
46. For the following reasons the Board now determines that for 1995 the subject's real property be 77% tax exempt and personal property 100% exempt:
  - a. The lack of evidence presented by the Respondent rebutting any of the testimony or documentation submitted by the Petitioner;
  - b. Ind. Code § 6-1.1-10-16(a);
  - c. Ind. Code § 6-1.1-10-20;
  - d. Ind. Code § 6-1.1-11-3.5;

- e. *State Board of Tax Commissioners v. International Business College, Inc.*, 251 N.E. 2d 39 (Ind. App. 1969);
  - f. The Board's decision granting tax exempt status for 1992, 1993 and 1994 for the subject property;
  - g. The County's decisions to grant exempt status to the subject property for 1996 and 2000; and
  - h. The requirements set forth in ¶25 and 26.
47. For all the reasons set forth above, a change in the assessment is made as a result of the exemption issue.

### **Summary of Final Determination**

ISSUE: *Whether the real estate and personal property should be tax exempt.*

48. In the case at bar, the Petitioner met its burden to show that the subject property qualifies for tax exemption status. The real property is determined to be 77% tax exempt and the personal property is determined to be 100% tax exempt.

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

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Chairman, 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.