

**STATE OF INDIANA
Board of Tax Review**

Indiana University Foundation,)	On Appeal from the Marion
)	County Board of Review
Petitioner,)	
)	
v.)	Petition for Review of Exemption,
)	Form 132
Marion County Board of Review,)	Petition No. 92-492-136
)	Parcel No. 2000176
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 (STBC), 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, on finds and concludes the following:

Issue

Whether the real property owned by Indiana University Foundation and leased to Indiana University is exempt from property taxation pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational research purposes.

Whether the real property owned by Indiana University Foundation and leased to Indiana University is exempt from property taxation pursuant to Ind. Code § 20-12-6-11.

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, Indiana University Foundation (Foundation) filed application for property tax exemption with the Marion County Board of Review (County Board) on May 15, 1992. On July 31, 1992, the County Board denied the Foundation's application.

3. Pursuant to Ind. Code § 6-1.1-11-7, the Foundation filed a Form 132 petition seeking a review of the County Board's action by the State. The Form 132 petition was filed August 26, 1992.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing scheduled for May 16, 1995 before Hearing Officer Kay Schwade. Prior to the hearing date, both parties agreed waive their right to a formal hearing and agreed to submit all evidence and testimony in written form. The date for submission of evidence was set for May 30, 1995. On May 10, 1995, the State received, via US Mail, confirmation from the Foundation regarding dated of submission set for evidentiary submissions. The Foundation's letter was entered into the record and labeled Petitioner's Exhibit A.

5. The subject Form 132 petition and attachments were made a part of the record and labeled Board Exhibit A. The Notice of Hearing was made a part of the record and labeled Board Exhibit B.

6. On May 30, 1995, the State received, via US Certified Mail, the following documents from the Foundation:

Petitioner's Exhibit B – A brief prepared by the Foundation's legal representative containing the Foundation's position regarding the exemption claim with the following attachments:

- a. An original power of attorney executed by the Foundation appointing Ms. Kiply S. Drew as the Foundation's representative in this matter.
- b. Copies of Indiana statute and case law regarding educational exemptions.
- c. The Affidavit of Richard E. Beard.
- d. The Affidavit of Richard Garschina.
- e. The Affidavit of Tamera B. Hyland with the following attachments:
 - i. A copy of the Amended Articles of Incorporation of Indiana University Foundation.
 - ii. A copy of the Amended By-Laws of Indiana University Foundation.
 - iii. Financial Statements for 1991 and 1992 of Indiana University Foundation.
 - iv. A copy of the application for exemption and the notice of action issued pertaining to the subject property for the 1989 assessment year.
 - v. A copy of a letter from Dean Regenovich to Tom McGlasson regarding the County Board's 1989 denial of exemption and the reason for the denial.
 - vi. A copy of a Form 132 petition filed following the County Board's denial of the 1989 exemption application.
 - vii. A copy of a Notice of Hearing dated May 21, 1992 pertaining to action taken by the County Board applicable to the 1991 assessment year.
 - a. The Affidavit of Karen J. Helton with the following attachments:
 - viii. A copy of an affidavit of survivorship prepared by Mr. Charles F. Cremer, Jr.
 - ix. A copy of a lease between Indiana University Foundation and the Trustees of Indiana University regarding the subject property.

- x. A copy of the notice of action from the County Board denying exemption for the assessment year 1991.
 - xi. A copy of the notice of action from the County Board denying exemption for the assessment year 1990.
 - xii. A copy of the notice of action from the County Board denying exemption for the assessment year 1992.
 - xiii. A copy of a Form 132 petition for the 1989 assessment year.
7. On May 7, 1996, the State contacted the parties regarding the resolution of pending 1991 Form 132 petition. The State presented a possible resolution of the 1991 and sought a response regarding the suggested resolution from each of the parties. The State's correspondence was entered into the record as Board Exhibit C. A copy of the State's appeal log was also entered into the record at this time as Board Exhibit D. On May 10, 1996, the State received, via US Mail, a letter from the Foundation agreeing to accept the resolution suggested for the pending 1991 Form 132 petition. The Foundation's response was entered into the record as Petitioner's Exhibit C. The County Board did not offer any comment or response to the State's inquiry.
8. The subject property consists of two (2) buildings used to house and care for medical research animals on 10 acres of a 164.99-acre parcel of land. The subject property is located at 7610 West County Line Road, Camby, in Marion County and is commonly known as the Conrad Farm Facility. The assessment year for which exemption is sought is 1992 with property taxes due and payable in 1993. The Hearing Officer did not view the property.
9. The Foundation is an Indiana not-for-profit corporation organized for the purpose of receiving, holding, and administering assets and properties for the benefit of Indiana University. *Pet. Ex. B, Beard Affidavit.*

10. In 1975, Martin L. Conrad and Opal G. Conrad (Conrads) deeded the 164.99 acre parcel of land to the Foundation and retained life estates to themselves. The Conrads died in December 1983 and June 1990. *Pet. Ex. B, Helton Affidavit*. The Foundation obtained fee simple title to the subject property following Mrs. Conrad's death in June 1990. *Pet. Ex. B, Beard Affidavit*.
11. In 1988, the Foundation entered into a lease agreement with Indiana University for 55 acres of the 164.99-acre parcel. The lease agreement specifies that Indiana University was to use 10 acres of the 55 acres for the construction of an animal care facility and related purposes and the remaining 45 acres were to be used as a buffer zone around the facility. *Pet. Ex. B, Helton Affidavit, Ex. 2*.
12. In 1988, Indiana University constructed an animal care facility on 10 acres as specified in the lease agreement. The facility is used by Indiana University School of Medicine for its educational research purposes. This facility, commonly known as the Conrad Farm Facility, is one component of the Indiana University School of Medicine Laboratory Animal Resource Center. *Pet. Ex. B, Beard Affidavit and Garschina Affidavit*.
13. The construction of the facility was funded by a grant obtained by the Indiana University School of Medicine in support of its research efforts. *Pet. Ex. B, Garschina Affidavit*.
14. The subject property is used exclusively by the Indiana University School of Medicine for both the conduct of research activities as well as the care and maintenance of the animals used at the Conrad Farm Facility (the subject property) and at the Indiana University School of Medicine. The research activities carried out at the Conrad Farm Facility are conducted by medical doctors, trained staff, and research staff associated with the Indiana University School of Medicine. *Pet. Ex. B, Garschina Affidavit*.

15. The use of the remaining 45 acres of the 55 acres leased to Indiana University furthers the educational research purposes by enhancing the security and privacy of the research efforts of Indiana University School of Medicine. *Pet. Ex. B, Garschina Affidavit.*
16. The Foundation applied for property tax exemption in 1989, 1990, 1991, and 1992 (the year under review). The County Board denied the 1989 under the basis of the life estate held by the Conrads. *Pet. Ex. B, Hyland Affidavit.* The Foundation presumes that the same reasoning was applied by the County Board with regard to the 1990, 1991, and 1992 applications. *Pet. Ex. B, Helton Affidavit, Ex. 3 and 4.*
17. The Foundation also filed a Form 132 petition with the State seeking a review of the County Board denial of the 1991 application for exemption. The State scheduled an administrative hearing for June 9, 1992 regarding the 1991 exemption application and denial. *Pet. Ex. B, Hyland Affidavit, Ex. 6 and 7; Board Ex. D.* The Foundation's and the State's files do not indicate that the State issued a final determination regarding the 1991 Form 132. *Pet. Ex. B, p. 3, n. 1; Board Ex. D.*
18. The Foundation acknowledges that the facts surrounding the exemption request for 1992 mirror the facts surrounding the 1991 exemption request and agrees to accept the final determination for the 1992 Form 132 petition as the final determination for the 1991 Form 132 petition. *Pet. Ex. B, p. 3, n.1; Pet. Ex. C.¹*

¹ On May 7, 1996, the State contacted both parties regarding a possible resolution of the 1991 Form 132 petition pending before the State. On May 10, 1996, the Foundation responded and agreed to the application of the 1992 Final Determination to the 1991 pending appeal. The County Board did not offer any comment or response to the State's correspondence.

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. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the 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).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, Section 5.51; 73 C.J.S. Public Administrative Law and Procedure, Section 128.
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239 (Ind. Tax 1998)).

6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. 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).
8. In the event the taxpayer sustains his burden, then the burden shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
9. If the taxpayer fails to meet his burden of proof at the administrative level, the State does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116-21.

Constitutional and Statutory Basis for Exemption

10. 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.
11. 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 property tax exemption for property used for educational or scientific purposes. The Petitioner also seeks exemption under Ind. Code § 20-12-6-11 which

provides exemption for property acquired by Indiana University and other designated State University and Occupational Schools).

12. 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

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
14. 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).
15. 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). 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.

16. 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)).
17. 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

18. The Foundation claims that, because the subject property is used as part of Indiana University's School of Medicine medical research program, the subject property is serving an educational purpose. The Foundation maintains that this educational purpose meets the standards for exemption under Ind. Code § 6-1.1-10-16. The Foundation also claims that, because the subject property is used by Indiana University for educational research, the subject property is provided exemption under Ind. Code § 20-12-6-11.
19. The County Board denied the exemption application under the basis of the life estate held by Mrs. Conrad on March 1, 1992. The State notes that the Conrads were deceased as of the assessment date of March 1, 1991. Therefore, the Foundation was the holder of fee simple title on March 1, and the County Board's basis for denial was in error.

20. As explained earlier in these findings, Ind. Code § 6-1.1-10-16 provides property tax exemption for property used for educational purposes. Ind. Code § 6-1.1-10-16 also provides exemption for property used for literary, scientific, religious, and charitable purposes. Thus, Ind. Code § 6-1.1-10-16 is the general exemption code enacted by the General Assembly cited when seeking exemption for educational, literary, scientific, religious, or charitable purposes. In certain circumstances, the General Assembly enacted provisions for property tax exemption addressing specific properties or conditions. One such provision enacted for specific exemption is Ind. Code § 20-12-6-11.
21. Ind. Code § 20-12-6-11 provides exemption for “all property acquired under the authority of this chapter or used for the purposes provided for in this chapter...” Chapter 6 of Article 12 provides the authority to State universities to acquire property by purchase, lease, or sublease for a period of no more than 40 years or used for educational research, public service programs, or any statutory responsibility assigned to institutions of higher education. Ind. Code § 20-12-6-1; -2.
22. Clearly, the General Assembly, when enacting this provision, intended the test for property tax exemption of property acquired or used by a State university to be measured by a set of standards other than those provided in Ind. Code § 6-1.1-10-16. Thus, the State will analyze the Foundation’s exemption request under the standards set forth in Ind. Code § 20-12-6-11 – did the Foundation acquire the property in accordance with the provisions of Ind. Code § 20-12-6-2 and is the property used for educational research, public service programs, or any other statutorily assigned responsibility.
23. The first standard under Ind. Code § 20-12-6-11 is that the property was acquired in accordance with the provisions of the chapter. This standard has been met. The evidence clearly shows that Indiana University entered into a 10-year lease agreement with the Foundation for 55 acres of the 164.99 acre parcel

owned by the Foundation. Thus, Indiana University acquired the subject property in accordance with the provisions of Ind. Code § 20-12-6-2.

24. The second standard under Ind. Code § 20-12-6-11 is that the property is used by a State university for educational research, public service programs, or other statutory responsibilities of the university. Again, there is no question that the subject property is used in this manner. The evidence makes it clear that the sole purpose of the subject property is an animal care facility for the medical research operation of Indiana University's School of Medicine. Therefore, Indiana University is using the subject property in a manner set forth under Ind. Code § 20-12-6-1.
25. The burden lies with the party petitioning for relief to show that the property for which exemption is sought falls specifically within the exemption statutes. The Foundation has succeeded. The Foundation brought forth sufficient evidence demonstrating that the subject property was acquired by Indiana University and is used by Indiana University's School of Medicine for educational research. Once the petitioner's has met this burden, the burden shifts to the local officials to justify their position with substantial evidence.
26. The County Board noted that the 1992 exemption application was denied because the Conrads held life estates in the subject property. *Board Ex. A*. The evidence provided also indicates that the County Board denied prior applications using the same reasoning. The County Board did not offer any evidence in support of the denied exemption application. The County Board has not overcome the burden shift and the Foundation prevails.
27. Additionally, the State notes that, unlike Ind. Code § 6-1.1-10-16, Ind. Code § 20-12-6-11 does not limit the number of acres for which exemption may be granted. Therefore, exemption is available to the entire 55 acres leased to Indiana University and used in the operation of the Conrad Farm Facility.

28. In an exemption challenge, the burden lies with the Petitioner to make a prima facia case before the State by presenting factual evidence showing that the property falls specifically within the exemption statute cited. The Foundation has succeeded. The Foundation has presented evidence sufficient to show that the subject property falls specifically within the provisions set forth under Ind. Code § 20-12-6-11.
29. For all of the reasons set forth above, the Foundation has met its burden by showing that the subject property falls specifically within Ind. Code § 20-12-6-11. As such, the 55 acres leased and used by Indiana University and the improvements on the 55 acres are 100 % exempt from taxation for the assessment year 1992.
30. With regard to the pending 1991 Form 132 petition, the evidence presented makes it clear that the facts surrounding the Foundation's exemption request for 1991 are mirrored in the Foundation's exemption request for 1992. The evidence also indicates that the County Board's sole basis for denial was the life estate held by the Conrads. Therefore, following the same reasoning above, the 55 acres leased and used by Indiana University and the improvements on the 55 acres are 100% exempt from taxation for the assessment year 1991.

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