

REPRESENTATIVE FOR PETITIONER: William Barrett and Daniel Layden, Attorneys

REPRESENTATIVE FOR RESPONDENT: John Slatten, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

INDEPENDENT INSURANCE AGENTS )	Petition Nos. 49-600-08-2-8-00013
OF INDIANA, INC. and INDEPENDENT )	49-600-10-2-8-00001
AGENTS SERVICES CORP., )	49-600-10-2-8-00276
)	49-600-11-2-8-01375
Petitioners, )	49-600-11-2-8-01148
)	
)	Parcel Nos. 6015216 and F532945
)	
v. )	Marion County
)	
MARION COUNTY ASSESSOR, )	Pike Township
)	
Respondent. )	Assessment Years 2008, 2010 and 2011

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

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

Do the Petitioners qualify for the educational purpose exemption under Ind. Code § 6-1.1-10-16 with respect to the real and personal property that are the subject of this appeal?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

## **Procedural History**

1. The Petitioners are two related entities: Independent Insurance Agents of Indiana Inc. (IIAI), a nonprofit corporation, and Independent Agents Services Corporation (IASC), a for-profit corporation. IIAI is the sole shareholder of IASC. The Petitioners operate out of a commercial building located at 3435 W. 96<sup>th</sup> Street. IASC held title to the building at all times relevant to these appeals. No evidence was presented distinguishing the ownership of the personal property.
2. The Petitioners are appealing denials of educational exemptions for real and personal property for the 2008, 2010, and 2011 assessment years by the Marion County Property Tax Assessment Board of Appeals (PTABOA). The record contains some confusion in the appeal process which might call into doubt whether the exemptions claimed (for real and personal property) were properly appealed to and denied by the PTABOA. The parties stipulated at the hearing that the exemption applications for both real property and personal property for assessment years 2008, 2010 and 2011 are properly before the Board. The Board accepts this stipulation without further review.

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

3. The Board conducts an impartial review of appeals concerning assessed valuations, deductions, and exemptions for tangible property. Ind. Code § 6-1.5-4-1(a). Such appeals are conducted under Ind. Code § 6-1.1-15.
4. Chairman Ted Holaday held the hearing in Indianapolis on December 18, 2013. He did not conduct an on-site inspection of the property.
5. Roger Ronk and Kevin Chestnut were sworn as witnesses and testified for the Petitioners. Nicole Webb was sworn as a witness for the Petitioners but did not testify.

6. The Petitioners presented the following exhibits:
  - Petitioners Exhibit 1 – Correspondence, Certificates and Journal Article (supporting documentation),
  - Petitioners Exhibit 2 – Spreadsheet of Summary of Property Taxes Paid,
  - Petitioners Exhibit 3 – Industry Sponsorship materials,
  - Petitioners Exhibit 4 – 2010 State and Federal Tax Returns,
  - Petitioners Exhibit 5 – 2011 State and Federal Tax Returns,
  - Petitioners Exhibit 6 – 2008-2011 IIAI Executive Committee Meeting Minutes,
  - Petitioners Exhibit 7 – Continuing Education Materials,
  - Petitioners Exhibit 8 – 2008-2011 Audited Financials,
  - Petitioners Exhibit 9 – Form 136 Petitions and supporting documents submitted to Marion County Assessor in support of Petitions,
  - Petitioners Exhibit 10 – Education Report spreadsheet,
  - Petitioners Exhibit 11 – Correspondence from IBTR to parties dated August 15, 2012,
  - Petitioners Exhibit 12 – Selected Focus Magazine Editions from 2008-2012.
  
7. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – Print out of the home page from the Petitioners’ website.
  
8. The following additional items are part of the record:
  - Board Exhibit A – Form 132 petitions with attachments,
  - Board Exhibit B – Notices of Hearing on Petition,
  - Board Exhibit C – Hearing Sign In sheet.
  
9. At the Petitioners request, and as allowed by the Board’s procedural rules, the Board took official notice of the following:
  - a. Article X, Section 1 of the Indiana Constitution, which permits the General Assembly to exempt property used for “municipal, *educational*, literary, scientific, religious or charitable purposes.” (emphasis added);
  
  - b. Indiana Code § 6-1.1-10-16, which provides that “[a]ll 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.” (emphasis added);
  
  - c. Indiana Code § 27-1-15.6 and § 27-1-15.7, which mandate respectively the licensure of all persons selling insurance products within the State of Indiana, and prescribe the licensure requirements, including the completion of prescribed programs or courses of study that are approved under the auspices of the body known as the Insurance Producer Education and Continuing Education Advisory Council (hereinafter “Education Advisory Council”), which consists of the

Commissioner of the Indiana Department of Insurance as well as fifteen members, including two members recommended by IIAI, appointed by the Governor of the State of Indiana; and

- d. Indiana Administrative Code 760 IAC 1-40 and 760 IAC 1-50, which prescribe respectively the pre-licensure education and continuing education regulations for insurance producer licenses.
10. At the hearing, the parties were instructed to submit post-hearing briefs on or before January 8, 2014. The parties requested the hearing be transcribed. Therefore, the due date for the briefs changed to March 3, 2014. The briefs were submitted on March 5, 2014, and entered into the record. *Pet. Brief and Resp. Brief.*
11. The subject property is a parking lot, building, and accompanying personal property located at 3435 West 96<sup>th</sup> Street in Indianapolis.
12. The PTABOA determined the subject property is 100% taxable for 2008, 2010 and 2011.

### **Objections**

13. Mr. Slatten objected to three letters addressed to Mr. Ronk that were included in Petitioners Exhibit 1 on the basis of hearsay. In response, Mr. Barrett stated that the letters were subject to the residual rule exception to hearsay. Hearsay is admissible as long as it does not form the sole basis of the determination. The objection is overruled as the Board's determination is not based on Petitioners Exhibit 1.
14. Mr. Barrett objected to Respondent Exhibit 1 on the basis of the Respondent's failure to tender it to the Petitioners prior to the hearing. Mr. Slatten claimed the exhibit was rebuttal evidence used to impeach Mr. Ronk's statement regarding the amount of time the Petitioners devote to lobbying. Mr. Slatten also stated that the exhibit is a public document. The Board finds that the rules on exchanging exhibits required Respondent to tender this exhibit prior to the hearing, and the objection is sustained.

## Summary of the Petitioner's Case

15. The Petitioners argue the subject property is owned, occupied and used for educational purposes and is exempt from property taxation under Ind. Code § 6-1.1-10-16.
16. IIAI was formed in 1898 and has been an Indiana not-for-profit corporation with tax exempt status under IRC 501(c)(6) since 1930. Its members write approximately eighty percent (80%) of the commercial line policies in the state. Those members include approximately 600 independent insurance agencies across Indiana, approximately 150 associate members such as insurance companies, law firms, and other interested parties in the industry, and 6000 individual agents across the state. IIAI's function is to provide legislative and regulatory assistance to its members. Since 1990, IIAI has been the premier provider of pre-licensure and continuing education insurance courses. *Ronk testimony; Pet. Brief.*
17. IASC, an Indiana corporation, is a wholly-owned subsidiary of IIAI. It was formed by IIAI to support the mission of IIAI and to preserve IIAI's IRC 501(c)(6) tax-exempt status. During the years at issue, IASC was the title holder of the subject property and leased it to IIAI for no rental payment and without a written lease obliging IIAI to any specific term or to any other element of a commercial lease. IASC provides Errors and Omissions coverage to IIAI members and their agents at discounted rates. All income generated from IASC's business activities is used to pay the salaries of the staff onsite at the subject property and to help finance IIAI's ongoing education programs. Because IASC's only shareholder is IIAI, any "profits" of IASC are the property of IIAI and are used to finance its functions. *Ronk testimony; Pet. Ex. 9; Pet. Brief.*
18. In Indiana, the sale of insurance is regulated by statute and regulation. The insurance industry and the people who are a part of its industry in Indiana are subject to regulation for the benefit of the public. *Indiana Department of Insurance v. Zenith Re-insurance Company, Ltd.*, 583 N.E.2d 201 (1991). These statutes and regulations require all applicants for an insurance producer's license to obtain pre-licensure education. Once

licensed, producers are required to take continuing education courses to maintain their licenses. *See* 760 IAC -140/1-50. Pursuant to Ind. Code § 27-1-15.6-3(a), a person is prohibited from selling insurance to the public without a license. To become properly licensed, an applicant must have successfully completed either an undergraduate degree program from an accredited university or an approved pre-licensing education program. The programs and courses of study are developed with recommendations from the Education Advisory Council. The Council includes two members recommended by IIAI and appointed by the Governor of the State of Indiana. *See* Ind. Code § 27-1-15.6-6(b)(3); Ind. Code § 27-1-15.7-6(g). *Ronk testimony; Pet. Ex. 9; Pet. Brief.*

19. In 1990, coinciding with the passage of the continuing education provisions, IASC acquired the subject property for educational purposes. The property was substantially renovated to create a conference center and educational support facilities. The property contains a large training facility that features a 100 plus person capacity classroom with state of the art light, sound and mechanical equipment, copy room, kitchenette, garage area, and office facilities for its online staff. *Ronk testimony; Pet. Brief.*
  
20. IIAI utilized the subject property to conduct several activities that fulfilled its educational mission. IIAI is the largest provider in the state, in terms of scope and breadth of its course offerings and the number of attendees at its continuing education courses. The classes are presented throughout the state and are open to the general public. Approximately 7,000 to 8,000 continuing education certificates are issued annually, including approximately half from events conducted at the subject property. It is estimated that classes are conducted at the subject property's training facility 130 days a year. IIAI staff plans, schedules, and produces the materials related to all state-wide events at the subject property. With respect to the pre-licensing courses, Indiana requires forty hours of classroom study to be eligible for licensure, and IIAI utilizes the outline approved by the Educational Advisory Council and devises the program and materials to teach the classes. IIAI is also the only entity that prepares insurance law update materials concerning the changes in the law and then conducts classes onsite and offsite. *Ronk testimony; Pet. Ex's. 7 and 9; Pet. Brief.*

21. On an annual basis, IIAI offers multiple professional designation courses that attract attendees from throughout the state and also out of state. The seminar programs consist of two and a half days of concentrated study in the designation program area (*e.g.*, commercial casualty, commercial property, personal lines) followed by a test to satisfy the requirements of the designation program. IIAI is the only entity in the state that offers the commercial risk management designation program, and it attracts attendees from various fields, including non-members (*e.g.*, attorneys, safety managers, personnel managers, or risk managers from private companies such as Eli Lilly). *Ronk testimony; Pet. Brief.*
  
22. IIAI also plays a role in the development and advancement of educational programs at the university and high school level. IIAI representatives have sat on the advisory councils for the three universities in the state that offer insurance majors, namely Ball State University, Indiana State University, and Butler University. Mr. Ronk assisted Butler University in the creation of its advisory council. IIAI has also hosted several Indiana State University Advisory Council meetings at the subject property. The purpose of this advisory council is development of course curriculum. IIAI also sends representatives to university job fairs, offers free exhibit space at its annual convention, and hosts events at the subject property for representatives from the insurance industry to make presentations to students discussing insurance majors, programs, internships, and scholarships in an effort to promote the industry with respect to the university programs. *Ronk testimony; Pet. Brief.*
  
23. At the high school level, IIAI develops publications for presentation to students, including materials on Indiana's statutory scheme of graduated driver's licenses. It also works with Ball State University with respect to a high school teacher program where teachers reside on campus for a three week period and are trained to teach insurance to high school students. These teachers may receive graduate course credit. The Ball State program is one of only five such programs in the United States. IIAI's staff, located at

the subject property, works with the university and the high school educators in the production of the program. *Ronk testimony; Pet. Brief.*

24. IIAI is the only entity in the state that provides flood training programs on a continuous basis with the Federal Emergency Management Agency (“FEMA”). Such training is state mandated in order to sell flood insurance. It is conducted at the subject property, as well as throughout the state. *Ronk testimony; Pet. Ex’s. 6 and 7; Pet. Brief.*
25. IIAI provides education programs when worker’s compensation rules are modified and works directly with the Indiana Worker’s Compensation Rating Bureau to conduct seminars concerning the Worker’s Compensation system. Every insurance carrier that wishes to write worker’s compensation insurance coverage in the state must belong to the Worker’s Compensation Rating Bureau, and employers in Indiana are not permitted to operate without the purchase of worker’s compensation insurance. *Ronk testimony; Pet. Brief.*
26. In the preparation for filing income tax returns, the Petitioners conducted a time study for the purpose of ascertaining the division of the subject property’s building space between IIAI and IASC business activities. The time study was conducted over a three to four week period. Its purpose was to determine how personnel and space were allocated between the two entities. Based upon the time study data, which in the opinion of tax specialist Kevin Chestnut was an appropriate method to determine the allocation of space and use between IIAI and IASC, it was determined that the predominant use of the property was for education, as the training areas, conference room, board room, common foyer area, copy room, kitchenette, garage, and associated office space are primarily used in the furtherance of IIAI’s educational activities. *Ronk testimony; Chestnut testimony; Pet. Ex. 9; Pet. Brief.*
27. Thirty-eight continuing education classes were conducted at the subject property in 2009. Because some of the programs were multiday, they spanned over approximately 80 to 90 days during 2009. Mr. Ronk estimates that there were approximately 70 days of courses



taught at the subject property in 2011. The 2011 calendar that the Petitioners submitted does not list all of the education programs provided by IIAI. Only the one-day programs are included. The webinars administered out of the subject property are not listed, nor are any of the self-study programs that occur at the property. Certified Insurance Counselors Programs (“CIC”), Certified Risk Management (“CRM”) classes and other designation courses are also excluded because they require separate accounting. Each year, IIAI conducts approximately ten to eleven CIC classes and at least two CRM classes. Sometimes an additional flood class is added as well. *Ronk testimony; Pet. Ex. 7.*

28. Petitioners occasionally allow outside organizations like Indiana State University to use the subject property. Board and committee meetings are also held at the property. Outside use by insurers occurs approximately one day a month. Mr. Ronk estimates that the Petitioners use the conference space around 130 days per year. During the remaining days, the property is unoccupied. *Ronk redirect.*

### **Summary of the Respondent’s Case**

29. IIAI is a trade association for sellers of insurance. It is involved in advocating the interests of its members before the legislature and providing insurance licensing related education. In essence, IIAI is providing services, for which its members pay, that educate its members about the products they sell and enable them to meet the requirements to legally sell their product in Indiana. Also, IIAI teaches courses related to practice management and running a profitable business. *Slatten argument; Resp. Brief.*
30. The educational services provided by Petitioners fall short of the requirements for an exemption. The activities are properly characterized as for the purpose of assisting their members in the operation of their trade, which is insufficient for the educational exemption. *See Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1266 (Ind. 2006). *Slatten argument; Resp. Brief.*

31. While the Petitioners claim its magazines are produced at the subject property, not all magazine articles are written by employees at the subject property. The August 2008 magazine contains an article titled *Recent Construction Crane Deaths Not Atypical* that was written by an individual who works for a national association. Another magazine article titled *On the Hill House Subcommittee Passes Agent Licensing Reform* was written by Tom Koontz. Neither of these authors works at the subject property. *Slatten argument; Pet. Ex. 12.*
32. The Petitioners' main focus is on lobbying and insurance regulation, and lobbying is not an exempt activity. It is uncontroverted that Mr. Duff is a lobbyist for the Petitioners. And while Mr. Ronk denies lobbying during the years at issue, he advocated for the Petitioners' members at the State House and with regulatory agencies. He participated in a discussion about federal lobbying during a board meeting with David Daniel on November 15, 2008. Also, a reception and fundraiser was held by the Petitioners for Mike Miley, who was President of the organization at the time. Another board meeting on February 6, 2008, entailed discussions about updates and changes that might require bars and taverns to carry liquor liability insurance. The Petitioners went to the Chairman of the Appropriations Committee to voice their concern over the proposed law. The minutes from the board meeting held on February 7, 2008, show that the Petitioners' staff helped to increase IPAC contributions. *Slatten argument; Pet. Ex. 6.*
33. IASC, the entity that owns the real estate at issue, provides a product by selling professional liability coverage to agencies. Promoting products and helping members to sell those products is not an exempt activity. The Board has dealt with a similar situation in the case of *Roller Skating Rink Operators*. Just like in that case, here we have a nonprofit operating out of a property that is owned by a for-profit entity (IASC). The fact that IASC is wholly owned by IIAI does not make it a subsidiary. *See Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262 (Ind. 2006). *Slatten argument.*
34. For a particular assessment date, the property must be predominately used, owned and occupied for an educational purpose during more than fifty percent (50%) of the time that

it is used or occupied in the year that ends on the assessment date. The present case involves the 2008, 2010 and 2011 assessment years. The Petitioners presented insufficient testimony about use during 2007 and 2009 to support a finding that the property was primarily used for an exempt purpose during the relevant time periods for the 2008 and 2010 exemptions. Furthermore, Petitioners failed to discuss the use of the personal property. *Slatten argument; Resp. Brief.*

35. As demonstrated by the Petitioners' IRS Form 990, IASC is a trade association that exists to help its members make more money. This is not an exempt purpose. Furthermore, at least a portion of Mr. Ronk's salary is paid by IASC. And according to the Petitioners' Form 990, all of his salary is paid by IASC and not IIAI. *Slatten argument; Pet. Ex. 2, 4 and 5.*
36. The Petitioners' use of the property does not meet the qualifications for an exemption under I.C. § 6-1.1-10-16. Implicit in the requirement that education be the substantial equivalent of instruction offered in Indiana's tax supported institutions is the notion that education benefits the public and not the presenter. *See Roller Skating Rink Operators Ass'n*, 853 N.E.2d at 1266. Education that primarily serves the private interest of an organization's members does not warrant public subsidy. "Programs of a trade association directed to the development of the private businesses of its members, though 'educational' in some sense, do not qualify for property tax exemption as educational activities." *Id. Slatten argument.*

### **Analysis**

37. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *See Indianapolis Osteopathic Hosp. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (*citing* I. C. § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.* All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is

exempt from taxation. *See* I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36. That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. §6-1.1-10-16(c); (e).

38. “The taxpayer must present probative evidence during the Indiana Board hearing which demonstrates that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009). “An exemption is strictly construed against the taxpayer and in favor of the State.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose is a fact sensitive inquiry; there are no bright-line tests.” *Oaken Bucket*, 909 N.E.2d at 1134 (citation omitted). Thus, each and every exemption case “stand[s] on its own facts” and, ultimately, how the parties present those facts.” *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004).
39. For each assessment year, the exemption is based on the use of the property during “the year that ends on the assessment date of the property.” I.C. § 6-1.1-11-3(c)(5). A taxpayer “must demonstrate that its property was owned, occupied, and predominately used for [an exempt] purpose during the relevant tax year (i.e., ‘the year that ends on the assessment date of the property’).” *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Board of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007). Furthermore, the Petitioner must prove that the building is predominately used for educational purposes more than 50% of the time. *New Castle Lodge #147 v. State Bd. of Tax Comm’rs*, 733 N.E.2d 36, 39 (Ind. Tax Ct. 2000), *affirmed by State Bd. of Tax Comm’rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002).
40. A taxpayer must demonstrate an educational purpose that confers “a public benefit justifying the loss in tax revenue.” *Dep’t of Local Gov’t Fin. v. Roller Skating Rink Operators Ass’n*, 853 N.E.2d 1262, 1265 (Ind. 2006). A public benefit is sufficient to

justify an educational exemption when the courses at issue correlate to those found in tax-supported schools and “to some extent” relieve the State’s burdens. *Trinity Sch. of Natural Health v. Kosciusko County PTABOA*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). The courses need not be identical to those taught in tax-supported schools. *Id.*, at 1238. A determining factor is whether the educational activities benefit the public, rather than the presenter. *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266. The exemption will be denied when the educational training is merely incidental to recreational and hobby activities. *Nat’l Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996).

41. The facts of *Roller Skating Rink Operators* most directly apply to the exemption claimed in the case at hand. 853 N.E.2d at 1262. The taxpayer was a nonprofit corporation that provided classes to roller skating rink operators and owners. *Id.* at 1263. Its purpose was to “inform, educate and foster the professional development of . . . roller skating rink owners and coaches.” *Id.* The curriculum included “study of hospitality, merchandising, customer service, personnel management, event planning and promotion, contracts and negotiations, risk management and legal issues, budgeting and finance, and advertising.” *Id.* The courses were “developed with the assistance of professors in recreational management” and participants were eligible for credit at the University of Wisconsin. *Id.* The taxpayer was self-described as a “trade association that serves skating center owner/operators.” *Id.* at 1264. In addition to educational courses, seminars, conventions, and trade fairs, the taxpayer had an overarching purpose to “foster the professional development of its members, create opportunities for networking and promote roller-skating as a lifetime sport and safe recreational activity.” *Id.*

42. Also of note, the taxpayer in *Roller Skating Rink Operators* was a separate nonprofit entity and detached from “USA Roller Skating,” a for-profit entity that provided “social and recreational activities for skaters.” *Id.* at 1263.

43. The Indiana Supreme Court applied the “public benefits” test: “a taxpayer must show an ‘educational purpose’ that confers a public benefit justifying the loss in tax revenue.” *Id.*

at 1265. Because, “in its broadest sense, ‘education’ comprehends the acquisition of all knowledge tending to develop and train the individual, . . . a more restrictive definition of ‘educational purposes,’ as concerns tax exemptions is required.” *Id.* at 1266. While “‘educational’ programs need not be the same as offerings of public schools and universities,” the courses should be offered to the public and not only those “largely or exclusively affiliated with the presenter.” *Id.* The Court summarized:

Education that primarily serves the private interests of an organization's members does not warrant public subsidy. It does not meet the "public benefit" test . . . .

*Id.* In doing so, the Supreme Court generally affirmed Tax Court and Court of Appeals precedent on educational exemptions.

44. The crux of the decision in *Roller Skating Rink Operators* was the finding by the Board that to “the extent any educational training is provided through [the taxpayer's] activities, it is *merely incidental* to the promotional activities of the organization.” *Id.* at 1266 (emphasis added). The Supreme Court reasoned:

Based on the evidence presented at the hearing before the State Board, we conclude that the State Board's conclusions that educational training is “merely incidental” to [the taxpayer's] promotional activities and does not confer a public benefit are supported by substantial evidence.

*Id.* However, the Court more broadly held that “programs of a trade association directed to the development of the private businesses of its members, though ‘educational’ in some sense, do not qualify for property tax exemption as educational activities.” *Id.* at 1263. Even though “the marketing and business concepts taught . . . are the same as those that are taught in business courses at tax-supported colleges and business schools, . . . the same could be said of the professional development and training provided by virtually any trade association.” *Id.* at 1266. The Board concludes that the typical educational activities offered by trade associations are not sufficient for an exemption.

45. It is uncontroverted that IIAI is a trade association organized to promote the interests of independent insurance agents. *Pet. Ex. 9; IIAI Articles of Incorporation*. It is similarly uncontroverted that IASC is a for-profit corporation engaged in the business of selling

“errors and omissions” insurance policies for both the benefit of IIAI’s members and the financing of IIAI’s operations. *Pet. Ex. 9; IASC Articles of Incorporation*. For the purposes of analysis of the use of the subject property, the Board will assume unity of ownership, occupancy, and use by IIAI and IASC.

46. The Board, based on *Roller Skating Rink Operators*, must start from the premise that the educational programs offered by a trade association to its members generally “do not qualify for property tax exemption as educational activities.” The burden is on the Petitioners to establish that the nature of their educational activities differs from “the professional development and training provided by virtually any trade association.”
47. The Petitioners argue that their activities pass the public benefits test because they ultimately fulfill the publicly beneficial and statutory purposes of insurance agent regulation. They rely on *Indiana Department of Insurance v. Zenith Re-Insurance Co., Ltd*, 583 N.E.2d 201, 205 (Ind. Ct. App. 1991) for the proposition that the regulation of insurance practice in the State of Indiana protects the public. Insurance agents are regulated and are required to satisfy pre-licensing and continuing education requirements. Also, IIAI is statutorily granted the right to recommend to the governor two persons to serve on the Education Advisory Council (the regulatory body that recommends the educational requirements to the Commissioner of the Department of Insurance). This evidence merely establishes that the members of the Petitioners’ trade union are engaged in a highly regulated industry. It also establishes that the Petitioners have been successful in lobbying and have acquired a large degree of influence over insurance regulation. It does not establish that the Petitioners’ efforts have the interests of the public, rather than its members, at heart. Nor do Petitioners establish how their trade union operates differently from other trade unions representing dozens of other state-regulated professions.
48. More persuasive is the Petitioners’ evidence regarding their actual educational activities. The Petitioners have established that they create curriculum and present courses for state mandated pre-licensure and continuing education. While the Petitioners are not

statutorily the exclusive provider of such services, they do provide an educational service to the public, in the absence of which, the state would have to provide. The primary focus is on statutory compliance rather than marketing or business development. The Petitioners have established that these courses are unique and differ from the types of professional development and training provided by virtually any trade association.

49. From the evidence presented by the Petitioners, the Board finds that the Petitioners' educational activities that are state mandated for pre-licensure and continuing education meet the standard for the public benefits test as outlined in *Roller Skating Rink Operators*.
50. The Board must next examine whether such educational use is the predominate use of the subject property. The Petitioners have appealed the denials of exemptions for assessment years 2008, 2010, and 2011. The Petitioners must show that the subject property, or a portion thereof, was used more than 50% of the time for exempt educational purposes during the periods of March 1, 2007, to March 1, 2008; March 1, 2009 to March 1, 2010; and March 1, 2010, to March 1, 2011.
51. The Petitioners argue generally that their daily activities at the subject property are predominantly focused on education. The subject property has a training facility that accommodates large groups for the classes it conducts. The property's office space is utilized to plan, schedule, and produce self-study, webinar, and live classes for attendees throughout the state. The business personal property at issue is used to further these educational activities. *Ronk testimony*. However, these are not the only activities conducted on the premises. The evidence also establishes that the Petitioners, like most trade associations, conduct many activities that are non-exempt: state and federal lobbying (or meetings with state or federal lobbyists), conventions, membership development, solicitation of contributions, political action committee matters, receptions, young agents organizations, general agency advice, selling "errors and omissions" policies, other non-exempt educational activities, etc. *Ronk testimony*. Because the subject property is utilized for a mix of exempt and non-exempt activities, the Petitioners



must produce evidence of the percentage of the subject property used for exempt purposes.

52. Mr. Ronk’s testimony for the Petitioners did not establish any bright line distinctions between exempt educational use and trade association use. No portion of the building was exclusively utilized for exempt educational purposes. No particular employees were solely engaged in exempt educational purposes. *Ronk testimony*. The building space allocation / employee time study itemizes use between IIAI and IASC, rather than educational versus non-exempt.<sup>1</sup> *Pet. Ex. 9*. The education report summarizes educational program participation, but does not indicate the educational use of the subject property relative to non-exempt use. *Pet. Ex. 10*.<sup>2</sup>

53. Mr. Ronk testified that the Petitioners “run programs . . . up to 130 days a year in that classroom.” But he did not testify as to how many days the classroom was used in each of the relevant time periods. Petitioners did not calculate the cumulative number of days scheduled for classes reflected in their exhibits. The Board notes that *Petitioners Exhibit 7* included a “2010 Education Calendar Attendance” which listed 77 days of courses in Indianapolis. Yet, *Petitioners Exhibit 9* suggests that only 64 days of courses occurred in Indianapolis.<sup>3</sup> Also, *Petitioners Exhibit 7* included a “2011 Education Calendar Attendance” which listed 80 days of courses in Indianapolis.<sup>4</sup> Similarly in *Petitioners Exhibit 7* was a “2008 Continuing Education Program Schedule” that included approximately 25 days of courses at the Indianapolis facility.<sup>5</sup> If any courses were presented at the subject property in 2009, no supporting documentation was presented. These documents do not clearly indicate whether the courses were conducted at the

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<sup>1</sup> The record contains no evidence as to when the study was conducted or whether it reflects the allocation of use during each of the relevant time periods.

<sup>2</sup> The educational report is for years 2008 and 2009, and references programs scheduled for 2010. Even had the report properly itemized exempt versus non-exempt classes, it still fails to reference the use during the applicable time periods for the years on appeal. Additionally, 2008 is blank under the categories “Programs- Indy Office” and “Total Attendees- Indy,” which appears to suggest there were no courses at the subject property in 2008.

<sup>3</sup> There appears to be no rhyme or reason as to the Petitioners’ placement of exhibits. Some calendars are in exhibit 7 while others are in exhibit 9. Each exhibit contains multiple documents with no sub-itemization or pagination, and no apparent relevancy to the other documents that share the same exhibit number.

<sup>4</sup> Only the courses during the months of January and February 2011 are in the relevant period for 2011.

<sup>5</sup> Only the courses during the months of January and February 2008 are in the relevant period for 2008.

subject property.<sup>6</sup> Moreover, these documents provide no guidance as to which courses were state-mandated for pre-licensure and continuing education. These exhibits fail to substantiate Mr. Ronk's testimony regarding how often the subject property is utilized for exempt purposes.<sup>7</sup>

54. The Petitioners had the burden of demonstrating the exempt use of the subject property relative to the total use of the subject property. Because the Petitioners failed to separate the wheat from the chaff, the Petitioners have not met their burden and the exemption statute will be strictly construed.
55. From the evidence presented, the Board cannot conclude that the Petitioners' predominate use of the subject property was for exempt educational purposes as defined in *Roller Skating Rink Operators*. Petitioners are therefore not entitled to an educational exemption.

### **Summary of Final Determination**

56. The evidence presented supports a finding that the Petitioners' real and personal property located at 3435 West 96<sup>th</sup> Street, Indianapolis in Marion County is not exempt on the grounds of educational use.

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<sup>6</sup> The Petitioners also included calendars and attendance for 2012 and 2013, which are irrelevant to the tax years at issue.

<sup>7</sup> The credibility of Petitioners' case is negatively affected when key portions of testimony involve Mr. Ronk counting days on a calendar and calculating allocations, evidently for the first time, from the witness stand.

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

Entered this date: July 3, 2014

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Commissioner, 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

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.