

REPRESENTATIVES FOR PETITIONER: Jack L. Tichenor, Vice-President for
Development of Oakland City University

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Oakland City University)	
)	
Petitioner	)	Petition No.: 26-016-98-2-8-00011
	)	County: Gibson
v.	)	Township: Columbia
	)	Property Parcel No.: 0160121800
Gibson County Board of Review	)	Assessment Year: 1997
and Columbia Township Assessor	)	Property Parcel No: 0160025400
	)	Assessment Year: 1997
Respondent	)	Property Parcel No: 0160096200
	)	Assessment Year: 1996
	)	Property Parcel No: 0160137300
	)	Assessment Year: 1999

Appeal from the Final Determination of
Gibson County Board of Review

March 26, 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

1. Pursuant to Ind. Code § 6-1.1-11-3, Oakland City University filed applications for property tax exemption (Form 136) with the Gibson County Board of Review. The application regarding parcel #0160121800 (the “student center site”) was filed on May 29, 1997. The application regarding parcel #0160096200 (the “Wilder Center”) was filed on May 14, 1996. The application regarding parcel #0160025400 (the “President’s residence”) was filed on March 3, 1997. The application regarding parcel #0160137300 (“student housing”) was filed on August 16, 1999.

2. Pursuant to Ind. Code § 6-1.1-11-7, Oakland City University filed a Form 132 petition petitioning the State Board to conduct an administrative review on the Board of Review action on the above-mentioned parcels. The Form 132 petition was filed with the Gibson County Auditor on October 1, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, and with proper notice, Hearing Officer Betsy Brand held an administrative hearing on March 16, 2001. No one was present on behalf of the Board of Review. Jack L. Tichenor, Vice-President for Development of Oakland City University, was present at the hearing on behalf of Oakland City University:

4. At the hearing, the following documents were entered into the record and labeled as Board exhibits:
Board Exhibit A – The Form 132 petition with the following attachments:
 - a. A copy of the Form 136 for parcel #0160025400 (“President’s residence”).

- b. A copy of the Form 136 for parcel #0160121800 (“student center site”).
- c. A copy of Form 5748, Required Information for Property Tax Exemption.
- d. A letter to the State Board from Jack L. Tichenor, Vice President for Development, Oakland City University.
- e. Appendix “A”:
 - 1. History of parcel #0160121800 (“student center site”).
 - 2. A copy of the action by the County Board of Review.
 - 3. A copy of the property record card.
 - 4. A copy of an Affidavit of Destroyed or Removed Property.
- f. Appendix “B”:
 - 1. History of parcel #0160096200 (“Wilder Center”).
 - 2. A copy of the action by the County Board of Review dated September 4, 1998.
 - 3. A copy of the property record card.
 - 4. A drawing of the “Wilder Center” floor plan.
- g. Appendix “C”:
 - 1. History of parcel #0160025400 (“President’s residence”).
 - 2. A copy of the action by the County Board of Review.
 - 3. A copy of the property record card
- h. Appendix “D”:
 - 1. History of parcel #0160137300 (“student housing”).
 - 2. A copy of the action by the County Board of Review.
 - 3. A copy of the property record card.

Board Exhibit B – The Notice of Hearing on Petition.

Board Exhibit C – A Request for Additional Evidence.

- 5. At the hearing, the following documents were entered into the record and labeled Petitioner’s exhibits:
 Petitioner’s Exhibit 1 – A copy of the Articles of Incorporation for Oakland City University.

Petitioner's Exhibit 2 – A copy of the Oakland City University By-Laws.

Petitioner's Exhibit 3 – Oakland City University catalogs for 1997-1999 and 1999-2002.

Petitioner's Exhibit 4 – A copy of an OCU Financial Statement for period ending May 31, 2000.

Petitioner's Exhibit 5 – A copy of a statement addressed to the State Board of Tax Commissioners dated October 1998.

Petitioner's Exhibit 6 – A document regarding the “update” of information for all properties of this appeal.

Petitioner's Exhibit 7 – A letter from the East Gibson School Corporation dated February 26, 2001.

Petitioner's Exhibit 8 – Information regarding Compassionate Care:

- a. Brochure of information.
- b. A copy of certification of 501(c)(3) status.
- c. A copy of a letter dated February 27, 1990 regarding tax exempt status.
- d. A copy of State Form 753, Not-for-Profit Tax Registration Certificate.
- e. Copies of Articles of Amendment to the Articles of Incorporation.

6. Although no one was present at the hearing to represent the County Board, Ms. Barnett, the Gibson county Assessor, submitted the following documents which were entered into the record and labeled Respondent's exhibits:

Respondent's Exhibit 1 – A letter from the Gibson County Assessor dated March 16, 2001 with enclosures:

- a. A property record card for parcel #0160070300 (not on appeal).
- b. A property record card for parcel #0160096200 (“Wilder Center”).

- c. A property record card for parcel #0160025400 (“President’s residence”).
 - d. A property record card for parcel #0160082600 (not on appeal).
7. At the hearing, the Hearing Officer requested that the Petitioner submit additional evidence on or before March 23, 2001. The Request for Additional Evidence is labeled Board Exhibit C and entered as evidence. The Petitioner complied with the request on March 20, 2001. The information is labeled Petitioner’s Exhibit 9 and entered as evidence.
8. On April 23, 2001 the Hearing Officer requested additional information regarding the date the Board of Review acted upon each exemption application and the date the Board of Review determination for each application was issued to the Petitioner. The information was requested by May 3, 2001. The letter was sent to the Gibson County Assessor with a copy to the Petitioner. The letter requested that all interested parties respond to the inquiry. Ms. Barnett responded to the request on April 27, 2001. Mr. Tichenor, OCU, did not respond to the letter. Ms. Barnett’s response is labeled Respondent’s Exhibit 2 and includes the following attachments:
 - a. Board of Review minutes dated September 4, 1998.
 - b. Form 133, Petition for Correction of Error for 1998 for various parcels.
 - c. Property record card for parcel 0160025400 (“President’s residence”).
 - d. Property record card for parcel 0160096200 (“Wilder Center”).
 - e. Property record card for parcel 0160137300 (“student housing”).
 - f. Property record card for parcel 0160140300 (parcel 0160121800 (“student center site”) was combined with this parcel).
9. Oakland City University is licensed by the State of Indiana and accredited by North Central Association of College & Schools. (Board Exhibit A.)

Statement of the Issue

10. The issue presented for the Board's review is:
Whether the land and improvements owned by Oakland City University (OCU) qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of educational purpose.

11. Oakland City University is seeking exemption from property taxation for the following properties that are the subject of this appeal:
 - a. Parcel # 0160121800, real property described in Appendix "A", is located at 726 College Street, Oakland City, Indiana and is intended to be the site of a student center. The property consists of a house, garage, and two sheds and .0523 acres of land. Oakland City University is seeking exemption from property taxation for the assessment year 1997 with taxes due and payable in 1998. For the assessment year under review, the assessed value for the improvement is \$17,300 and the assessed value for the land is \$830. The Board of Review determined this property to be one hundred percent (100%) taxable.

 - b. Parcel # 0160096200, real property known as the Wilder Center, is described in Appendix "B". The property is located on Indiana State Highway 64 at the west edge of Oakland City, IN. The property consists of an office building, fence and paving and 1.9942 acres of land. Oakland City University is seeking exemption from property taxation for the assessment year 1996 with taxes due and payable in 1997. For the assessment year under review, the assessed value for the improvement is \$98,360 and the assessed value for the land is \$3330. The Board of

Review determined this property to be fifty percent (50%) exempt and fifty percent (50%) taxable.

- c. Parcel #0160025400, real property described in Appendix “C”, is located at 628 West Oak Street, Oakland City, IN. The property consists of a residence and garage and Lots 4, 5, 6, 7, part 8, and part 9, Cockrum Estates. Oakland City University is seeking exemption from property taxation for the assessment year 1997 with taxes due and payable in 1998. For the assessment year under review, the assessed value for the improvement is \$15,630 and the assessed value for the land is \$1270. It is the residence of the Oakland City University President. The Board of Review determined this property to be one hundred percent (100%) taxable.

- d. Parcel #0160137300, real property described in Appendix “D”, is located at 626 College Street, Oakland City, IN. The property consists of an eight-unit apartment building and Lots 4, 5, and 6 BLK 3, West Enlg. Oakland City University is seeking exemption from property taxation for the assessment year 1999 with taxes due and payable in 2000. For the assessment year under review, the assessed value for the improvement is \$29,030 and the assessed value for the land is \$2970. The Board of Review determined this property to be one hundred percent (100%) taxable.

Testimony and Documents Presented to the State Board

- 12. Mr. Tichenor testified a Form 136 was filed for every property owned by Oakland City University. Regarding the date of the Board of Review determinations, Mr. Tichenor testified that “to his knowledge” the notices from the Board of Review

for all four properties under appeal were received simultaneously. He testified he then filed the appeal to the State Board on October 1, 1998.

13. The Form 132 filed in this case shows the date of assessment in this appeal is March 1, 1998. The Form 136 filed for parcel 0160096200 (“Wilder Center”) shows exemption claimed for 1996. The Forms 136 filed for parcels 0160121800 (“student center site”) and 0160025400 (“President’s residence”) show exemption claimed for 1997. The Form 136 filed for parcel 0160137300 (“student housing”) shows exemption claimed for 1999. Mr. Tichenor refused to testify regarding the assessment year under appeal.

Regarding Parcel #0160121800 (“student center site”)

14. Oakland City University contends parcel #0160121800 was purchased to make way for the construction of a new student center. Mr. Tichenor testified:
 - a. A faculty person was housed in the property prior to the demolition.
 - b. The action of the Board of Review took place while the person was living in the property.
 - c. It has since been razed and the student center has been constructed on the site. The affidavit of destroyed or removed property is included with the Petition. (Board Exhibit A, Appendix A, 4)
 - d. The student center was completed in May 2000.
15. Oakland City University became the owner of record for parcel #0160121800 on May 27, 1997 as evidenced in Petitioner’s Exhibit 9, item 3. The Form 136, Application for Property Tax Exemption was filed on May 29, 1997. The application shows the year filed for is 1997. The Action by the County Board of Review shows the exemption was denied on August 15, 1997. The Board of Review minutes show action on September 4, 1998. The Form 132, Petition to

the State Board of Tax Commissioners for Review of Exemption, was filed on October 1, 1998 with the Gibson County Auditor.

Regarding Parcel #0160096200 (“Wilder Center”)

16. Oakland City University contends the property known as the Wilder Center was donated to the university October 4, 1995. They contend the principal use is to provide offices and classroom space for the OCU School of Adult Degrees and Professional Studies. They contend Compassionate Care, a church related Adoption Agency and Counseling service, and the East Gibson School Corporation occupy portions of the space. Referencing Board Exhibit A, Appendix B, 4, Mr. Tichenor testified:
 - a. Currently OCU faculty and staff, in support of the school of adult degrees, occupy all of the building except the area colored green on the floor plan. The adult degree program is a part of the educational activities of Oakland City University.
 - b. The only change in the use of the building since the petition was filed is the East Gibson School Corporation ended its lease agreement on April 13, 2001 and has vacated their offices. (See Petitioner’s Exhibit 7).
 - c. The floor plan shows the area that was used by East Gibson School Corporation colored yellow.
 - d. The areas colored in green on the floor plan are used by an organization called Compassionate Care. The General Baptist founded OCU and Compassionate Care is a General Baptist entity and a 501(c)(3) organization. (See Petitioner’s Exhibit 8.)
 - e. Compassionate Care is an educational effort on the part of General Baptist to alleviate situations that relate to crises pregnancy and adoption proceedings. Compassionate Care provides a counseling service, conducts sessions to train potential housemothers, and provides individual sessions for those that are directly affected.

- f. The Board of Review erred in their determination that fifty percent (50%) of the assessment is exempt because OCU occupies more than fifty percent (50%) of the total area.
17. Oakland City University contends it became the owner of parcel #0160096200 on October 4, 1995. The Form 136, Application for Property Tax Exemption was filed on May 14, 1996. The application shows the year of filing as 1996. The County Board of Review signed their determination on September 4, 1998. The Board of Review allowed fifty percent (50%) exemption. The Form 132, Petition to the State Board of Tax Commissioners for Review of Exemption, was filed on October 1, 1998 with the Gibson County Auditor.
18. In Respondent's Exhibit 1, Ms. Barnett states the Wilder Center was donated to the university in 1995. She contends the exemption was denied (in part) because the university was renting space in the building to other parties.

Regarding Parcel #0160025400 ("President's residence")

19. Oakland City University contends the OCU President, James W. Murray, purchased Parcel #0160025400 in 1990. The property was renovated and sold to OCU in 1996 to be used as the University President's home. OCU contends providing housing to a University President is a necessary part of the educational process and is commonly found at most accredited colleges and universities in Indiana and throughout the U.S.A. Referencing parcel #0160025400, Mr. Tichenor testified:
 - a. The property is located in close proximity to the University.
 - b. With Board approval, the President used his own resources to purchase and renovate the property for sale to OCU.
 - c. When the renovations were complete the Trustees voted to acquire the property from Dr. Murray for use as the University President's home.

- d. The property is owned by the University and used for University purposes.
20. Oakland City University became the owner of record for parcel #0160025400 on May 24, 1996 as evidenced in Petitioner's Exhibit 9, item 4. The Form 136, Application for Property Tax Exemption was filed on March 3, 1997. The application shows the filing is for 1997. The Action by the County Board of Review shows the exemption was denied on August 15, 1997. The Board of Review minutes show action on September 4, 1998. The Board of Review did not allow exemption. The Form 132, Petition to the State Board of Tax Commissioners for Review of Exemption, was filed on October 1, 1998 with the Gibson County Auditor.
21. In Respondent's Exhibit 1, Ms. Barnett states Mr. Murray sold the house to the university in 1996. She contends the university then claimed an exemption on the parcel, which was denied. She claims the university currently owes delinquent property taxes on this parcel.

Regarding Parcel #0160137300 ("student housing")

22. Oakland City University contends this eight-unit apartment building was purchased in April 1998 to become housing for OCU students. Because of lease obligations, non-OCU students occupied three of the units at the time of the appeal. OCU contends that because it is the intent of OCU to convert all of the space to student housing it will be used for educational purposes and is therefore eligible to be declared tax-exempt. Referencing Parcel #0160137300, Mr. Tichenor testified:
- a. The property is located adjacent to other University owned property.
 - b. At the time the property was acquired there were tenants with existing leases.
 - c. All non-student leases were terminated when they expired.

- d. By April of 1999 the apartment building was used exclusively as University student housing.
23. Oakland City University contends it became the owner of parcel #0160137300 in April 1998. The Form 136, Application for Property Tax Exemption was filed on August 16, 1999. The application shows the year of filing is for 1999. The Action by the County Board of Review is not signed and does not show a date of the determination. The Board of Review minutes show action on September 4, 1998. The Board of Review denied the exemption. The Form 132, Petition to the State Board of Tax Commissioners for Review of Exemption, was filed on October 1, 1998 with the Gibson County Auditor.
24. In Respondent's Exhibit 1, Ms Barnett states that the Property Tax Assessment Board of Appeals never addressed Parcel #0160137300. She states that "according to our records" the property received an exemption.

Jurisdictional Framework

25. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
26. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

State Review and the Petitioner's Burden

27. 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 Board has the ability to decide the administrative appeal based upon the evidence presented.
28. In reviewing the actions of the County Board, the State Board 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).
 29. 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*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10)
 30. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board 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, n. 13 (Ind. Tax 1998)).
 31. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the taxpayer. Requiring the State Board 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*.
 32. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia 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).

33. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
34. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board 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

35. 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.
36. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, Oakland City University seeks exemption under Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).
37. 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 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.
38. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
39. 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).
40. 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 property would otherwise have paid, and this should never be seen as an inconsequential shift.
41. 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)).

42. 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).
43. As a condition precedent to being granted an exemption under the educational purpose clause of the statute, 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 1247 (Ind. 1991)).

Property Tax Exemption

44. Article 10, § 1 of the Constitution of Indiana reads:
- (a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal. The General Assembly may exempt from property taxation any property in any of the following classes:
- (1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

45. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. The provision that has been enacted under which exemption is being claimed is Ind. Code § 6-1.1-10-16, which reads, in pertinent part:

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

(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- i. a building which is exempt under subsection (a) or (b) is situated on it; and
- ii. the tract does not exceed:

(B) fifteen (15) acres in all other cases.

46. The character and purpose of the owner of property claiming exemption is not to be examined in property tax exemption claims, rather it is the character and purpose of the property itself that must be considered. As such, it is the use of the property that permits the exemption from property taxation. *State ex. rel Tieman v. City of Indianapolis*, 69 Ind. 375, 377 (1879).
47. The use of property in furtherance of an exempt purpose is the minimal limitation required for exemption given within the Indiana Constitution. This minimal limitation must be included in any legislation granting property tax exemption. However, legislature may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).
48. The legislature enacted legislation placing additional requirements for property tax exemption claims. The legislature enacted a provision that established the

statutory procedure pertaining to the application for exemption. The provision enacted is Ind. Code § 6-1.1-11-3, which reads in pertinent part:

- (a) The *owner* of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property is located. The application must be filed annually *on or before May 15* on forms prescribed by the state board of tax commissioners. Except as provided in sections 1, 3.5, and 4 of this chapter, the *application applies only for the taxes imposed for the year for which the application is filed.* (Emphasis added.)

- 49. The legislature enacted additional sections within Ind. Code § 6-1.1-11 that provide exceptions to Section 3 of Ind. Code § 6-1.1-11. These exceptions place specific requirements limiting the application for exemption. Two of these provisions are Section 3.5 and Section 1.
- 50. Section 3.5 of Ind. Code § 6-1.1-11 *specifically* addresses the application for exemption for property of a not-for-profit corporation. Section 3.5 establishes that, beginning in 1988, a not-for-profit corporation needs only to file an application for exemption in 1988 and every four years thereafter. Section 3.5 also provides that, if a not-for-profit corporation did not file application for exemption in 1988 or in a year that follows in a four year interval and was not exempt from taxation in the prior year, the not-for-profit corporation must file an application for exemption in the year for which exemption is sought.
- 51. Section 1 of Ind. Code § 6-1.1-11 provides that an “[e]xemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.”

52. Therefore, in exemption claims, the propriety of the application for exemption must be examined to insure that the owner of property who wishes its property to obtain property tax exemption has complied with the statutory procedures set forth regarding the filing of the application.

Conclusions Regarding Educational Purpose Claim

53. For purposes of an educational exemption, the term “education” is not restricted to academic curricula or to ivy covered halls. *State Board of Tax Commissioners v. Fort Wayne Sport Club*, 147 Ind. App. 129, 258 N.E. 2d 874 (1970).
54. To qualify for an education purpose exemption, Oakland City University must show that it “provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.” *NAME*, 671 N.E. 2d at 221 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 882).
55. “An 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.” *NAME*, 671 N.E. 2d at 222 (quoting *Fort Wayne Sport Club*, 147 Ind. App. at 140, 258 N.E. 2d at 881-82).
56. Accordingly, Oakland City University is required to affirmatively show that its activities fit into the general scheme of education provided by the State and supported by public taxation. The educational exemption is available if the organization makes a substantial contribution to the relief of the burden of government.

57. Oakland City University presented substantial evidence to show that its activities fit into the general scheme of education provided by the State and supported by public taxation. (See Petitioner’s Exhibits 1 – 5.) In their determinations the Board of Review did not question the educational purpose of Oakland City University. Rather, they based their determinations on the use of each parcel.

Conclusions Regarding the Exemption Claim for Parcel #0160121800
(“student center site”)

58. Before exploring the question of whether OCU meets the requirements set forth under Ind. Code § 6-1.1-10-16, the Board must first determine whether OCU statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
59. OCU maintains that the application for exemption meets the statutory filing date established under Ind. Code § 6-1.1-11-3 to achieve an exemption from property taxation for the taxes due and payable in 1998.
60. Property taxes that are assessed and imposed for a year are due and payable in two equal installments the following year. (See Ind. Code § 6-1.1-22-9.) Thus, property taxes that become due and payable in 1998 were assessed and imposed in 1997.
61. To repeat, an application for property tax exemption must be filed in the same year that property tax exemption is sought. Therefore, if OCU wished to have exemption from the property taxes assessed and imposed in 1997 then OCU was required to file an application for exemption on or before May 15, 1997. However, OCU filed an application for exemption on May 29, 1997 requesting property tax exemption for property taxes assessed and imposed in 1997. Thus

- the application for exemption was filed after the statutory deadline to achieve property tax exemption for the taxes assessed and imposed for 1997.
62. Again, an exemption is a privilege that may be waived if the owner of property does not comply with the statutory procedures for obtaining an exemption. OCU did not comply with the statutory filing date set forth under Ind. Code § 6-1.1-11-3 and -3.5 and has waived property tax exemption for the year 1997. As such, property tax exemption is denied and the subject property is wholly subject to property taxation for the year 1997 with the property taxes due and payable in 1998.
 63. Furthermore, *assuming arguendo* that OCU complied with the statutory filing date, Ind. Code § 6-1.1-11-3 also places a limitation on who has the authority to sign an exemption application to be filed. Section 3(b) of Ind. Code § 6-1.1-11 provides that, unless delegated by an executed power of attorney, *only* the owner of property may sign an exemption application when seeking property tax exemption.
 64. The owner of property for assessment and taxation purposes is the person who holds fee simple title to real property on the assessment date of March 1. *See* Ind. Code § 6-1.1-1-9 and Ind. Code § 6-1.1-1-2(1). As stated earlier in these findings, OCU purchased the subject property and obtained fee simple title to the subject property on March 27, 1997 and, therefore, could not have had fee simple title to the subject property on the assessment date March 1, 1997. OCU did not have the statutory authority to sign the exemption application filed in this matter because OCU was not, by statutory definition, the owner of the subject property for the year in question. In addition, there is no evidence in the record that the party who did have fee simple title on March 1, 1997 executed a power of attorney delegating the authority to OCU, or anyone else, to sign and file the application. As such, the application is not in compliance with the statutory filing

procedures set forth under Ind. Code § 6-1.1-11-3(b) and the exemption is waived. Therefore, the owner of the subject property has waived the exemption and the subject property is wholly subject to property taxation for the taxes assessed and imposed for the year 1997 that are due and payable in 1998.

65. Finally, the board will not examine the merits of the case or explore the educational nature of OCU in this matter. As stated in the above findings, OCU did not comply with the statutory procedures pertaining to the application for exemption. As such, the exemption has been waived and must be denied without delving into the issue of whether OCU is entitled to exemption pursuant to the cited statute.

Conclusions Regarding the Exemption Claim for Parcel #0160096200
("Wilder Center")

66. Before exploring the question of whether OCU meets the requirements set forth under Ind. Code § 6-1.1-10-16, the Board must first determine whether OCU statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
67. OCU maintains that the application for exemption meets the statutory filing date established under Ind. Code § 6-1.1-11-3 to achieve an exemption from property taxation for the taxes due and payable in 1997. The Form 136, Application for Property Tax Exemption was filed with Gibson County Auditor on May 14, 1996. The application was filed in compliance with statutory requirements to achieve property tax exemption for the taxes assessed and imposed for 1996. The Board of Review determination was signed on September 4, 1998. OCU filed the Form 132, Petition to the State Board for Review of Exemption on October 1, 1998 within the thirty (30) days required in IC 6-1.1-11-7.

68. Because of the statutory structure of Ind. Code § 6-1.1-10-16, Oakland City University's claim must be examined in two steps. Ind. Code § 6-1.1-10-16(a) addresses property tax exemption for a building owned, used, and occupied for an exempt purpose. Subsection (c) of Section 16 addresses property tax exemption for land; however, there are limitations placed upon the property tax exemption of land. Subsection (b) provides that, for land to be exempt from property taxation, a building, which is exempt, must be located on the land and the land cannot exceed the specified acreage. Therefore, the Board will separately address the property tax exemption claim for Oakland City University's buildings and land.
69. The test set forth under Ind. Code § 6-1.1-10-16 is whether the property is owned by an entity for an exempt purpose; whether the property is occupied by an entity for an exempt purpose; and whether the property is used by an entity for an exempt purpose. *Sangrilea, supra*. One of the purposes specified under Art. X, § 1 of the Constitution considered for property tax exemption is educational. Therefore, the question before the Board is whether the property under appeal is owned by Oakland City University for educational purposes; whether the property under appeal is occupied for educational purposes; and, whether the property under appeal is used for educational purposes.
70. Oakland City University claims that the property known as the Wilder Center qualifies for property tax exemption under the classification of educational. OCU maintains the principal use of the Wilder Center is to provide offices and classroom space for the OCU School of Adult Degrees and Professional Studies. They contend the areas not used by OCU are occupied by non-profit agencies that are also involved in educational endeavors; therefore one hundred percent (100%) of the property is eligible for tax-exempt status.

71. The Gibson County Board of Review determined that because space was rented to other agencies the property did not qualify for 100% tax exemption. The Board of Review allowed a fifty percent (50%) exemption.
72. In *Sangralea* the Tax Court found that Ind. Code § 6-1.1-10-16 does not require a single entity to own, occupy, and use a piece of property before it can be exempted from taxation. The act requires that property be dedicated to furthering educational purposes. As evidenced in the testimony of Mr. Tichenor and the documents submitted, Oakland City University's property does further educational purposes.
73. As stated previously, for property tax exemption, the property must be *predominantly* used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3. (Emphasis added.) Board Exhibit 1, Attachment B-4 shows that OCU occupied more than ninety percent (90%) of the subject building. Gibson County did not dispute the evidence presented by OCU nor were they present at the State Board hearing to explain the rationale of granting the fifty percent (50%) exemption allowed in their determination.
74. Oakland City University has passed the test set forth under Ind. Code § 6-1.1-10-16. The subject building is owned by OCU for an exempt purpose; the building is occupied predominately by OCU for an exempt purpose; and the building is used by OCU for an exempt purpose.
75. The subject building is located on 1.9942 acres of land that is owned by Oakland City University. In accordance with IC § 6-1.1-10-16(c)(B) the land is exempt from property taxation.

76. Therefore, for all of the above reasons, the property owned, occupied, and used by Oakland City University qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 and is wholly exempt from property taxation.

Conclusions Regarding the Exemption Claim for Parcel #0160025400

("President's residence")

77. Before exploring the question of whether OCU meets the requirements set forth under Ind. Code § 6-1.1-10-16, the Board must first determine whether OCU statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
78. OCU maintains that the application for exemption meets the statutory filing date established under Ind. Code § 6-1.1-11-3 to achieve an exemption from property taxation for the taxes due and payable in 1998. The Form 136, Application for Property Tax Exemption was filed with Gibson County Auditor on March 3, 1997. The application was filed in compliance with statutory requirements to achieve property tax exemption for the taxes assessed and imposed for 1997. The Board of Review minutes show action on September 4, 1998. OCU filed the Form 132, Petition to the State Board for Review of Exemption on October 1, 1998 within the thirty (30) days required in IC 6-1.1-11-7.
79. Because of the statutory structure of Ind. Code § 6-1.1-10-16, Oakland City University's claim must be examined in two steps. Ind. Code § 6-1.1-10-16(a) addresses property tax exemption for a building owned, used, and occupied for an exempt purpose. Subsection (c) of Section 16 addresses property tax exemption for land; however, there are limitations placed upon the property tax exemption of land. Subsection (b) provides that, for land to be exempt from property taxation, a building, which is exempt, must be located on the land and the land cannot

exceed the specified acreage. Therefore, the Board will separately address the property tax exemption claim for Oakland City University's buildings and land.

80. The test set forth under Ind. Code § 6-1.1-10-16 is whether the property is owned by an entity for an exempt purpose; whether the property is occupied by an entity for an exempt purpose; and whether the property is used by an entity for an exempt purpose. *Sangralea, supra*. One of the purposes specified under Art. X, § 1 of the Constitution considered for property tax exemption is educational. Therefore, the question before the Board is whether the property under appeal is owned by Oakland City University for educational purposes; whether the property under appeal is occupied for educational purposes; and, whether the property under appeal is used for educational purposes.
81. Oakland City University claims the residence of the President of the University qualifies for property tax exemption under the classification of educational. OCU maintains the property is owned by the University and used for University purposes.
82. The Board of Review disagreed with OCU and denied the application for exemption. The Board of Review determination states that the President “continues to live here, not educational”.
83. Oakland City University owns the property that is the subject of this appeal as evidenced in item 4 of Petitioner's Exhibit 9. The County does not dispute that the President of the University constructively occupies the residence. A residence for the President of a University can be viewed as reasonably necessary for the educational functions of the University.
84. Oakland City University has passed the test set forth under Ind. Code § 6-1.1-10-16. The subject building is owned by OCU for an exempt purpose; the building is

occupied predominately by OCU for an exempt purpose; and the building is used by OCU for an exempt purpose.

85. The subject building is located on lots 4, 5, 6, and 20' off the North end of Lots 7, 8, and 9 in the Cockrum Estate Addition. In accordance with IC § 6-1.1-10-16(c)(B) the land is exempt from property taxation.
86. Therefore, for all of the above reasons, the property owned, occupied, and used by Oakland City University qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 and is wholly exempt from property taxation.

Conclusions Regarding the Exemption Claim for Parcel #0160137300
("student housing")

87. Before exploring the question of whether OCU meets the requirements set forth under Ind. Code § 6-1.1-10-16, the Board must first determine whether OCU statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
88. OCU maintains that the application for exemption meets the statutory filing date established under Ind. Code § 6-1.1-11-3 to achieve an exemption from property taxation for the taxes due and payable in 2000. The State Board must disagree.
89. Property taxes that are assessed and imposed for a year are due and payable in two equal installments the following year. (*See* Ind. Code § 6-1.1-22-9.) Thus, property taxes that become due and payable in 2000 were assessed and imposed in 1999.
90. To repeat, an application for property tax exemption must be filed in the same year that property tax exemption is sought. Therefore, if OCU wished to have

exemption from the property taxes assessed and imposed in 1999 then OCU was required to file an application for exemption on or before May 15, 1999.

However, OCU filed an application for exemption on August 16, 1999 requesting property tax exemption for property taxes assessed and imposed in 1999. Thus the application for exemption was filed after the statutory deadline to achieve property tax exemption for the taxes assessed and imposed for 1999.

91. Again, an exemption is a privilege that may be waived if the owner of property does not comply with the statutory procedures for obtaining an exemption. OCU did not comply with the statutory filing date set forth under Ind. Code § 6-1.1-11-3 and -3.5 and has waived property tax exemption for the year 1999. As such, property tax exemption is denied and the subject property is wholly subject to property taxation for the year 1999 with the property taxes due and payable in 2000.
92. Furthermore, *assuming arguendo* that OCU complied with the statutory filing date, Ind. Code § 6-1.1-11-7 also places a limitation on the filing of the Form 132, Petition to the State Board of Tax Commissioners for Review of Exemption. Section 7(c) of Ind. Code § 6-1.1-11 provides that, within thirty (30) days after the notice of disapproval is mailed, the owner may, in the manner prescribed in IC, 6-1.1-15-3, petition the state board of tax commissioners to review the county property tax assessment board of appeals' determination.
93. In this case the Form 132, Petition to the State Board of Tax Commissioners for Review of Exemption, was filed with the Gibson County Auditor on Oct 1, 1998. The Form 136, Application for Property Tax Exemption, was filed with the Gibson County Auditor on August 16, 1999. OCU is seeking review of a Board of Review action even before the application for exemption was filed at the local level. As such, even if the application was in compliance with the statutory filing procedures, the petition for review does not comply with procedures set forth

under Ind. Code § 6-1.1-11-7(c) and the exemption is waived. Therefore, OCU has waived the exemption and the subject property is wholly subject to property taxation for the taxes assessed and imposed for the year 1999 that are due and payable in 2000.

94. Finally, the Board will not examine the merits of the case or explore the educational nature of OCU in this matter. As stated in the above findings, OCU did not comply with the statutory procedures pertaining to the application for exemption. Furthermore, OCU did not comply with the statutory procedures pertaining to the review of the Board of Review action on the exemption application. As such, the exemption has been waived and must be denied without delving into the issue of whether OCU is entitled to exemption pursuant to the cited statute.

Summary of Final Determination

Determination of ISSUE: Whether the land and improvements owned by Oakland City University (OCU) qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of educational purpose.

Parcel #0160121800 (“student center site”): 100% taxable for 1997 payable 1998. No change in the assessment.

Parcel #0160096200 (“Wilder Center”): 100% exempt for 1996 payable 1997. A change is made in the assessment.

Parcel #0160025400 (“President’s residence”): 100% exempt for 1997 payable 1998. A change is made in the assessment.

Parcel #0160137300 (“student housing”): 100% taxable for 1999 payable 2000. No change in the assessment.

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

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.