

REPRESENTATIVES FOR PETITIONER: Mr. V. Partenheimer, Attorney-at-Law and Mr. Jack L. Tichenor, Vice President for Development, Oakland City University

REPRESENTATIVES FOR RESPONDENT: Ms. Juanita Beadle, Gibson County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

OAKLAND CITY UNIVERSITY,)	
)	
Petitioner,)	
)	
v.)	Petition No. 26-007-01-2-8-00001
)	
)	County: Gibson
)	
GIBSON COUNTY PROPERTY TAX)	Township: Columbia
ASSESSMENT BOARD OF APPEALS,)	
)	Parcel No. 0160092900
Respondent.)	
)	Assessment Year: 2002 ¹

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

August 21, 2003

¹ Information contained in Board's Exhibits A and B raised a question regarding the assessment year under review. The Administrative Law Judge sought clarification from the parties, and after discussion, the parties agreed that the assessment year under review is 2002.

FINAL DETERMINATION

The Indiana Board of Tax Review,² having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is:

Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Oakland City University (the Petitioner) filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on September 12, 2002. The determination of the Gibson County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 14, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was held on May 22, 2003 in Princeton, Indiana, before Kay Schwade, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were present at the hearing:

² For convenience of reference, the Indiana Board of Tax Review is hereafter referred to as the "Board."

For the Petitioner:

Mr. V. Partenheimer, Attorney-at-Law;

Mr. Jack L. Tichenor, Vice President for Development for Oakland City University.

For the Respondent:

Ms. Juanita Beadle, Gibson County Assessor/Secretary of the PTABOA.

5. The following persons were sworn in as witnesses and presented testimony at the hearing:

For the Petitioner:

Mr. Jack L. Tichenor, Vice President of Development for Oakland City University.

For the Respondent:

Ms. Juanita Beadle, Gibson County Assessor/Secretary of the PTABOA.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A copy of a Final Determination, Form 118, issued by the Board on March 26, 2003;

Petitioner's Exhibit B – A copy of a land purchase contract between Oakland City University and the Shoultz Living Trust dated September 3, 1998.

For the Respondent:

No exhibits were presented.

7. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 132 petition with attachments;

Board Exhibit B – Notice of Hearing on Petition.

8. The Respondent did not present a list of witnesses and a list of testimony and evidence to be presented during the administrative proceedings to the Petitioner. The Petitioner elected to move forward with the proceedings providing that, should the Respondent present new information, the hearing would be continued to a later date allowing the Petitioner an opportunity to review the new information.
9. The real property at issue is a residential dwelling and land located at 615 College Street in Oakland City, Columbia Township, Gibson County. The property was held 100% subject to property taxation for 2002.

Jurisdictional Framework

10. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, 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.
11. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

State Review and Petitioner's Burden

12. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
13. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See*

Whitley Products, 704 N.E. 2d at 1119 (Ind. Tax. Ct. 1998), *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890, 893 (Ind. Tax Ct. 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

14. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018, 1024-1025 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
15. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See e.g., Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277 (Ind. Tax Ct. 2002).
17. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and

material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

18. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Indiana Constitution, Article 10, § 1.
19. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
20. In Indiana, the use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. Of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

21. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

22. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services 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. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
23. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
24. 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 exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of the Issue

Issue: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

25. The Petitioner contends that the property should be exempt because it is used to provide housing for a faculty member of Oakland City University, and that use allowed it to purchase the faculty member's former residence that it intends to use for an expansion project. *Tichenor testimony.*

26. The Respondent maintains that property tax exemption should be denied because the property is not used for student housing and the Petitioner receives monthly rent from the faculty member living at the property – unlike the exempt President’s Home which Petitioner does not receive rent for.

27. The applicable statutes and case law governing this issue are:

Indiana Code § 6-1.1-10-16

Property owned, used, and occupied for exempt purposes is exempt from property taxation.

Indiana Code § 6-1.1-10-36.3

To qualify for property tax exemption, property must be predominately used for an exempt purpose.

LeSea Broadcasting Corp. v. State Bd. of Tax Comm’rs, 525 N.E.2d 637 (Ind. Tax Ct. 1988)

Property that is predominantly used for purposes that are “reasonably necessary” for the maintenance of an entity’s exempt purpose is exempt from taxation.

Indiana University Foundation v. State Bd. of Tax Comm’rs, 527 N.E.2d 1166 (Ind. Tax Ct. 1988)

An apartment building used to house students, faculty, and staff was exempt to the percentage of the Foundation’s ownership of said building.

28. Evidence and testimony considered particularly relevant to this determination include the following:

- (a) The property was initially acquired for the purpose of married student housing. The property is currently used to provide housing for a faculty member at a monthly rent rate of \$350. *Tichenor testimony.*

- (b) The Petitioner deemed the need for housing a faculty member more immediate than the need for student housing. *Tichenor testimony.*
- (c) The need for faculty housing was deemed appropriate to facilitate the acquisition of another property necessary for campus expansion. The faculty member currently occupying the property owned the property necessary for the expansion project. The faculty member agreed to sell his property without delay if other living arrangements could be provided. *Tichenor testimony.*
- (d) The exemption was denied because the property was used as faculty housing rather than student housing. The PTABOA was uncertain whether exemption extended to housing for faculty members as it does with the President's Home. *Beadle testimony.*

Analysis of the Issue

Issue: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

- 29. The proper inquiry is whether the use of the property as faculty housing is “reasonably necessary” to accomplish the Petitioner’s educational purposes. *LeSea Broadcasting Corp. v. State Bd. of Tax Comm’rs*, 525 N.E.2d at 639. The question is one that must be answered based on the specific facts and circumstances of each case.
- 30. The property is owned by the Petitioner, an entity that is engaged in higher education.
- 31. Although the property was intended to be used for married student housing, it was occupied by a faculty member on the assessment date. Providing housing for students and faculty members has been found to be sufficiently in furtherance of an institution’s exempt purposes so as to justify an exemption. *See, e.g., Indiana University Foundation v. State Bd. of Tax Comm’rs*, 527 N.E.2d 1166 (Ind. Tax

1988); *State Bd. of Tax Comm'rs v. Int'l Business College, Inc.*, 251 N.E.2d 39 (Ind. Ct. App. 1969).

32. The faculty member resides there temporarily under a special arrangement with the Petitioner that allowed it to purchase the faculty member's former residence for an expansion project. *Tichenor testimony*. The faculty member would not have sold his former residence to the Petitioner if the Petitioner had not provided immediate housing for him. Thus, providing temporary housing for the faculty member was reasonably necessary to facilitate the Petitioner's expansion project,³ and thereby further its educational purposes.
34. Accordingly, the Board finds that the Petitioner's use of the property as both housing for the faculty member, and as a tool to expedite its expansion project, is reasonably necessary to further the Petitioner's educational purposes.
35. The Petitioner has established a prima facie case regarding the exemption claim. The property is determined to be 100% tax exempt.

Summary of Final Determination

Determination of Issue: *Whether the property qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

The Petitioner established a prima facie case regarding the exemption claim. The property is 100% tax exempt.

³ The record reflects that Petitioner will use the parcel formerly owned by the faculty member for educational purposes. Tichenor testified that the residence was razed and construction has begun on a new administration building.

The above stated findings of fact and conclusions of law 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 21st day of August, 2003.

Commissioner, 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.