

REPRESENTATIVES FOR PETITIONER:

Robert A. Hicks, HALL, RENDER, LILLIAN, HEATH & LYMAN, P.S.C.

REPRESENTATIVES FOR RESPONDENT:

Charles K. Todd, Jr., TODD LAW OFFICE

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

REID HOSPITAL AND HEALTH)	
CARE SERVICES, INC.)	Petition Number: 89-012-02-2-5-00012C
)	
Petitioner,)	County: Wayne
)	
v.)	Township: Wayne
)	
WAYNE COUNTY PROPERTY)	Parcel Number: 029-02836-04
TAX ASSESSMENT BOARD)	
OF APPEALS,)	Assessment Year: 2002
)	
Respondent.)	

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

September 13, 2005

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Issue: Should the exemption application that was filed for 2002
have been considered as an application for 2003?**

Procedural History

1. Pursuant to Ind. Code § 6-1.1-11-7 Robert A. Hicks, attorney, Hall, Render, Killian, Heath & Lyman, P.S.C., filed a Form 132, Petition for Review of Exemption, on behalf of Reid Hospital and Health Care Services, Inc. (the “Petitioner”) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on October 7, 2003. The determination of the PTABOA was issued on September 8, 2003.

Hearing Facts and Other Matters of Record

2. This property was originally scheduled for hearing along with three other properties owned by the Petitioner for May 26, 2004. On May 10, 2004, the Board received a request for a continuance regarding all four petitions. The Board granted that request.
3. A hearing was rescheduled for November 3, 2004. Prior to that hearing the parties again requested a continuance so they could continue discussions regarding a settlement. On January 21, 2005, the Board sent a letter requesting a case status report.
4. On February 10, 2005, the parties responded. The parties had reached a stipulation on three of the four petitions. The parties agreed the most expeditious way to resolve the remaining petition was to submit a Joint Stipulation regarding the facts and request for a Final Determination without a hearing.
5. On February 11, 2005, the Board agreed to issue its Final Determination based on the Joint Stipulation. The Board gave the parties until April 4, 2005, to submit the Joint Stipulation and briefs.

6. On March 31, 2005, the Board received a Joint Stipulation and Request for Ruling from the parties. Notwithstanding the Board's specific request, neither party submitted a brief.
7. The following items are officially recognized as part of the record of proceedings:
 - A – Form 132 Petition,
 - B – Joint Stipulation and Request for Ruling.
8. The following matters or facts were stipulated and agreed by the parties:
 - A. On March 13, 2002, Petitioner purchased a parcel of unimproved land consisting of approximately 0.808 acres (the "Property"). The tax parcel map number assigned to the Property by the Wayne County Assessor is 46-21-101.040-29 and the tax identification number assigned to the Property by the Wayne County, Indiana Assessor is 0290283604.
 - B. Petitioner purchased the Property as part of Petitioner's new hospital campus and the Property meets the statutory requirements for property tax exemption found at Ind. Code Section 6-1.1-10-16(d).
 - C. On May 8, 2002, Petitioner filed an application for property tax exemption ("Exemption Application") for the Property. The Exemption Application indicated that the year for which Petitioner sought exemption for the Property was 2002.
 - D. On September 8, 2003, the Respondent denied the Exemption Application for 2002 on the basis that Petitioner did not own the Property on the 2002 assessment date (i.e., March 1, 2002). Petitioner agrees that, because it was not the owner on the assessment date, it is not entitled to an exemption for the Property for 2002. However, Petitioner requested that the PTABOA consider the Exemption Application as timely filed for the 2003 tax year. Respondent denied Petitioner's request and seeks to tax the Property for the 2003 tax year.

Jurisdictional Framework

9. 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.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-5-5.

Administrative Review and the Petitioner's Burden

11. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
13. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Constitutional and Statutory Basis for Exemption

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.

15. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the 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) (non-profit status does not 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. New Castle Lodge, Loyal Order of Moose*, 765 N.E.2d 1257, 1263 (Ind. 2002); *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

17. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
18. 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, which is 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, National Association of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
19. The transfer of this obligation to non-exempt properties by the granting of an exemption should never be seen as inconsequential. This consequence is the reason that worthwhile activities or noble purposes alone are not enough for tax exemption. Exemption is granted when there is an expectation that a benefit 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).

20. Anyone seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that its use falls specifically within the statutory authority for exemption. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (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).

Analysis

21. The Petitioner contends that the 2002 Exemption Application should have been applied by the Respondent to the 2003 exemption year. The Petitioner believes that principles of equity and fairness require this result because the Petitioner did not receive notice from the Respondent that the Exemption Application had been denied until after the filing deadline, May 15, 2003. Petitioner contends that it would have been able to timely file an Exemption Application had it received notice of the denial prior to May 15, 2003. Petitioner states their technical mistake of filing the Exemption Application before the year for which it qualified for the exemption should not deprive Petitioner of the exemption for 2003. The Petitioner argues this is especially true when, as here, the Respondent is not prejudiced because as it had ample notice that Petitioner claimed exemption.
22. The Respondent contends that the plain language of Ind. Code §6-1.1-11-3(a) requires that an exemption application be filed in the year for which the exemption is sought.
23. The applicable laws governing this issue are:
- Ind. Code § 6-1.1-11-3(a):** Provides in pertinent part that an exemption "... application must be filed annually on or before May 15 ..." Such section also provides that "Exempt as provided in sections 1, 3.5, and 4 ... the application only applies for the taxes imposed for the year in which the application is filed."
- Ind. Ind. § 6-1.1-11-3.5(a):** Provides that: "A not-for-profit corporation that seeks an exemption provided by IC 6-1.1-10 for 2000 or for a year that follows

2000 by a multiple of two (2) years must file an application for the exemption in that year. However, if a not-for-profit corporation seeks an exemption provided by IC 6-1.1-10 for a year not specified in this subsection and the corporation did not receive the exemption for the preceding year, the corporation must file an application for the exemption in the year for which the exemption is sought.”

24. The sole issue in this case is whether the exemption application filed for tax year 2002 should be considered as an exemption application for 2003. The procedure for filing an exemption application is governed by Ind. Code §6-1.1-11.
25. The parties have not cited any authority governing a similar set of facts. Accordingly, the Board must determine the intent of the legislature in arriving at its decision.
26. The foremost goal of statutory construction is to determine and give effect to the true intent of the legislature. *Caylor-Nickel Clinic, P.C. v. Indiana Dep’t of Revenue*, 569 N.E.2d 765, 768 (Ind. Tax Ct. 1991) (citations omitted). To accomplish this task, statutory words and phrases must be given their plain, ordinary, and usual meaning. The statute must be read as a whole, and not in sections or parts of it piecemeal. *Roehl Transp., Inc. v. Indiana Dep’t of Revenue*, 653 N.E.2d 539, 543 (Ind. Tax Ct. 1995) (citations omitted).
27. In statutory construction, it is just as important to recognize what the statute does not say as it is to recognize what it does say. *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, 775 N.E.2d 720, 723 (Ind. Tax Ct. 2002) citing *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 654 (Ind. Ct. App. 1996).
28. Indiana Code § 6-1.1-11-3 states that an exemption application must be filed annually. This fact would seem to mandate an exemption application to be filed each year an entity seeks an exemption.
29. Nevertheless, Ind. Code § 6-1.1-11-3.5 is an exception to the annual requirement. A not-for-profit corporation must only file an exemption application in even numbered years.

The section requires an exemption application from a not-for-profit if they were not exempt the preceding year. In the present case, the parties have agreed that the property is not entitled to an exemption for tax year 2002.

30. In the current situation, the original exemption application sought an exemption for tax year 2002. Both parties agree that the Petitioner was not the owner of record on the assessment date in 2002 and therefore cannot seek an exemption for that year.
31. The deadline to file for an exemption in any year is May 15 of the year for which the exemption is sought. The Petitioner timely filed the exemption application for 2002 (filed on May 8, 2002). The Petitioner did not file an exemption application for 2003.¹
32. The exemption applications must be filed annually. There is an exception for not-for-profit corporations once their application is approved. Until the exemption is approved, however, annual filings should continue.²
33. The Legislature did not add any language indicating an exemption application should carry over to the following year in a case such as this. The most analogous situation covered by statute is in dealing with a taxpayer seeking review of an assessment. In that case, the Legislature clearly states that a late-filed challenge should be viewed as a challenge for the next assessment date. *See* Ind. Code §6-1.1-15-1(d). There is no such language in the exemption procedure. Ind. Code § 6-1.1-11.
34. The Petitioner argues that this situation was made worse because the Respondent unnecessarily delayed their decision for the 2002 tax year. The Petitioner did not receive notice that the exemption was denied until after the time for filing for 2003 had passed.

¹ The Petitioner could have chosen to file an application for 2003 prior to receiving the ruling from the Respondent, thus protecting their rights. It did not do so.

² In Indiana, status as a not-for-profit corporation does not alone entitle an entity to an exemption from property taxes.

35. There are no statutory deadlines on the Respondent for ruling on exemption applications. The timing of the decision regarding the 2002 tax year does not change the outcome for the 2003 tax year.
36. Finally, the Board does not have jurisdiction over the 2003 assessment year in the present case. For the Board to acquire jurisdiction, there must be a decision from the Respondent regarding the 2003 exemption application. Nothing presented by either party indicates that an exemption application was filed for tax year 2003, that the Respondent issued a decision regarding the 2003 tax year, or that a Petition for Review of Exemption has been filed with this Board for the 2003 tax year. Without such, the Board does not have jurisdiction. Ind. Code § 6-1.5-4-1(a).

Conclusion

37. The Petitioner filed an exemption application for tax year 2002. That exemption was not granted. The Petitioner failed to file an exemption application for 2003. The Respondent is not required to consider the exemption application filed for tax year 2002 as an application for 2003 as well. The Board finds in favor of the Respondent.

The Indiana Board of Tax Review issues this Final Determination on the date first written above.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.