

REPRESENTATIVE FOR PETITIONER:

Guile Cox and Scott Craig, Cox Zwerner Gambill & Sullivan, LLP

REPRESENTATIVE FOR RESPONDENT:

Deborah Lewis, Vigo County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

ROSE-HULMAN INSTITUTE,)	Petition No.: 84-009-10-2-8-00001
OF TECHNOLOGY ,)	
)	Parcel No.: 84-07-17-400-002.000-009
Petitioner,)	
)	County: Vigo
v.)	
)	Township: Lost Creek
VIGO COUNTY ASSESSOR)	
)	
Respondent.)	Assessment Year: 2010

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

November 7, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

Introduction

1. Rose-Hulman did not timely file an exemption application for the 2010 assessment year. This appeal therefore turns on whether Rose-Hulman can take advantage of Ind. Code § 6-1.1-11-4(d), which excuses a taxpayer from having to continue to apply for an

exemption where (1) the taxpayer has properly filed an application based on educational use under Ind. Code § 6-1.1-10-16 at least once, and (2) the property continues to be used for educational purposes. Because Rose-Hulman met those two requirements, the Board finds that the subject property was entitled to an exemption.

Background and Procedural History

2. The Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 120 Notice of Action on Exemption Application in which it denied Rose-Hulman an exemption for the March 1, 2010 assessment date. Rose-Hulman then timely filed a Form 132 petition asking the Board to review the PTABOA’s determination. In that petition, Rose-Hulman listed the assessment date under appeal as 2009. Rose-Hulman acknowledged that it had missed the statutory deadline for filing its exemption application by one day, but claimed that the delay was attributable to the Assessor’s office having given Rose-Hulman incorrect information about the property.
3. On July 20, 2011, Rose-Hulman filed an amended Form 132 petition. In that amended petition, Rose-Hulman corrected the assessment date under appeal to March 1, 2010. Rose Hulman also added an argument that it was not required to file an exemption application for 2010.¹
4. The Board has jurisdiction over Rose-Hulman’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1. On August 9, 2011, the Board’s Administrative Law Judge, David Pardo (“ALJ”), held a hearing on Rose-Hulman’s appeal. Neither the Board nor the ALJ inspected the subject property.
5. The following witnesses testified under oath: Lori Vearrier, senior accountant for Rose-Hulman, and Deborah Lewis, Vigo County Assessor.

¹ Although Rose-Hulman filed its amended petition fewer than 15 business days before the hearing, the Assessor consented to the amendments at the hearing.

6. Rose-Hulman submitted the following exhibits:

- Petitioner Exhibit 1: Form 136 Application for Property Tax Exemption for March 1, 2004, with attached Rose-Hulman Institute of Technology Property Holdings Detail
- Petitioner Exhibit 2: Form 136 application for subject property (Page 1 of 5)
- Petitioner Exhibit 3: Copy of certified mail return receipt
- Petitioner Exhibit 4: Aerial map with information for the subject property
- Petitioner Exhibit 4A: Color aerial map with information for the subject property and with buildings circled in red and yellow ink
- Petitioner Exhibit 5: E-mails (2 pages) between and among Lori Coronell, Robert Coons, Matthew Davis, Guille Cox and Cindy Cox
- Petitioner Exhibit 6: Copies of cards from plat mapping
- Petitioner Exhibit 7: May 26, 2010 letter from Erica McWilliams of Hendrich Title Company to Guille Cox
- Petitioner Exhibit 8: Property record card for the subject property
- Petitioner Exhibit 9: Printout from Rose-Hulman's website regarding Skinner Hall
- Petitioner Exhibit 10: 2006-2007 Undergraduate Bulletin "Programs – Aerospace Studies (Air Force ROTC)"

7. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Copy of envelope postmarked 5/18/2010
- Respondent Exhibit 2: Form 136 application for the subject property (Page 1 of 5)
- Respondent Exhibit 3: Form 136 application for Parcel No. 84-07-400-002.000-009 listing March 1, 2007 assessment date (page 1 of 5); Form 136 application for Parcel No. 84-07-400-005.000-009 listing March 1, 2007 assessment date (page 1 of 5)
- Respondent Exhibit 4: Form 136 application for Parcel Nos. 114-10-07-200-011, 113-10-07-400-002, and 114-10-07-200-012 listing 2006 as year of filing (1 page); Form 136 application listing 2006 as year of filing (1 page) with attached Rose-Hulman Institute of Technology Property Holdings Detail
- Respondent Exhibit 5: Copy of Ind. Code §§ 6-1.1-10-20 through -23

8. The Board recognizes the following additional items as part of the record:

- Board Ex. A: Form 132 petition
- Board Ex. B: Amended Form 132 petition
- Board Ex. C: Hearing notice
- Board Ex. D: Hearing sign-in sheet

Findings of Fact

9. Rose-Hulman is a private science and engineering college with about 2000 students. *Vearrier testimony*. The subject property is a 6.35-acre tract on Rose-Hulman's campus. *See id; Pet'r Ex. 7*. Although the property actually contains five buildings, three of those buildings are separately assessed under different parcel numbers. *Vearrier testimony; Pet'r Exs. 4A, 7*. Thus, the subject property is assessed as having two buildings: Skinner Hall, and an ROTC building. *Vearrier testimony; Pet'r Exs. 4A, 5*. Skinner Hall is a student residence consisting of three-bedroom air-conditioned apartments. *Vearrier testimony*. The ROTC building is used to hold classes and meetings and for storage. *Id.; Pet'r Ex. 10*.
10. Before 2008, what is now the subject property was assessed under two separate parcel numbers: 84-07-17-400-002.000-009 ("Parcel 002") and 84-07-17-400-005.000-009 ("Parcel 005"). *Vearrier testimony; Pet'r Exs. 1, 7*.² Parcel 002 had 5.35 acres but was not assessed for any improvements while Parcel 005 had one acre and was assessed for improvements. *Id.*
11. From at least 2004 forward, Rose-Hulman applied for and received exemptions for Parcels 002 and 005. *Vearrier testimony*. In 2004, Rose-Hulman filed a single Form 136 application for 17 parcels, including Parcels 002 and 005. *Pet'r Ex. 1*. Where the application calls for a taxpayer to specify the use or purpose for which it claims an exemption, Rose-Hulman checked the box for "Educational – pursuant to IC 6-1.1-10-16," and also wrote "6.1-1-10-20 Technical College Incorporated in Indiana." *Id.* In 2006, Rose Hulman similarly applied for and received an exemption for 17 parcels. *See Lewis testimony; see also Resp't Ex. 4*. On that application, however, Rose-Hulman did not check the box for "Educational – pursuant to IC 6-1.1-10-16" and instead referred only to IC 6-1.1-10-20. *Id.* In 2008, Rose-Hulman filed separate applications for each parcel. *Lewis testimony; see also Resp't Ex. 3*. In its applications for Parcels 002 and

² Sometime between 2004 and 2007, Vigo County apparently changed its numbering system. Before the two parcels were identified as 1-20-07174000002 and 1-20-07174000005. *See Pet'r Ex. 1; see also, Lewis testimony*.

005, Rose-Hulman again failed to check the box for “Educational – pursuant to IC 6-1.1-10-16” and referred only to IC 6-1.1-10-20. *Id.*

12. In 2008, Dave Dillon of Vigo County’s plat mapping department combined Parcels 002 and 005 under the parcel number for Parcel 002. *Vearrier testimony; Pet’r Exs. 6-7.* Mr. Dillon, however, apparently did not notify anyone at Rose-Hulman that the parcels had been combined. Lori Vearrier, a senior accountant for Rose-Hulman, first noticed a discrepancy when she began preparing Rose-Hulman’s exemption applications for 2010. *Vearrier testimony.* Parcel 002, which previously had only 5.35 acres had not been assessed for any improvements, now had more acreage and improvement assessment of \$225,000. *Id.* Ms. Vearrier spoke to Matt Davis, Rose Hulman’s controller, to find out what had happened. *Id.* Davis did not know of any recent construction, so he and Ms. Vearrier decided to call the Assessor’s office. *See id.* Someone in that office told Ms. Vearrier that a deed had been recorded in March 2009 splitting off one acre of land and an apartment building that previously had been owned by, and assessed to, ATO fraternity. *Id.; Pet’r Ex. 5.*
13. Because Ms. Vearrier and other Rose-Hulman employees could not identify any transaction that might have caused Parcel 002’s assessment to change, they contacted Rose-Hulman’s lawyers, who in turn hired Hendrich Title Company to investigate. *Vearrier testimony; Pet’r Exs. 5, 7.* Ultimately, Hendrich Title determined that Parcels 002 and 005 had been consolidated. *Id.* Ms. Vearrier found out about the consolidation from Davis on Thursday, May 13 or Friday, May 14, 2010. *Vearrier testimony; see also Pet’r Ex. 5.*
14. Upon learning of the consolidation, Ms. Vearrier promptly completed an exemption application for the subject property. *Vearrier testimony.* She drafted the application for the signature of Robert Coons, Rose-Hulman’s chief financial officer and vice president of finance, and placed the application secretary’s in-box. *Id.* Ms. Vearrier received the signed application on Monday, May 17, 2010. *Id.* At 3:00 p.m. that day, she put the application in a mail bin in Moench Hall where she brought most of her outgoing mail.

Id. Because there was a sign by the bin saying that mail would be picked up at 4:00 p.m., Ms. Vearrier expected the application to be postmarked that day. *Id.* Although Ms. Vearrier did not know it at the time, mail goes from that bin to Rose-Hulman’s central mail facility where it is then picked up by United States Postal Service. *Id.* Thus, there is no guarantee that mail dropped in the bin will be postmarked the same day. *Id.* In this case, the subject property’s exemption application was not postmarked until the next day, May 18, 2010. *Id.*; *see also Resp’t Ex. 1.*

Conclusions of Law and Discussion

15. Generally, all tangible property in Indiana is taxable. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004)(citing Ind. Code § 6-1.1-2-1). The legislature, however, has exercised its constitutional power to exempt certain types of property. Thus, for example, the legislature enacted Ind. Code § 6-1.1-10-16—one of the two statutes under which Rose-Hulman claims an exemption in this case. When read together with Ind. Code § 6-1.1-10-36.3, Ind. Code § 6-1.1-10-16 exempts all or part of a building that is owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a) (2011 supp.); I.C. § 6-1.1-10-36.3(c)(4) (2010 repl. vol.) (“Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.”). That exemption also generally extends to a tract of land, including the campus and athletic grounds of an educational institution, on which an exempt building sits. I.C. § 6-1.1-10-16 (c)(1) (2011 supp.); *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1015. Similarly, Ind. Code § 6-1.1-10-20 exempts a college’s real property that is used and occupied for the purposes that the college was incorporated for. Regardless of the type of property at issue or the statutory grounds for exemption, a taxpayer bears the burden of proving that its property is exempt. *Indianapolis Osteopathic Hospital*, 818 N.E.2d at 1015.
16. The Assessor does not appear to dispute that the subject property was owned, occupied, and predominately used for an exempt purpose. Indeed, the limited evidence about how

the two buildings were used—housing students and providing classes, meeting and storage for the ROTC—shows that the buildings were owned, occupied, and predominately used for educational purposes. *See State Bd. of Tax Comm'rs v. International Business College, Inc.*, 145 Ind. App. 353, 251 N.E.2d 39, 44-45 (holding that a dormitory was used and set apart for educational purposes). And there is no dispute that the property was used and occupied for the purposes that Rose-Hulman was incorporated for. Indeed, the PTABOA continuously exempted Parcels 002 and 005 since at least 2004. And the parcels' use did not change; the only thing that changed was the county's unilateral decision to consolidate the parcels.

17. Rather than disputing the subject property's exempt use, the Assessor claims that Rose-Hulman failed to timely file its Form 136 application for 2010. The Assessor correctly recognizes that an exemption is a privilege that a taxpayer may waive by failing to comply with the statutory procedures for obtaining it. I.C. § 6-1.1-11-1 (2010 repl. vol.). Generally, a property owner must file a written application on or before May 15 of the year for which it seeks an exemption, or in the case of a not-for-profit entity seeking to continue an exemption previously granted under Ind. Code § 6-1.1-10, on or before May 15 of every even-numbered year. *See* I.C. § 6-1.1-11-3(a) (2010 repl. vol.); I.C. § 6-1.1-11-3.5(a) (2010 repl. vol.). There is no dispute that Rose-Hulman failed to meet that deadline; the subject property's Form 136 application was postmarked May 18, 2010.

18. But there are exceptions to that general rule. Thus, as Rose-Hulman points out, Ind. Code § 6-1.1-11-4(d) provides, in relevant part

The exemption application referred to in section 3 or 3.5 of this chapter is not required if:

(1) the exempt property is:

....

(C) [T]angible property owned, occupied, and used by a person for educational . . . purposes described in IC 6-1.1-10-16;

....

(2) the exemption application referred to in section 3 or 3.5 of this chapter *was filed properly at least once* for . . . an educational . . . use under IC 6-1.1-10-16 . . . ; and

(3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16

I.C. § 6-1.1-11-4(d) (2011 supp.).

19. Rose-Hulman filed an exemption application for Parcels 002 and 005—the two parcels that now make up the subject property—in 2004. And that application was granted. The Assessor counters that the 2004 application was for 17 parcels and that Rose-Hulman cited two statutes—Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-20—as grounds for an exemption without specifying which statutory ground applied to which parcel. And that is important because Ind. Code § 6-1.1-10-20 is not one of statutes listed in Ind. Code § 6-1.1-11-4(d). In a similar vein, the Assessor argues that Rose-Hulman did not “properly” apply for an exemption because the rules required a separate application for each parcel. In any event, the Assessor contends that the 2004 application cannot save Rose-Hulman because Rose Hulman’s next two applications (2006 and 2008) relied solely on Ind. Code § 6-1.1-10-20, without even mentioning Ind. Code § 6-1.1-10-16.
20. The Board disagrees with the Assessor. First, because Rose-Hulman did not expressly limit its exemption request for any particular parcel to a single statutory ground, its 2004 application should be read as claiming that all 17 parcels were exempt under both statutes. And there is no evidence that the PTABOA limited any parcel’s exemption to one or the other statutory ground. Indeed, as explained above, the subject property qualifies under both statutes.
21. Second, the Assessor failed to offer any authority for her claim that Rose-Hulman’s 2004 application was not “properly filed.” At the time Rose-Hulman filed that exemption application, Indiana Code § 6-1.1-11-3 did not explicitly require a separate petition for each parcel. *See* I.C. § 6-1.1-11-3 (2004). Similarly, the Form 136 application itself did not notify taxpayers of such a limitation. *Pet’r Ex. 1*. In any event, given that the PTABOA accepted Rose-Hulman’s application, the Board finds that Rose-Hulman substantially complied with statutory and administrative filing requirements.

22. Third, the fact that Rose-Hulman cited only to Ind. Code § 6-1.1-10-20 in its next two applications (2006 and 2008) does not deprive Rose-Hulman of Ind. Code § 6-1.1-11-4(d)'s benefits. That statute simply requires an application to have been filed "at least once" for an educational purpose under Ind. Code § 6-1.1-10-16. Rose-Hulman's 2004 application therefore suffices.
23. Because (1) Rose-Hulman properly filed an application based on educational use under Ind. Code § 6-1.1-10-16 at least once, and (2) the subject property continues to be used for educational purposes, Rose Hulman was entitled to an exemption in 2010 regardless of whether it applied for one. The Board therefore need not address Rose-Hulman's contentions that its application actually was timely because it left Ms. Vearrier's hand on Monday, May 17, 2010, or, alternatively, that the Board should make an exception to the filing deadline because local officials contributed to Rose-Hulman missing the deadline.

SUMMARY OF FINAL DETERMINATION

24. The subject property was owned, occupied, and predominately used for educational purposes. Because Rose-Hulman was not required to apply for an exemption in 2010, the fact that it filed its application after the statutory filing deadline is inconsequential. The Board therefore finds that the subject property was exempt from taxation for the 2010 assessment year.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>