

REPRESENTATIVES FOR PETITIONER: Jeffery Lorenzo, Deputy City Attorney

REPRESENTATIVES FOR RESPONDENT: Brian Tidd, Member, Board of Review & Jackson County Auditor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

SEYMOUR MUNICIPAL AIRPORT AUTHORITY,)	Petition No.: 36-009-94-2-8-00021 ¹
)	
Petitioner)	County: Jackson
)	
v.)	Township: Jackson
)	
JACKSON COUNTY BOARD OF REVIEW,)	Assessment Year: 1994
)	
Respondent)	
)	

Appeal from the Final Determination of
Jackson County Board of Review

June 6, 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:

¹ Formerly Petition No.: 94-362-21.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:
ISSUE 1 – Whether the property owned by the Seymour Municipal Airport Authority and City of Seymour, Indiana, is exempt from taxation.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 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 was filed on August 4, 1994. The determination of the PTABOA was issued on July 14, 1994.
3. This matter has pended as a subject of on-going discussions between the involved parties for a considerable period of time. The discussions, however, did not result in an agreement between the parties.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on April 21, 1995 at the office of the Jackson Township Assessor in Seymour, Indiana, before Jim Cornwell, the duly designated Hearing Officer.
5. At the hearing, the Form 132 was made part of the record with all included attachments. The Notice of Hearing was also made part of the record. In addition, there are two exhibits identified as “Hearing Officer’s Exhibits.” Exhibit A is a letter to the parties of this appeal. Exhibit B is a spreadsheet identifying certain parcels that comprise the subject property.

6. The following persons were present at the hearing:
- For the Petitioner: Jeffery Lorenzo, Deputy City Attorney
John Springer, Airport Manager
- For the Respondent: Brian Tidd, Member, Board of Review & Jackson County Auditor
Patricia Cummings, Jackson Township Assessor
Rodney Farrow, Attorney for Jackson County

Jurisdictional Framework

7. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

8. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
9. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
10. 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 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
11. 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 *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

12. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *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 State (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 State 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

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
14. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. 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 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.

Basis of Exemption and Burden

16. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
17. 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).
18. 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* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). 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.
19. 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)).
20. 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).

21. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), 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 (Ind. Tax 1991)).

Discussion of Issues

ISSUE 1: *Whether the property owned by the Seymour Municipal Airport Authority and City of Seymour, Indiana, is exempt from taxation.*

22. The Petitioner contends all the subject property is exempt from taxation under Ind. Code § 6-1.1-10-4.
23. The Respondent contends the portions of the subject property leased for non-airport purposes are taxable.
24. The Seymour Municipal Airport Authority (Authority) and the City of Seymour, Indiana (City) own an airport located in Jackson Township, Jackson County, Indiana. The Board of Aviation Commissioners operates the airport.
25. The property in question consists of approximately 2,500 acres and contains the airport facilities as well as land leased to various people for commercial and agricultural purposes.
26. The Authority contends the property in question is exempt from taxation by virtue of being a Municipal Corporation under Ind. Code § 36-1-2-10. That section states: “Municipal Corporation” means unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, *local airport authority*, special service

district, or other separate local governmental entity that may sue and be sued. The term does not include special taxing district.

27. Ind. Code § 36-1-2-13 states: “Political subdivision” means municipal corporation or special taxing district.
28. Ind. Code § 6-1.1-10-4 states: “Except as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation.”
29. The Authority and City are political subdivisions. Therefore, the property owned by the Petitioner can qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-4. However, ownership is not the sole determinant. Government owned property must also be used and occupied by the owner. See Ind. Code § 6-1.1-11-9.
30. Furthermore, Ind. Code § 6-1.1-10-37(b) governs exemptions of leased property, and states:

If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.
31. Typically, when a public airport or political subdivision leases property the question becomes whether the property is used for “airport” or “aviation” purposes. Ind. Code § 6-1.1-10-15. Consequently, if property is leased, it may be found to be exempt if it is used for aviation purposes.
32. The real property owned by the Authority and City used for airport or aviation purposes is exempt from property taxation. Property used for purposes unrelated to aviation and leased to various lessees is taxable to the lessee pursuant to Ind. Code § 6-1.1-10-37.

Conclusion

33. The property listed in Exhibit B that is leased and not used for airport or aviation purposes is taxable.

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.