

REPRESENTATIVE FOR PETITIONER:

Frederick J. Hartz, Attorney¹

REPRESENTATIVE FOR RESPONDENT:

Lori A. Carney, LaGrange County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

SHIPSHEWANA AIR	)	Petition No.:	44-014-09-2-8-00001
ASSOCIATES, INC.,)		
	)	Parcel No.:	44-05-03-100-010.000-014
Petitioner,)		
)		
v.	)	County:	La Grange
)		
LAGRANGE COUNTY	)	Township:	Newbury
ASSESSOR,)		
)		
Respondent.	)	Assessment Year:	2009

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

January 13, 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:

¹ Mr. Hartz did not file a notice of appearance as required by the Board’s procedural rules. See 52 IAC 2-3-2(c). But he signed the Form 131 petition. It therefore appears that Shiphshewana Air Associates authorized Mr. Hartz to represent it. The Board reminds Mr. Hartz to comply with its procedural rules in future proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Shipshewana Air Associates claimed an exemption under Ind. Code § 6-1.1-10-16 for a tract of land that it used as an airport. Because Air Associates did not show that an exempt building was associated with the subject land or that it used the land for one of purposes for which Ind. Code § 6-1.1-10-16 exempts vacant land, Air Associates failed to meet its burden of proof.

Background and Procedural History

2. Air Associates filed a Form 136 Application for Property Tax Exemption seeking to completely exempt the subject property from taxation for the 2008 and 2009 assessment years. On November 18, 2009, the PTABOA determined that the property was 100% taxable for 2009. Air Associates responded by timely filing a Form 132 petition with the Board. The Board has jurisdiction over Air Associates' appeal under Ind. Code § 6-1.1-15 and 6-1.5-4-1.
3. On October 26, 2010, the Board held a hearing through its administrative law judge, Joseph Stanford ("ALJ").
4. The following people were sworn in at the hearing:
 - For Air Associates:
 - Steve Fanning, shareholder of Air Associates'
 - For the Assessor:
 - Lori A. Carney, LaGrange County Assessor
5. The parties submitted the following exhibits:
 - For Air Associates:
 - Petitioner Exhibit 1: Copies photographs depicting activity at the subject property (nine pages).

For the Assessor:

- Respondent Exhibit 1: Form 136 Application for Property Tax Exemption,
- Respondent Exhibit 2: Notice of Action on Exemption Application,
- Respondent Exhibit 3: Subject property's airport certificate,
- Respondent Exhibit 4: Shipshewana Air Associates' Certificate of Incorporation,
- Respondent Exhibit 5: Emails between Jerri Brown, Deputy Assessor, and Adam Fackler, INDOT Office of Aviation Chief Airport Inspector,
- Respondent Exhibit 6: Ind. Code § 6-1.1-10-15,
- Respondent Exhibit 7: Ind. Code § 6-1.1-10-16,
- Respondent Exhibit 8: IRS Publication 557, page 20, regarding section 501(c)(3) organizations,
- Respondent Exhibit 9: Hearing notice.

6. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: Form 132 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D: Hearing sign-in sheet.
7. Neither the ALJ nor the Board inspected the subject property.

Findings of Fact

8. Air Associates, a not-for-profit entity that is exempt from federal income taxation,² owns and operates the subject property. *Fanning testimony*. The subject property, in turn, is an approximately 14-acre tract known as Wolfe Field. *See id; Resp't Ex. 1*. On its exemption application, Air Associates indicated that there were no improvements on the subject property. *Resp't Ex. 1*. Although Air Associates offered copies of photographs that depict buildings close to the property, including a building that appears to house an airplane and bears a sign with the name "Wolfe Field," it offered no other evidence about those buildings. *See Fanning testimony; Pet'r Ex. 1*.
9. Before 1982, the Indiana Department of Transportation ("INDOT") had classified the subject property as a "Public-Use" airport. *Fanning testimony*. On May 18, 1982,

² Mr. Fanning did not specify the Internal Revenue Code section under which Air Associates is exempt from federal taxes. Presumably it is section 501(c)(4). *See Board Ex. A; Resp't Ex. 1* (listing "IRC 501(c)(4) Civic League" as statute under which Air Associates claimed an exemption for the subject property).

however, INDOT changed that classification to “Restricted-Use.” *Resp’t Ex. 3.*

According to an email from Adam Fackler, chief airport inspector for INDOT’s Office of Aviation, the Restricted-Use classification no longer exists—that classification is now known as “Private-Use.” *Resp’t Ex. 5.* To be classified as a public airport, Air Associates would have to buy more liability insurance, have a 24-hour phone, build a fence, and get the property re-zoned. *Id.*

10. Despite the 1982 reclassification, the airport’s operations have not changed. *Fanning testimony.* Pilots use the property free of charge. *Id.* Although pilots must call ahead to request permission to land and there are limits on the size of aircraft that can be accommodated, Air Associates does not otherwise restrict pilots from using the subject property. *Id.*

Conclusions of Law and Analysis

11. A taxpayer bears the burden of proving that its property qualifies for exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). On its Form 132 petition, Air Associates claimed that the subject property was exempt under Ind. Code § 6-1.1-10-16 because it was owned, occupied, and used for charitable and scientific purposes. *See Board Ex. A; Resp’t Ex. 1.*
12. Indiana Code § 6-1.1-10-16 exempts buildings from taxation if those buildings are owned, occupied, and predominately used for educational, literary, scientific, religious, or charitable purposes. *See Ind. Code § 6-1.1-10-16(a); Ind. Code § 6-1.1-10-36.3.* Indiana Code § 6-1.1-10-16 also exempts tracts of land, but only in the following circumstances:
 - A building that is exempt under Ind. Code § 6-1.1-10-16(a) or (b)³ is situated on the land, a parking lot that serves such a building is situated on the land, or the land is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics. I.C. § 6-1.1-10-16(c);

³ Indian Code § 6-1-10-16(b) exempts certain buildings that are owned, occupied and used by a town, city, township, or county.

- The land is bought to erect a building that is to be owned, occupied, and used in such a manner that the building will be exempt under Ind. Code § 6-1.1-10-16(a) or (b). I.C. § 6-1.1-10-16(d);
- The land is acquired to erect single-family residences that are to be given away or sold in a charitable manner to low-income individuals. I.C. § 6-1.1-10-16.⁴

13. Air Associates did not show that the subject property qualifies for an exemption under Ind. Code § 6-1.1-10-16. Although Air Associates contends that it used the subject property for charitable and scientific purposes, such uses are not, by themselves, sufficient to exempt land under Ind. Code § 6-1.1-10-16. Instead, the land either must be situated under, or at least associated with, an exempt building, or it must be used for one of the limited purposes justifying an exemption for vacant land. Here, the undisputed evidence shows that the subject property was vacant. Indeed, Air Associates described the subject property as unimproved on its exemption application. While Air Associates offered photographs depicting buildings that might at least be associated with the subject property, it offered no evidence about who owned those buildings or what they were used for, much less that the buildings qualified as exempt under Ind. Code § 6-1.1-10-16(a). Similarly, Air Associates did not offer any evidence that it bought the subject property to retain and preserve the land for its natural characteristics, to erect a building that would be used for exempt purposes, or to build low-income housing.

14. Because Air Associates did not show that the subject property was either associated with an exempt building or met the requirements for exempting vacant land, the Board need not address Air Associates' claims that allowing members of the public to use the airport free of charge constituted a charitable or scientific purpose.

15. Finally, the Assessor expended significant effort to explain that the subject property held a Restricted-Use, rather than a Public-Use, certificate from INDOT, and that the property

⁴ These are minimum requirements. Even if a tract of land meets those basic requirements, the statute imposes additional limitations that are not relevant to this appeal and that the Board omits for purposes of brevity. *See* I.C. § 6-1.1-10-16(c) -(i)(2)-(4).

therefore did not qualify for an exemption under Ind. Code § 6-1.1-10-15, which provides, in part:

The acquisition and improvement of land for use by the public as an airport and the maintenance of commercial passenger aircraft is a municipal purpose regardless of whether the airport or maintenance facility is owned or operated by a municipality. The owner of any airport located in this state, *who holds a valid and current public airport certificate issued by the Indiana department of transportation*, may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes.

I.C. § 6-1.1-10-15(a)(emphasis added).

16. Although Air Associates' witness and counsel spoke about what they viewed as the public nature of the subject property's use, Air Associates did not claim an exemption under Ind. Code § 6-1.1-10-15 either on its original application or on the Form 131 petition that it filed with the Board. And counsel for Air Associates reiterated that point at the hearing.⁵ The Board therefore need not address whether the subject property qualified for an exemption under Ind. Code § 6-1.1-10-15.

Summary of Final Determination

17. Shipshewana Air Associates did not meet its burden of showing that the subject property qualified for an exemption under Ind. Code § 6-1.1-10-16. The subject property was therefore 100% taxable for the March 1, 2009 assessment date.

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

⁵ The following exchange occurred at the hearing:

ALJ: So, just for my clarification, . . . you're claiming the exemption under charitable and scientific, which is 6-1.1-10-16 and not necessarily under the public airport exemption?

Hartz: Right. Right. And that's only because, as I stated, [speaking to Assessor] its in here. It's listed next to theses little boxes. In other words, based on the evidence that you've heard today, wouldn't you agree that this is a charitable or scientific organization?

ALJ and Hartz colloquy.

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>>