

**State of Indiana  
Board of Tax Review**

THOMAS C. TAYLOR,	) On Appeal from the Jennings County
	) Board of Review
Petitioner,	)
	) Petition for Review of Exemption,
v.	) Form 132
	) Petition No. 40-441-97-2-8-00047
JENNINGS COUNTY BOARD OF	) Parcel No. 0130112600
REVIEW,	)
	)
Respondent.	)

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issues**

1. Whether the application for property tax exemption meets the statutory filing requirements pursuant to Ind. Code § 6-1.1-11-3.
  
2. Whether the real property owned by Mike Barlow and used and occupied by the North Vernon International School (NVIS) qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.

## Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-11-3, Mr. Thomas C. Taylor (Petitioner) filed an application for property tax exemption with the Jennings County Board of Review (County Board) on November 25, 1996. The County Board denied the application on June 26, 1997 and gave the Petitioner notice of denial.
  
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petition seeking a review of the County Board action by the State. The Form 132 petition was filed July 1, 1997.
  
4. Pursuant to Ind. Code § 6-1.1-15-4, an administrative hearing was held on August 5, 1998 before Hearing Officer Kay Schwade. Mr. Thomas C. Taylor, Petitioner, was present at the hearing. No one was present on behalf of the County Board.
  
5. At the hearing, the subject Form 132 petition was made a part of the record as Board Exhibit A. The Notice of Hearing was made a part of the record as Board Exhibit B. In addition, the following exhibits were presented to the State:

Petitioner's Ex. A – A packet of supporting documentation, which includes the following:

- a. Required Information for Property Tax Exemption;
- b. Certificate of Incorporation for NVIS;
- c. By-laws of NVIS;
- d. Qualifications of NVIS faculty;
- e. A copy of the 1993 Federal Tax Return, Form 1120S, for NVIS;
- f. A copy of the 1994 Federal Tax Return, Form 1120S, for NVIS;

- g. A copy of the 1995 Federal Tax Return, Form 1120S, for NVIS;
  - h. A copy of the 1996 expenses for NVIS;
- Petitioner's Exhibit B – A copy of the 1997 Federal Tax Return, Form 1120S, for NVIS;
- Petitioner's Exhibit C – A copy of the 1996 Federal Tax Return, Form 1120S, for NVIS;
- Petitioner's Exhibit D – Copies of the second semester calendars for the 1996-1997 academic year for NVIS;
- Petitioner's Exhibit E – A copy of NVIS's course outline for grade nine; and
- Petitioner's Exhibit F – NVIS's admissions brochure.
6. The real property at issue is owned by Mr. Mike Barlow and is used and occupied by the North Vernon International School (NVIS). The real property at issue consists of a dwelling, detached garage, and land located in North Vernon, Indiana. The Hearing Officer did not inspect the property.

### **Testimony and Evidence Regarding the Exemption Claim**

7. Mr. Taylor testified that the subject property is being purchased under a land contract between Mr. and Mrs. Taylor and Mike Barlow. Mr. Taylor testified that the land contract was entered into during the Spring of 1996.
8. Mr. Taylor testified that NVIS was established to provide parents an alternative to public schooling. He testified that NVIS offers an educational program that is traditionally found in the public school system. Mr. Taylor also testified that NVIS was an approved test site for the PSAT and SAT II; that NVIS offered seven (7) Advanced Placement (AP) courses and tests; and that the educational program at NVIS is recognized by the NCAA Clearinghouse as meeting the qualifications for its students to have NCAA Division I athletic eligibility.

9. Mr. Taylor testified that the accreditation process had begun for international accreditation by receiving a certificate of prospective membership from the European Council of International Schools. He also testified that local accreditation had not begun because NVIS had not been in existence long enough to begin the accreditation process.
10. Mr. Taylor testified that he had been a schoolmaster for 23 years and that all the members of NVIS's faculty were licensed educators.
11. Mr. Taylor testified that he was seeking property tax exemption only for a time period beginning July 1, 1996, through June 30, 1997. Mr. Taylor testified that exemption was not requested for the time period July 1, 1997 through June 30, 1998, because the subject property would not be used by NVIS during this time.

### **Conclusions of Law**

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

### **Burden**

2. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the

taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

### **Constitutional and Statutory Basis for Exemption**

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. 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 much 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 predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
9. 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).
10. Strict construction construes exemption from the concept of the taxpayer citizen. 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 would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough to justify 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)).
12. 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).

### **Conclusions Regarding the Exemption Claim**

13. Before exploring the question of whether the Petitioner meets the requirements set forth under Ind. Code § 6-1.1-10-16, the State Board must first determine whether the Petitioner statutorily complied with the requirements and limitations regarding the filing of the exemption application set forth under Ind. Code § 6-1.1-11.
14. An exemption is a privilege that may be waived if the owner of property does not comply with the statutory procedures for obtaining an exemption. The Petitioner's application does not comply with the statutory filing requirements set forth under Ind. Code § 6-1.1-11-3(b) and property tax exemption for the year 1997 has been waived. As such, property tax exemption is denied and the subject property is wholly subject to property taxation for the year 1997 with the property taxes due and payable in 1998.
15. Ind. Code § 6-1.1-11-3 places a limitation on who has the authority to sign an exemption application to be filed. Section 3(b) of Ind. Code § 6-1.1-11 provides that, unless delegated by an executed power of attorney, *only* the owner of property may sign an exemption application when seeking property tax exemption. (Emphasis added.)
16. The owner of property for assessment and taxation purposes is the person who holds fee simple title to real property on the assessment date of March 1. See Ind. Code § 6-1.1-1-9 and Ind. Code § 6-1.1-1-2(1). As stated earlier in these findings, the Petitioner and his wife entered into a land contract with Mr. Mike Barlow in May 1996 (see letter attached to Board Ex. A) for the purchase of the subject property.

17. In *Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*, 711 N.E. 2d 875, 878 (Ind. Tax 1999), the Tax Court stated: “the owner of the property must apply for the property tax exemption. The owner of real property is defined (with some exceptions not applicable here) by Ind. Code § 6-1.1-1-9 as the holder of legal title to that real property in fee.”
18. Mr. Barlow held fee simple title to the subject property on the assessment date March 1, 1997. The record is void of any evidence indicating that during the assessment period March 2, 1996 through March 1, 1997, the Petitioner satisfied the land contract and obtained fee simple title. Thus, Mr. Barlow was the owner of the subject property by statutory definition for the assessment date in question and *only* Mr. Barlow had the authority to sign and file the application for exemption or to delegate authority by way of a power of attorney.
19. The Petitioner did not have fee simple title to the subject property on the assessment date March 1, 1997. The Petitioner did not have the statutory authority to sign the exemption application filed in this matter because the Petitioner was not, by statutory definition, the owner of the subject property for the year in question. In addition, there is no evidence in the record that the party who did have fee simple title on March 1, 1997 executed a power of attorney delegating the authority to the Petitioner, or anyone else, to sign and file the application. As such, the application is not in compliance with the statutory filing procedures set forth under Ind. Code § 6-1.1-11-3(b) and the exemption is waived. Therefore, with the exemption waived, the subject property is wholly subject to property taxation for the taxes assessed and imposed for the year 1997 that are due and payable in 1998.
20. In *Word* the Tax Court also stated: “Although the general rule in this state is that the substance not the form of a transaction governs its taxability, *see Maurer v. Department of State Revenue*, 607 N.E. 2d 985, 987 (Ind. Tax 1993), when the legislature chooses to exalt form over substance in a particular case, that is its prerogative, and if, from a public policy perspective, such a choice is unwise, relief



may be sought with the Indiana General Assembly, not the courts.” *Word*, 711 N.E. 2d at 878, FN2.

21. Finally, the State Board will not examine the merits of the case or explore the educational nature of NVIS in the matter before it today. As stated in the above findings, the application filed by the Petitioner did not comply with the statutory procedures pertaining to the application for exemption. As such, the exemption has been waived and must be denied without delving into the issue of whether the Petitioner is entitled to exemption pursuant to the cited statute.

The above stated findings and conclusions 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 \_\_\_\_ day of \_\_\_\_\_, 2002.

---

Chairman, Indiana Board of Tax Review