

**STATE OF INDIANA
Board of Tax Review**

UNITED STATES AUTO CLUB, INC.	)	On Appeal from the Marion County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
)	
v.	)	Petition for Review of Exemption, Form 132
	)	Petitions No. 49-900-00-2-8-10001
MARION COUNTY PROPERTY TAX	)	49-900-00-2-8-10002
ASSESSMENT BOARD OF APPEALS	)	49-900-00-2-8-10003
)	
	)	Parcels No. 9002317
Respondent.	)	I502777
	)	9041513

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:

Issue

Whether the real and personal property owned by the United States Auto Club, Inc. (USAC) qualifies for a property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

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, USAC filed applications for property tax exemption with the Marion County PTABOA. The applications regarding parcels I502777 and 9041513 were filed on May 15, 2000. The application regarding parcel 9002317 was filed on May 10, 2000. The PTABOA determinations regarding the three parcels were mailed on February 23, 2001. The PTABOA determined the properties to be 100% taxable.

3. Pursuant to Ind. Code § 6-1.1-11-7, USAC filed Form 132 petitions seeking a review of the PTABOA action by the State. The Form 132 petitions were filed March 21, 2001.

4. Pursuant to Ind. Code § 6-1.1-15-4, and with proper notice, Hearing Officer Betsy Brand held an administrative hearing on September 18, 2001. The Marion County PTABOA was represented by: Andrew P. Seiwert, City of Indianapolis Assistant Corporation Counsel and Melissa Tetrick, Marion County Assessor Exemption Deputy. The United States Auto Club, Inc. was represented by: Randal J. Kaltenmark, attorney at law; Johnny Capels, USAC President, CEO; Ray Linton, USAC Vice President Finance; and Michael Devin, USAC Vice President/Technical Director, Director of Competition.

5. At the hearing, the following documents were entered into the record and labeled as Board exhibits:
Board Exhibit A – The Form 132 petition for each parcel with attachments:
 - a. A document regarding taxpayer's grounds for appeal.
 - b. A copy of the Power of Attorney.
 - c. A statement of related parcels under appeal.

- d. A copy of the Form 136.
- e. A copy of the Form 120.

Board Exhibit B – The Notice of Hearing on Petition for each parcel.

6. At the hearing, the Petitioner submitted an Exhibit Binder to the State containing the following exhibits:

Petitioner's Exhibit 1 – A copy of the USAC Financial Statement for fiscal year end 11/30/96.

Petitioner's Exhibit 2 – A copy of the USAC Financial Statement for fiscal year end 11/30/97.

Petitioner's Exhibit 3 – A copy of the USAC Financial Statement for fiscal year end 11/30/98.

Petitioner's Exhibit 4 – A copy of the USAC Financial Statement for fiscal year end 11/30/99.

Petitioner's Exhibit 5 - A copy of the USAC Financial Statement for fiscal year end 11/30/2000.

Petitioner's Exhibit 6 – A copy of an IRS exemption letter dated 3/17/60.

Petitioner's Exhibit 7 – A copy of Forms 990 and 990T filed for 1995.

Petitioner's Exhibit 8 – A copy of Forms 990 and 990T filed for 1996.

Petitioner's Exhibit 9 – A copy of Forms 990 and 990T filed for 1997.

Petitioner's Exhibit 10 – A copy of Forms 990 and 990T filed for 1998.

Petitioner's Exhibit 11 - A copy of Forms 990 and 990T filed for 1999.

Petitioner's Exhibit 12 – A copy of property record cards for parcels #9002317 and #9041513.

Petitioner's Exhibit 13 – A copy of the written transcript of a State hearing regarding the USAC Form 136 filed for 1983.

Petitioner's Exhibit 14 – A copy of Form 136 filed for 1988.

Petitioner's Exhibit 15 – A copy of Form 136 filed for 1992.

Petitioner's Exhibit 16 - A copy of Form 136 filed for 1996.

Petitioner's Exhibit 17 – A copy of Form 120, dated 9/27/96.

Petitioner's Exhibit 18 – A copy of Form 136 filed for 2000.

Petitioner's Exhibit 19 – A copy of a letter from Melissa Tetrick, Marion County Assessor Exemption Deputy, dated 6/29/00.

Petitioner's Exhibit 20 – A copy of Form 120, dated 2/23/01.

Petitioner's Exhibit 21 – Copies of tax statements for the spring installment of the 1999 pay 2000 taxes for parcels #99041513, #9002317, and #1502777.

Petitioner's Exhibit 22 – A copy of the Articles of Incorporation of USAC, as amended.

Petitioner's Exhibit 23 – A copy of the amended and restated Bylaws of USAC.

Petitioner's Exhibit 24 – A list of USAC activities for 2000.

Petitioner's Exhibit 25 – A copy of a letter from H.A. Fishel, Director, GM Motorsports Technology Group to John Capels, USAC President, dated 4/26/93.

Petitioner's Exhibit 26 – A copy of a letter from Christopher C. Green, M.D., Head of Biomedical Science Department to Mike Devin, Technical Director of USAC, dated 5/3/93.

Petitioner's Exhibit 27 – A copy of a letter from Christopher C. Green, M.D., Head of GM Biomedical Science Department to Henry Bock, M.D. of Methodist Hospital, dated 1/12/94.

Petitioner's Exhibit 28 – A copy of a letter from John Pierce of G.M. Motorsports Technology Group to Mike Devin, Technical Director of USAC, dated 5/31/94.

Petitioner's Exhibit 29 – A copy of minutes of a USAC Safety Committee meeting, dated 1/28/93.

Petitioner's Exhibit 30 – A copy of an SFI Foundation Article.

Petitioner's Exhibit 31 – A copy of a USAC newsletter, dated 12/8/00.

Petitioner's Exhibit 32 – A copy of a paper regarding "Monitoring Race Car Drivers Using Helmet and Head-Mounted Sensors" published by the Society of Automotive Engineers, Inc.

Petitioner's Exhibit 33 – A copy of a paper regarding "Head Impact Protection Developments in the F-1 Cockpit with Investigations to

Correlate Head Movement to Brain Injury” published by the Society of Automotive Engineers, Inc.

Petitioner’s Exhibit 34 – A copy of the USAC 2001 official competition rules.

Petitioner’s Exhibit 35 – An affidavit of Ray Linton, dated September 14, 2001.

Petitioner’s Exhibit 36 – An affidavit of Michael Devin, dated September 14, 2001.

7. At the hearing the Respondent submitted exhibits to the State:

Respondent’s Exhibit 1 – A copy of Ind. Code § 6-1.1-11-7.

Respondent’s Exhibit 2 – A copy of *Indiana State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988).

Respondent’s Exhibit 3 – A copy of *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 571 N.E.2d 1247 (Ind.1991).

8. At the hearing, the Respondent objected to the admission of Petitioner’s Exhibits 13, 14, 15, 16, and 17 on the basis of relevancy, because these exhibits concerned prior tax years, which were not the subject of this appeal. The Hearing Officer noted the objection and took the matter under advisement.

9. On September 28, 2001 the State received Proposed Findings of Fact and Conclusions of Law prepared by the Petitioner’s representative. The document is labeled Board Exhibit C and entered as evidence.

10. On October 1, 2001 the State received Proposed Findings of Fact and Conclusions of Law prepared by the Respondent's representative. The document is labeled Board Exhibit D and entered as evidence.
11. On October 3, 2001 the State received a copy of a letter as proof of service copy of Proposed Findings of Fact and Conclusions of Law by the Petitioner to the Respondent. The letter is labeled Board Exhibit E and entered as evidence.
12. The USAC is a not-for-profit corporation formed for two interrelated purposes: (1) sanction racing events and (2) conduct scientific tests and research in order to promote safety related improvements that may be incorporated into automobiles and other vehicles manufactured and sold to consumers. (Linton testimony.)
13. USAC is seeking exemption from property taxation for the assessment year 2000 with taxes due and payable in 2001. The properties for which the exemption is sought are located at 4910 West 16th Street, Indianapolis, IN. USAC seeks seventy-six percent (76%) exemption for the land and improvements and one hundred percent (100%) exemption for personal property. (Linton testimony and Form 136.)
14. The structure under appeal is a two-story building that has approximately 18,000 square feet. The first floor contains administrative offices, small meeting rooms and other common areas. The basement is occupied by the USAC printing office. The second floor has some office space and a 2,500 square foot boardroom, which is used for many of USAC's meetings. The remainder of the second floor consists of storage and common areas, except for approximately 2,000 square feet, which is leased to two (2) for-profit subsidiaries, known as USAC Properties, Inc. and USAC Promotions, Inc.
15. On State Form 5748, Required Information for Property Tax Exemption, the Petitioner shows the "second floor - 4156 square feet out of total of 18,200

square feet” is used by individuals or groups for purposes not related to the claimed exempt purpose. (See Section III, 1b).

16. The percentage of exemption sought is based on a State determination issued in 1985 that exempts seventy six percent (76%) of the real property and one hundred percent (100%) of the personal property. The Petitioner completed Forms 136 for the tax years 1988, 1992, 1996 and 2000 in an identical manner. (Linton testimony.)
17. USAC owns, occupies, and uses much of its property for scientific purposes. USAC conducts scientific research or causes such research to be done by others and collates, evaluates, and disseminates the results of such research to interested parties and/or the public at large. The government and the average consumer have benefited from USAC’s scientific activities. (Linton and Devin testimony.)
18. USAC retains, commissions or partners with other scientific experts and/or testing facilities in order to conduct scientific studies, testing and research concerning an identified problem. Such third party experts have included: (1) automobile manufacturers such as General Motors, Chrysler, and Ford, (2) airplane manufacturers, such as McDonnell Douglas, Curtis-Wright Aviation, and Lear, (3) governmental authorities, such as, the United States Air Force, (4) educational institutions, such as Wayne State University, (5) private parties, such as the SFI Foundation, and (6) individual expert consultants. (Devin testimony and Petitioner’s Exhibit 36.)
19. The third party corporate sponsors involved in the Petitioner’s scientific studies generally finance the scientific testing. (Devin testimony.)
20. Due to equipment costs and because only a few institutions possess the test and laboratory facilities necessary to meet the Petitioner’s testing specifications, the initial scientific testing is generally conducted at third party testing facilities such

as Wayne State University and Wright Patterson Air Force Base. (Devin testimony.)

21. Scientific studies on human test subjects are often conducted on drivers at race events sanctioned by the Petitioner. (Devin testimony.)
22. During and after the scientific study and research, meetings are normally held at the USAC Building in order to analyze and discuss test data, progress, and results. Test results are generally incorporated into the Petitioner's Rule Book and in the Petitioner's Newsletter, which are published in-house. (Devin testimony.)
23. The Petitioner disseminates the results of its scientific research to members of the public and other interested parties through its publications, by allowing such information to be published by others, and by meeting with other interested persons or organizations. (Devin testimony.)
24. There are other sanctioning bodies for auto races that may engage in similar scientific testing. However, sanctioning bodies, such as the IRL, CART, NASCAR and the NHRA are operated on a for-profit basis. (Devin testimony.)
25. USAC claims exemption under Ind. Code § 6-1.1-10-16. The classification of education was marked in error on the Form 136. The organization is partially exempt under the scientific classification. There was no hearing held by either the County Auditor or the PTABOA regarding the denial of the Form 136 for 2000. (Linton testimony.)
26. The General and Exempt Purpose areas of the Form 136 request information regarding the exempt purpose for which the property is used. These areas of the Form 136 filed for the year 2000 have been completed and state "to encourage the furtherance of public regard for the professional aspects of racing, tests and research; and promote facilities for safety and economy in the

automobile field”...“through racing facilities used as a proving ground for scientific improvements, which are safety related, and have been incorporated into automobiles and other vehicles manufactured and sold to consumers.”

27. Because there was insufficient information provided on the front page of the Form 136, the County deputy made a verbal request for specific information regarding the classification exemption was claimed under. Amending the first page of the Form 136 the Petitioner indicated the exemption was claimed under the educational classification of Ind. Code § 6-1.1-10-16. Exemption was disallowed by the PTABOA because the taxpayer did not affirmatively demonstrate its activities provide educational training, which would otherwise be furnished by tax-supported schools. (Tetrick testimony.)
28. In denying the Petitioner’s exemption, the PTABOA did not consider any information or activities listed on the Form 136 other than the “educational” category. (Tetrick testimony and Form 120.)

Conclusions of Law

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

Burden In General

2. In reviewing the actions of the 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.

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 v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998); *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 State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, USAC seeks exemption under Ind. Code § 6-1.1-10-16, which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for scientific purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).
7. 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

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. 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.

11. 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)).

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).

13. As a condition precedent to being granted an exemption under the educational purpose clause of the statute, 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 1247 (Ind. 1991)). The same basic principal of burden is applicable for all classifications of Ind. Code § 6-1.1-10-16.

Conclusions Regarding Objection to Evidence

14. At the Hearing, the PTABOA objected to evidence submitted by the Petitioner regarding the 1985 State Board determination, and Forms 136 for 1988, 1992, and 1996. The PTABOA contends the information is not relevant to the 2000 tax year.
15. The Tax Court has held “[while] only those facts as they exist on the 1st day of March of each year are material to the determination of questions of assessment and valuation...and for exemption, ...[the] situation on the assessment date can be evidenced by occurrences outside that date.” *Trinity Episcopal Church v. State Board of Tax Commissioners*, 694 N.E. 2d 816, 819 (Ind. Tax 1998) (citing *Governor’s Square Apts. v. State Board of Tax Commissioners*, 528 N.E.2d 864, 866 (Ind. Tax 1988)).
16. Based on the *Trinity* decision the challenged evidence is found to be relevant and admissible regarding the Petitioner’s situation on the March 1, 2000 assessment date.

Conclusions Regarding the Classification

17. The PTABOA based their denial of the exemption application on the lack of evidence regarding the educational classification found in Ind. Code § 6-1.1-10-16. The Form 136 shows the classifications of “educational” and “other” are marked on the first page of the application. However, additional information regarding the use and purpose of the subject properties can be found in the General and Exempt Purpose sections on the Form 136.
18. While the exemption statutes are to be construed strictly against the exemption, the tax-exempt statute must not be construed so narrowly that its purpose is defeated. *Raintree Friends Housing, Inc. v. Dept. of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996).
19. When reviewing a document, “[t]he main rule of construction is to give effect to the intention of the parties by construing the instrument as a whole, giving effect to every portion, if possible, and always preferring the construction which will render the instrument valid.” *Linton v. Linton* (1975), 166 Ind. App. 409, 421, 336 N.E. 2d 687, 694.
20. On the Form 136 the Petitioner claims the use and purpose of the properties under appeal are “to encourage the furtherance of public regard for the professional aspects of racing, tests and research; and promote facilities for safety and economy in the automobile field...through racing facilities used as a proving ground for scientific improvements, which are safety related, and have been incorporated into automobiles and other vehicles manufactured and sold to consumers.”
21. It appears the PTABOA viewed USAC’s exemption application in a narrow manner resulting in their denial of the application for exemption based solely on the educational classification. The Form 136 clearly shows the Petitioner claims the property is used for safety related testing and research regarding scientific improvements that are incorporated into consumer vehicles. In addition,

because a hearing was not held at the local level, USAC was not allowed the opportunity to present evidence in support of its contention that the property is used for a scientific purpose.

22. The State will consider whether USAC demonstrated that it provides a scientific related benefit to the general public sufficient to qualify for an exemption under Ind. Code § 6-1.1-10-16.

Conclusions Regarding Scientific Purpose Claim

23. Scientific is defined as producing knowledge of, relating to, or exhibiting the methods or principles of science. Merriam Webster's Collegiate Dictionary, Tenth Edition.
24. The definition of scientific method is: "principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses." Merriam Webster's Collegiate Dictionary, Tenth Edition.
25. In support of its claim for partial exemption, USAC submitted the testimony of Michael Devin, USAC Vice president/Technical Director and Director of Competition. Petitioner's Exhibits 24 through 34 support Mr. Devin's testimony that USAC performs, or causes to be performed, scientific research and testing in order to improve automobile safety and technology.
26. USAC has demonstrated its involvement in the systematic pursuit of knowledge involving the recognition and formulation of problems. Likewise, it has shown that it participates in the collection of data through observation, and participates in the experiment and the formulation and testing of hypothesis.

27. While other sanctioning bodies may participate in scientific research, USAC maintains a not-for-profit status while it participates in its scientific endeavors. In its efforts to provide a benefit to the general public, USAC partners with not-for-profit government authorities such as the United States Air Force and not-for-profit educational institutions such as Wayne State University.
28. USAC claims exemption under the scientific classification of Ind. Code § 6-1.1-10-16. USAC has presented probative evidence in order to make a prima facie case. The burden of persuasion now shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.
29. The testimony and exhibits presented by the PTABOA did not address the scientific purpose claim of the Petitioner. In fact, the Respondent's witness testified that the PTABOA based its determination solely on an educational purpose claim.
30. As stated previously, USAC claims exemption under the scientific classification of Ind. Code § 6-1.1-10-16. USAC claims seventy-six percent (76%) exemption for its real property because a portion is used by for-profit agencies. USAC claims one hundred percent (100%) exemption for its personal property. USAC has met the burden of proof regarding its claim. The County has not rebutted the evidence presented by the Petitioner nor justified its decision with substantial evidence.
31. Therefore, in the instant case, the real property owned, occupied, and used by USAC qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 and is seventy six percent (76%) exempt from property taxation. No exemption is allowed for the area of the second floor not used for the tax exempt purpose. In addition, the personal property owned and used by USAC qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16(e) and is wholly exempt from property taxation.

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