

REPRESENTATIVES FOR PETITIONER:

Mr. Kelvin Roots, Ms. Linda Spears, and Ms. Janice Crane

REPRESENTATIVES FOR RESPONDENT:

No one appeared on behalf of the Respondent.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

UNION HOSPITAL, Inc.)	Petition for Review of Assessment, Form 131
)	
Petitioner,)	Petition No.: 84-002-91-2-8-01666
)	County: Vigo
)	
v.)	Township: Harrison
)	
HARRISON TOWNSHIP)	Parcel No.: 18061530100100
ASSESSOR,)	
)	
Respondent.)	Assessment Year: 1991
)	

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

[March 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether the Petitioner complied with the statutory procedures to obtain property tax exemption for the assessment year 1991.*

ISSUE 2 – *Whether the property owned by the Petitioner qualifies for property taxation pursuant to Ind. Code § 6-1.1-10-16 as a not-for-profit corporation.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Union Hospital, Inc. (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on November 17, 1993. The determination of the Vigo County Board of Review (County Board) is dated October 20, 1993.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 19, 1996 at Terre Haute, Indiana before Wayne Hudson, the duly designated Hearing Officer authorized by the Board.
4. The following persons were present at the hearing:

For the Petitioner:

Mr. Kelvin Roots

Ms. Linda Spears

Ms. Janice Crane

For the Respondent:

No one appeared on behalf of the Respondent.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. Kelvin Roots

Ms. Linda Spears

Ms. Janice Crane

6. The Form 131 petition with attachments was made a part of the record and labeled as Board Exhibit A. The attachments to the Form 131 petition included the following documents:

- a. A copy of the underlying Form 130 petition filed in this matter.
- b. A Form 11, Notice of Assessment, for the subject property with an assessed value of \$6,100 with an effective assessment date of March 1, 1991.
- c. A copy of an assessment summary for the subject property.
- d. A copy of the County Board Response to Petitioner dated October 20, 1993.
- e. Duplicate copies of the underlying Form 130 petition and assessment summary.
- f. A copy of the issues raised on the underlying Form 130 petition.
- g. A copy of the Limited Power of Attorney submitted by the Petitioner.

The Notice of Hearing was entered into the record and labeled Board Ex. B.

7. The following exhibits were submitted to the Board:

For the Petitioner:

Petitioner Exhibit 1 – The 1993 Property Tax Bill for the subject property.

8. The property subject to this appeal is land with residential improvements located at 721 Eighth Avenue Street in Terre Haute. The assessment year under appeal is 1991.

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Constitutional and Statutory Basis for Exemption

11. 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.
12. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
13. 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

14. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

15. 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).
16. 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.
17. 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)).
18. 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).
19. 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)).

State Review and Petitioner's Burden

20. The State does not undertake to reassess property, or 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).
21. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. 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.]
22. 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.]
23. 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.]
24. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF*, 765 N.E.2d 711 (Ind. Tax, 2002).

25. 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’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. 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.]

Discussion of Issues

ISSUE 1: *Whether the Petitioner complied with the statutory procedures to obtain property tax exemption for the assessment year 1991.*

26. The Petitioner filed a Form 131 petition on November 17, 1993 seeking 100% property tax exemption from the taxes imposed for the assessment year March 1, 1991.

27. The applicable statute governing Issue 1 is:

Ind. Code § 6-1.1-11-1

An exemption is a privilege that may be waived if the taxpayer does not comply with the statutory procedures for obtaining the exemption.

Ind. Code § 6-1.1-11-3

A taxpayer who wishes to obtain an exemption from property taxation must file an application with the county auditor on or before May 15 of the year for which exemption is sought.

28. Evidence and testimony considered particularly relevant to this determination include the following:

[A] The underlying Form 130 petition was filed on August 7, 1992. The Form 131 petition was filed on November 17, 1993.

[B] The underlying Form 130 petition raised only valuation issues. The issue of property tax exemption was raised for the first time at the State level upon the filing of the Form 131 petition.

Analysis of ISSUE 1

28. Before the question of whether a property qualifies for property tax exemption, the question of whether the Petitioner complied with the statutory procedures to obtain exemption must be determined.

29. To obtain exemption from property taxes imposed for the assessment year March 1, 1991, the Petitioner was required to file an application for exemption on or before May 15, 1991. The Petitioner sought property tax exemption upon filing the subject Form 131 petition in August 1992. The August 1992 filing date is more than 12 months after the statutory deadline for seeking property tax exemption from the taxes imposed for the March 1, 1991 assessment year. The date the Form 131 petition was filed does not comply with the statutory filing date for obtaining exemption.

30. Additionally, the Petitioner made its exemption request by way of a Form 131 petition rather than filing a Form 136, Application for Exemption. The Form 131 is not an alternate format for the application for exemption; therefore, the Petitioner did not fulfill the requirements of applying for exemption. The Petitioner's Form 131 petition does not comply with the statutory filing procedure for obtaining an exemption.

31. Furthermore, the Petitioner made its exemption request by way of a Form 131 petition rather than filing a Form 136, Application for Exemption. Statute is clear regarding

the procedures for obtaining exemption. An application for exemption must first be filed at the local level in order to obtain an exemption. Because the record is void of any indication that the Petitioner filed a timely application for exemption, the Petitioner's use of the Form 131 petition to seek exemption appears to be an attempt to correct the Petitioner's omission. If a taxpayer fails to timely file an application for exemption, this failure cannot be corrected at a later date through the use of another appeal method. *Reames v. State Board of Tax Commissioners*, 620 N.E.2d 759, 760.

32. The privilege of property tax exemption is waived if the taxpayer does not comply with the statutory procedures set forth for obtaining the exemption. The Petitioner's request falls short of complying for the reasons set forth above. The Petitioner has not complied with the statutory procedures for obtaining exemption and, therefore, has waived property tax exemption for the assessment year 1991.

ISSUE 2: *Whether the property owned by the Petitioner qualifies for property taxation pursuant to Ind. Code § 6-1.1-10-16 as a not-for-profit corporation.*

33. Because the Petitioner failed to comply with the statutory procedures for obtaining property tax exemption, the question of whether the property is exempt under Ind. Code § 6-1.1-10-16 will not be examined.

Summary of Final Determination

Determination of ISSUE 1: *Whether the Petitioner complied with the statutory procedures to obtain property tax exemption for the assessment year 1991.*

34. The Petitioner has waived exemption for the assessment year 1991 because the Petitioner failed to comply with the statutory procedures for obtaining property tax exemption for the year 1991.

Determination of ISSUE 2: *Whether the property owned by the Petitioner qualifies for property taxation pursuant to Ind. Code § 6-1.1-10-16 as a not-for-profit corporation.*

35. The question of whether the property qualifies for exemption will not be examined because the Petitioner did not comply with the statutory procedures for obtaining exemption.

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.