

**State of Indiana
Board of Tax Review**

VINCENNES UNIVERSITY,) On Appeal from the Gibson
) County Board of Review
Petitioner,)
)
v.) Petition for Review of Exemption,
) Form 132
)
) Petition No. 26-000-97-2-8-00001
GIBSON COUNTY BOARD OF REVIEW,) Parcel No. 007-01922-00
) 011-01005-00
Respondent.) 006-03798-00

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 real property owned by Vincennes University is statutorily subject to taxation pursuant to Ind. Code § 6-1.1-10-2.
2. Whether the application for exemption was timely filed pursuant to the requirement set forth under Ind. Code § 6-1.1-11-3 to achieve property tax exemption for the taxes assessed and imposed for the year 1997.

3. Whether the real property owned by Vincennes University qualifies for 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 also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-11-3, Vincennes University (University) filed an Application for Property Tax Exemption, Form 136 with the Gibson County Auditor. The Form 136 was filed on May 20, 1998. The Gibson County Board of Review (County Board) denied the application and gave the University notice on September 4, 1998.
3. Pursuant to Ind. Code § 6-1.1-15-3, the University filed a Form 132 petition seeking a review by the State. The Form 132 petition was filed September 23, 1998.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on August 2, 2000, before Hearing Officers Kay Schwade and Betsy Brand. Mr. Robert J. Stryzinski, Vice President of Financial Services, and Ms. Marilyn Pea were present at the hearing on behalf of the University. Ms. Betty Jean Barnett, Gibson County Auditor, 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 and the Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State Board of Tax Commissioners:

Petitioner's Exhibit A – A packet containing the following information:

- a. A letter to the Gibson County Auditor dated May 20, 1998 regarding application for exemption with the following attachments:
 - i. Application for Exemption.
 - ii. Required Information for Property Tax Exemption.
 - iii. Charter of Vincennes University.
 - iv. A copy of the check paying the filing fee.
- b. A copy of the notice of denial sent by the County Board.
- c. A copy of a letter to the Gibson County Auditor dated September 23, 1998 requesting reconsideration of exemption denial with the following attachments:
 - i. Copies of the deeds of conveyance.
 - ii. A copy of Ind. Code § 6-1.1-10-16.
- d. A copy of the memorandum to the University from Mr. Ken W. Gruebel dated September 30, 1998.
- e. Copies of correspondence to the State Board from the University dated November 24, 1998 and February 25, 1999.
- f. A copy of correspondence from the State Board's Appeal Division to the University.
- g. A copy of correspondence from the University to the State Board's Appeal Division dated May 7, 1999, submitting the subject Form 132 with supporting documentation.
- h. Copies of the University's accounting statements pertaining to the subject properties.
- i. A copy of the Charter of Vincennes University signed November 29, 1806.
- j. The Financial Statement of Vincennes University.

Respondent's Exhibit A – Copies of the property record cards for the subject properties.

6. The properties subject to this appeal are three separate vacant residential lots as follows:

Parcel #0060379800	Hawthorne Drive	Princeton	Patoka Twp.
Parcel #0110100500	Mohawk Drive	Ft. Branch	Union Twp.
Parcel #0070192200	Mohawk Drive	Ft. Branch	Union Twp.

7. The University is seeking property tax exemption for the assessment year 1997 with taxes due and payable in 1998. The Hearing Officers did not view the properties.
8. The University is a State institution of higher education established by charter in 1806. (Pet. Ex. A; *Styrzinski testimony*)(See also Ind. Code § 23-13-18-1, et. seq.)
9. The University filed its applications for exemption upon receipt of the tax bills for the subject properties. Prior to the purchase, the subject properties had been placed on the tax rolls. The University was not aware that the subject properties had remained on the tax rolls until receiving the tax statement for the 1997 assessment year payable in 1998. (*Styrzinski testimony*).
10. The warranty deeds for the subject properties contain a clause for payment of property taxes because the University assumes the liability for the property taxes due and payable in the year of purchase. (*Pea testimony*).
11. The University purchased the subject properties in August and September of 1996. (Pet. Ex. A). The subject properties were purchased for use by the University's Construction Technology Program (Program). (*Styrzinski testimony*).
12. Unlike most learning processes, the students cannot learn all aspects of the construction trade through on-campus experience alone. The University purchases land for the construction of residential dwellings because the only way its students can obtain the skills of residential construction is to build a residential dwelling. (*Styrzinski testimony*).

13. The University's Program instructs students on various aspects of the residential construction trade. The Program's first year students are primarily involved in lab work on campus. The Program's second year students, as part of their instruction, are assigned to a property to construct a residential dwelling. (*Styrzinski testimony*).
14. The residential dwellings are constructed by the Program's second year students with instruction from residential contractors. Although certain phases of construction, such as laying a foundation, are completed by outside contractors, the second year students are primarily responsible for all other phases of residential construction, such as framing, interior finish, etc. (*Stryzinski testimony*).
15. Upon completion, the homes are placed on the market and sold to private individuals. Over a period of time, approximately six years, some of the homes have sold at a profit, but most of the homes have sold at a loss. Overall, the program operates at a deficit. (*Stryzinski testimony*).
16. The University's Program has an enrollment of approximately 40 students. Averaging one year each to complete, the University's Program constructs approximately three homes each year. The Program has constructed homes in Terre Haute (Vigo County), Indianapolis (Marion County), Knox County, and Gibson County. (*Stryzinski testimony*).
17. Properties owned by the University and used for the same purposes in Vigo and Knox County have been granted exemption from property taxation. Upon notifying the local officials in these counties that the University is a State institution, the properties were removed from the tax rolls. (*Stryzinski testimony*).
18. The County Board denied the University's application because (1) the application was not timely filed; (2) the application included multiple parcels from different taxing districts; and (3) the homes can be sold at a profit.

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. The University seeks property tax exemption under Ind. Code § 6-1.1-10-16 under an educational claim. The County Board denied the application because (1) the application was not filed timely; (2) the application sought exemption for multiple parcels; and (3) the subject properties could be sold for a profit.
14. The State points out that property owned by the State of Indiana or an agency of the State of Indiana is exempt from taxation. Ind. Code § 6-1.1-10-2. The University is an agency of the State of Indiana. Ind. Code § 6-1.1-1-18. (See also Ind. Code § 23-13-18-1, et. seq.; University Charter, Pet. Ex. A.) The statutes make clear that property owned by a state university is to be exempt from property taxation. Furthermore, the court held that land owned by Butler University which was rented and the proceeds used in the operation of the university was tax exempt under provisions of special charter granted by Acts

1850, chapter 331 and denial of a tax exemption for such land would violate a constitutionally protected contractual right. *Butler University v. State Board of Tax Commissioners*, 77 Ind. Dec. 726, 408 N.E. 2d 1286 (1980).

15. The State would also note that the mere fact that the University's application encompassed multiple parcels is irrelevant as well. Simply because the University applied for exemption for three parcels on one application did not prevent the County Board from acting on each parcel individually. Furthermore, at the time this particular application for exemption was filed, nothing in statute or in the instructions provided on the application precluded a property owner from seeking exemption for multiple parcels on a single application.
16. Also, the mere fact that the subject properties could be sold at a profit is not enough on its own to deny exemption.
17. Thus, the remaining question is whether the University was required to file an application for exemption and, if so, whether the application was within the statutory time limitations.
18. The owner of tangible property may obtain property tax exemption if an application for exemption is filed with the county auditor on or before May 15 of the year for which exemption is sought. Ind. Code § 6-1.1-11-3.
19. However, an application for exemption is not required if the property is owned, and, in the case of real property, occupied by the State of Indiana or an agency of this state. Ind. Code § 6-1.1-11-4. Thus, the University is *only* required to file the application if it does not occupy the subject properties.
20. Although "occupy", in its strictest sense, is construed to mean physically inhabiting a structure, the courts have repeatedly held that the exemption statutes are not to be construed so narrowly as to defeat the intent of the exemption. *Sangralea v. State Board of Tax Commissioners*, 686 N.E. 2d 954

(Ind. Tax 1997) (citing *Mechanics Laundry v. Department of State Revenue*, 650 N.E. 2d 1223, 1227 (Ind. Tax 1995). “Occupy”, given a less restrictive meaning, can also refer to the utilization of property.

21. Clearly, at the time the construction project begins, there is no structure to physically inhabit. However, from the time the subject properties were purchased until the construction projects were complete, the University’s building trades students were actively utilizing the subject properties in their educational pursuits. Thus, the University, through its students and its building trades program effectively occupies the subject property.
22. It is of little or no consequence that once the project is complete the University’s students are no longer present at the building sites because the University holds the properties until it can sell the properties, recoup some or all of its expenses and return the funds expended during construction to its program. The completed dwellings are not used or occupied for any other purpose until sold to private individuals. As such, the University is still utilizing the subject properties as part of its building trades program.
23. Therefore, the University was not required to file an application for exemption pursuant to Ind. Code § 6-1.1-11-4. As such, the State need not examine whether or not the University’s application for exemption was filed within the statutory time limitations.
24. The record is clear. The University is an agency of the State and, for the reasons given above, the University was not required to file an application for exemption to obtain property tax exemption. Therefore, the University, as an agency of the State, is statutorily exempt from property taxation pursuant to Ind. Code § 6-1.1-10-2.

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