

**State of Indiana
Board of Tax Commissioners
Appeals Division**

City of New Castle ,) On Appeal from the Henry
) County Board of Review
Petitioner,)
)
v.) Petition for Review of Exemption,
) Form 132
)
Henry County Board of Review,) Petition No. 33-015-97-2-8-00019
) Parcel No. 030-03627-00
Respondent.)

Findings of Fact and Conclusions of Law

The State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issues

Whether the real property owned by the City of New Castle is statutorily exempt pursuant to Ind. Code § 6-1.1-10-4, Ind. Code § 6-1.1-10-5, and Ind. Code § 36-10-2-5.

Whether the real property owned by City of New Castle qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

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 1995 and 1996.

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, the City of New Castle (City) filed an Application for Property Tax Exemption, Form 136 with the Henry County Auditor. The Form 136 was filed on September 9, 1996. The Henry County Board of Review (County Board) denied the application and gave the City notice on December 26, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-3, the City filed a Form 132 petition seeking a review by the State Board. The Form 132 petition was filed January 24, 1997.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 9, 1997, before Hearing Officer Wayne Hudson. Mr. David Cooperhaver, Attorney, and Ms. Phyllis Amburgey, Accountant, were present at the hearing on behalf of the City. Ms. Patricia French, Henry County Treasurer and Mr. Jim Pickering, Henry County Assessor, were 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. The property record card for the subject property was entered into the record and labeled Board Exhibit C. In addition, the following exhibits were submitted to the State Board of Tax Commissioners:

Petitioner's Exhibit 1 – A copy of the Policies and Procedures for Tenants, a copy of the Tenant Committee Responsibilities, and a copy of the Policies and Procedures for non-tenants.

Petitioner's Exhibit 2 – A copy of a lease agreement between the City of New Castle and the Senior Citizens Center dated September 27, 1995.

Petitioner's Exhibit 3 – A copy of the 1995 Audit Report for the City of New Castle.

Petitioner's Exhibit 4 – A copy of the Henry County Senior Center's June dining menu and the regular weekly schedule listing the times and dates for the various activities available.

Petitioner's Exhibit 5 – The June 1997 edition for Senior Life.

4. The property subject to this appeal is a 2,870 square foot two-story commercial building and a 42-foot by 70-foot lot located at 108 South Main Street, New Castle, Henry Township, Henry County. The years for which exemption are sought is 1995, 1996, and 1997. The Hearing Officer did not view the subject property.
5. The City obtained ownership of the subject property in April 1990 (Board Ex. C). The City uses the subject property as its Community Center and a Senior Center (collectively called Centers). (Copenhaver testimony.) The City leases 92 square feet of the subject building to the Senior Center. (Pet. Ex. 2.)
6. The tenants of the subject building pay rent in the amount of \$57.50 monthly. The City places the rent collected into its Non-reverting City Center Fund. The monies in the fund are used to pay the utility expenses (electric, water, sewage, etc.) and to maintain the subject property. (Copenhaver testimony.)
7. The City maintains that the Centers are municipal services described under Ind. Code § 36-10-2-5 and, as such, the subject property is being used for governmental purposes. The purchase of the subject property was possible due

to the sale of the Centers' prior location and a matching grant from the Community Focus Grant Fund. The City believes that, given these facts, the City owns, uses, and occupies the subject property. (Copenhaver testimony.)

8. The Centers had the benefit of property tax exemption for the prior location. The Centers did not change the manner under which they operated. The only change the Centers experienced was the relocation to the subject property which had been purchased and renovated with public funds for public use. The City cannot maintain any of its operational offices in the subject building as a provision of the Community Focus Grant. The purpose of the grant was, in part, the funding of senior centers. (Copenhaver testimony.)
9. The County Board denied the exemption for two reasons: (1) the application was not timely filed; and (2) the City did not provide information regarding finances and the use of the subject property. (Board Ex. A.)

Conclusions of Law

1. The State Board 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. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the County Board (or PTABOA), the State Board 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).

4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, Section 5.51; 73 C.J.S. Public Administrative Law and Procedure, Section 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders and Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239 (Ind. Tax 1998)).
6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. 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).

8. In the event the taxpayer sustains his burden, then the burden shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.
9. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116-21.

Constitutional and Statutory Basis for Exemption

10. 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.
11. 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 § 6-1.1-10-4, which provides exemption for property owned by political subdivisions; Ind. Code § 6-1.1-10-5, which provides exemption for property used for municipal services, and 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.
12. 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

13. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
14. 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).
15. 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). 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.
16. 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)).
17. 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

18. The City seeks property tax exemption under Ind. Code § 6-1.1-10-4, Ind. Code § 6-1.1-10-5, and Ind. Code § 6-1.1-10-16. The City argues that the subject property should be exempt because it is owned and used for municipal purposes. The County Board denied the application because (1) the application was not filed timely and (2) the City did not provide information regarding finances and the use of the subject property.
19. Unless otherwise provided by law, property owned by a political subdivision of the State of Indiana is exempt from property taxation. Ind. Code § 6-1.1-10-4. A “political subdivision” is a “municipal corporation or special taxing district.” Ind. Code § 36-1-2-13. A “municipal corporation” is any local governmental unit, except special taxing districts, that may sue or be sued. Ind. Code § 36-1-2-10.
20. The City is, by statutory definition, a political subdivision of the State of Indiana. Therefore property owned by the City is statutorily exempt from property taxation.
21. Property that is owned by a city or town and is used to provide a municipal service is exempt from property taxation. Ind. Code § 6-1.1-10-5. Municipal services, under Ind. Code § 6-1.1-10-5, include, but are not limited to, public schools, municipally owned parks or swimming pools, and “*any other* municipally owned property, utility, or institution.” Ind. Code § 6-1.1-10-5(b)1 through –3.
22. Ind. Code § 36-10-2-5 provides the authority for a unit to establish, aid, maintain, and operate a neighborhood, community or civic center. “Unit” is defined as a “county, municipality, or township.” Ind. Code § 36-1-2-23. A city or town is a municipality. Ind. Code § 36-1-2-11. A “community center” is defined as “a

meeting place, often a complex of buildings, where the people of a community may carry on cultural, recreational, or social activities.” (*Webster’s New World Dictionary, Second Edition*, p. 288.)

23. The subject property is the result of the City’s implementation of Ind. Code § 36-10-2-5. The City obtained ownership for the sole purpose of relocating the Senior Center and providing a location for local gatherings, such as meeting rooms for local businesses and not-for-profit organizations. The City’s use of the subject property is plainly a community center by definition.
24. There can be no doubt that the subject property is a municipally owned property used to provide a municipal service. Thus, the subject property is statutorily exempt pursuant to Ind. Code § 6-1.1-10-5.
25. The City also makes its exemption claim under Ind. Code § 6-1.1-10-16. However, because the property owned by a city is specifically exempted under both Ind. Code § 6-1.1-10-4 and Ind. Code § 6-1.1-10-5, the exemption provided under Ind. Code § 6-1.1-10-16 is not relevant in this case. Therefore, the State Board will not examine the City’s exemption claim under Ind. Code § 6-1.1-10-16.
26. Finally, the State Board will examine whether or not the City timely filed an application for exemption to obtain property tax exemption for the years 1995 and 1996. However, before examining the timeliness of the application, the State Board will first look to whether the City was even statutorily required to file an application for property tax exemption.
27. To obtain property tax exemption, a taxpayer must file an application for exemption with the county auditor on or before May 15 of the year for which exemption is sought. Ind. Code § 6-1.1-11-3. For example, if a taxpayer seeks property tax exemption for the taxes assessed and imposed in 1995, then the application for exemption must be filed on or before May 15, 1995. However, as

stated earlier in these findings, legislature has made exceptions to this requirement.

28. An application for exemption is not required if the property is owned, and, in the case of real property, occupied by a political subdivision as defined under Ind. Code § 36-1-2-13. Ind. Code § 6-1.1-11-4. As stated above, the City is a political subdivision by statutory definition. Thus, the City is *only* required to file the application if it does not occupy the subject properties.
29. 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.
30. The City maintains and operates the Centers as a municipal service to the community. Through its operation of the Centers, the City is utilizing the subject property for municipal purposes. Therefore, the City is effectively occupying the subject property. It is of no consequence that the City does not use the subject property as a location for governmental operations because, using a less restrictive definition, occupying property does not necessarily mean physically inhabiting the property.
31. Therefore, the City was not required to file an application for exemption pursuant to Ind. Code § 6-1.1-11-4. As such, the State Board need not examine whether or not the City’s application for exemption was filed within the statutory time limitations to obtain property tax exemption for 1995 and 1996. Because the City was relieved of the requirement to file an application, the time limitation for seeking property tax exemption is irrelevant.

32. The City bore the burden of showing that the subject property fell specifically within the exemption statute. The City has met this burden. The City has shown through testimony and evidence that it owns the subject property and utilizes the subject property in the operation of the Community Center. As such, the subject property is wholly exempt from property taxation pursuant to Ind. Code § 6-1.1-10-4 and Ind. Code § 6-1.1-10-5 for the years 1995, 1996, 1997, and forward until such time that the City no longer utilizes the subject property in the operation of the Community Center.