

**STATE OF INDIANA**  
**Board of Tax Commissioners**  
**Appeals Division**

P&A, LLC	)	On Appeal from the Lake County
Petitioner,	)	Property Tax Assessment Board
	)	of Appeals
	)	
v.	)	
	)	Petition for Review of Exemption
	)	Form 132
LAKE COUNTY PROPERTY TAX	)	Petition No. 45-030-00-2-8-00001
ASSESSMENT BOARD OF APPEALS	)	Parcel No. 081505410002
Respondent.	)	

**Findings of Fact and Conclusions of Law**

The Indiana Board of Tax Review (IBTR), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law. It should be noted that pursuant to Ind. Code § 6-1.5, effective January 1, 2002, the IBTR assumed the duties of the State Board of Tax Commissioners and the Appeals Division of the State Board of Tax Commissioners, regarding property tax appeals.

**Issue**

Whether the land and improvements leased by Purdue University Calumet from P&A, LLC, qualify for property tax exemption pursuant to Indiana Code (IC) 6-1.1-10-16, IC 6-1.1-10-38 and that Statute's reference to IC 20-12-6-11.

## 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 IC 6-1.1-11-3, P&A, LLC filed an application for property tax exemption with the Property Tax Assessment Board of Appeals (PTABOA) on May 15, 2000. The PTABOA denied the application on December 8, 2000, and gave P&A, LLC proper notice of denial.
  
3. Pursuant to IC 6-1.1-11-7, P&A, LLC filed a Form 132 petition seeking a review of the PTABOA action by the Appeals Division. The Form 132 petition was filed January 16, 2001.
  
4. Pursuant to IC 6-1.1-15-4, a hearing was held on June 5, 2001 before Senior Administrative Law Judge (ALJ) Tim Rider. Testimony and exhibits were received into evidence. Mark Lillianfeld, attorney at law, appeared for the Petitioner. Sharon Fleming, Lake County Nonprofit Deputy, represented the PTABOA. R. G. White appeared from Ross Township.
  
5. At the hearing, the subject Form 132 petition and attachments were made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following items were received into evidence:  
  
Petitioner's Ex. 1 – Power of Attorney appointing Mark I. Lillianfeld, attorney at law, as the representative for P&A, LLC.  
Petitioner's Ex. 2 – Memorandum of Law in support of petition for review.  
Petitioner's Ex. 3 – Appendix to Pet. Ex. 2, containing documents and law cited in the Memorandum of Law.
  
6. The subject property is located at 8120 Georgia Street, Merrillville, IN 46410.

7. The ALJ did not view the property.
8. The material facts of this case are not in dispute.
9. Purdue University is an educational institution for the State of Indiana.
10. Prior to October 1998, Purdue University requested an advisory opinion on a property tax exemption for a proposed lease with P&A, LLC from the Lake County PTABOA.
11. On October 14, 1998, such an advisory opinion was issued by Henry E. Bennett, Jr., Senior Hearing Officer for the PTABOA. (See Pet. Ex. 3).
12. In the pertinent part of Mr. Bennett's advisory opinion he stated that "Having conferred with the Indiana State Board of Tax Commissioners the Board finds that Purdue Calumet is eligible for tax exempt status (I.C. 20-12-6-2, 20-12-6-11) for the space leased by your college from its owner, P & A, L.L.C., but only for the space leased by the college and not for any other part of the parcel that does not fall under your leasing agreement."
13. In reliance on the advisory opinion, on October 26, 1998, Purdue University entered into a lease with P&A, LLC for the property in question. (See Pet. Ex. 3).
14. The terms of the lease require Purdue University to occupy and use the leased property exclusively for classroom instruction and administrative functions. The term of the lease is for an initial period of eight months and five days with up to five one-year renewals at the option of Purdue University. (See Pet. Ex. 3).
15. Purdue University acquired a possessory interest under the lease but no ownership rights.

16. Since entering into the lease, Purdue University has occupied and used the building exclusively for the uses set forth in the lease.
16. In its May 15, 2000 Application for Property Tax Exemption, the Petitioner asked for a 50% exemption for land and improvements as that was the percentage of the property Purdue University was using for educational purposes. In the section titled "Upon what uses or purpose do you base the claim for exemption?" the Petitioner check the box titled "Educational – pursuant to I.C. 6-1.1-10-16" and under "Other" to Petitioner denoted "I.C. 20-12-6-2, 20-12-6-11." (See Board Ex. A).
17. In its December 8, 2000 determination, the PTABOA cites as its reasons for denial the following: "I.C. 6-1.1-10-16 Does not qualify for this exemption. Purdue leases this property and is not the owner as required to qualify for the exemption. See state owned property I.C. 6-1.1-10-2." (See Pet. Ex. 3).

### **Conclusions of Law**

1. The Appeals Division of the State Board was the proper body to hear an appeal of the action of the PTABOA pursuant to IC 6-1.1-15-3.

#### **A. Burden In General**

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 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*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & 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, n. 13 (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 a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.

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

9. 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.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption was claimed under IC 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 educational purposes.
11. In addition, the exemption was also claimed under IC 20-12-6-11 which provides that property acquired by a state university under the authority of or for purposes provided for in Chapter 6 of IC 20-12 shall be exempt from all taxation in the State of Indiana.
12. While IC 6-1.1-10 deals with property tax exemptions, Section 38 provides that chapter 10 does not contain all property tax exemption provisions and goes on to list IC 20-12-6-11 as one of many other exemption provisions.

### **C. Basis of Exemption and Burden**

13. In Indiana, the general rule is that all property in the State is subject to property taxation. IC 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 (NAME) v. State Board of Tax Commissioners*, 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.
16. 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)).
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).

#### **D. Conclusions Regarding the Exemption Claim**

18. In its analysis of the exemption claim, the PTABOA was quite right when it stated that the Petitioner was not entitled to an educational exemption under IC 6-1.1-10-16.
19. Clearly P&A, LLC did not own the property for educational purposes but, rather its leasing of the property to Purdue University was a profit making venture.
20. However, the PTABOA did not mention IC 20-12 in its Notice of Action on Exemption Application taking the position that if the owner did not qualify pursuant to IC 6-1.1-10-16 no exemption could be granted.
21. Since IC 6-1.1-10-38 lists IC 20-12-6-11 as a statutory provision where property tax exemption provisions can be found; the Petitioner claimed its exemption under that statutory provision; and the Petitioner raised the issue at hearing, an analysis of IC 20-12 must be made.
22. Chapter 6 of IC 20-12 deals with the acquisition and use of buildings and other facilities by state universities for carrying on or servicing educational responsibilities.
23. For purposes of Chapter 6 of IC 20-12, the state universities of Indiana, including specifically Purdue University, are identified as “corporation(s).”
24. IC 20-12-6-2(a) states in its relevant part that the corporations shall be authorized to acquire by lease for such period of time not exceeding 40 years as the respective governing boards of the state universities may approve, such real property as deemed necessary for purposes of carrying on educational research,



public service programs, the statutory responsibilities of the educational institutions, or for the management, operation or servicing of the educational institutions, on such terms and conditions as the governing boards of the state universities may approve.

25. IC 20-12-6-11 states in its relevant part that all property acquired by a state university under the authority of Chapter 6 of IC 20-12, or used for purposes provided in Chapter 6 of IC 20-12 shall be exempt from all taxation in the State of Indiana.
26. The keyword to examine regarding these statutory cites is “acquire.” Purdue University did not acquire ownership and is not the owner of the property as that term is defined in IC 6-1.1-1-9.
27. Purdue University clearly received, in the lease, only the right to use the property. There was no ownership right conveyed in the lease agreement. Accordingly, the property in question is **owned** by P&A, LLC, a for-profit entity.
28. An examination of previous State Board determinations reveals that exemptions have been denied under similar circumstances.
29. In the matter of Petition for Review of Exemption, Form 132, Petition No. 68-021-99-2-8-13201, Parcel No. 021-02763-05, Petitioners: Douglas K & Mary F. Lowe, an exemption was denied for property leased by the State of Indiana’s Bureau of Motor Vehicles (a tax exempt organization) because the State “acquired no ownership interest.” Judicial review was not taken of this determination issued by the State Board on September 22, 2000.
30. One case can be noted where the Tax Court examined a similar situation. In *The Indiana University Foundation v. State Board of Tax Commissioners*, 527 N.E.2d 1166 (1988), the Petitioner owned 31% of an apartment building but operated the entire complex in support of Indiana University. The Foundation claimed a 100%

educational exemption based on exclusive use and occupancy of the property for educational purposes. *Id* at 1167.

31. The Tax Court referred to IC 6-1.1-1-9(b) which defines “owner” as the holder of “legal title in fee to real property.” *Id* at 1168.
32. The Tax Court went on to hold that “While the Foundation may satisfy the use and occupancy prongs of the test under IC 6-1.1-10-16, it does not satisfy the ownership requirement.” *Id* at 1169.
33. In the instant case Purdue University has acquired no “ownership interest” in the property in question. The owner is the Petitioner who leases property as a profit-making venture.
34. It bears repeating that 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* at 714; *Indiana Association of Seventh Day Adventists* at 938.
35. Because P&A, LLC has not shown that it is entitled to an educational property tax exemption pursuant to IC 6-1.1-10-16, the IBTR denies its exemption request.