

REPRESENTATIVE FOR PETITIONER:
Donald E. Schlyer, Attorney, Schlyer & Associates

REPRESENTATIVES FOR RESPONDENT:
Mark Thiros, Assistant Attorney, Lake County Commissioners

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LAKE COUNTY TRUST	)	Petition No:	45-033-00-2-8-00001
COMPANY - TRUST #2483)		
d/b/a GRIFFITH-MERRILLVILLE)		
AIRPORT)		
)		
Petitioner)		
	)	Parcel:	395100540001
v.)		
	)	County:	Lake
LAKE COUNTY PROPERTY TAX	)	Township:	St. John
ASSESSMENT BOARD OF)		
APPEALS)		
	)	Assessment Year:	2000
Respondent.)		

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

April __, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board is whether the subject property qualifies as reasonably necessary to and used for public airport purposes pursuant to Ind. Code § 6-1.1-10-15.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Paul Goldsmith, sole beneficiary and owner of the Lake County Trust Company – Trust #2493 d/b/a Griffith-Merrillville Airport (Griffith-Merrillville Airport) filed an Application for Property Tax Exemption, Form 136, for the 2000 assessment year on May 1, 2000. The Lake County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on August 5, 2005, exempting 86% of the land and improvements and finding 14% of the land and improvements to be taxable.
3. Pursuant to Ind. Code § 6-1.1-11-7, Paul Goldsmith, on behalf of Griffith-Merrillville Airport filed a Form 132 Petition for Review of Exemption on August 17, 2005, petitioning the Board to conduct an administrative review of the above petition.

Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on January 23, 2007, in Crown Point, Indiana.
5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Paul Goldsmith, beneficiary and owner

Craig Anderson, airport manager

For the Respondent:

Sharon Fleming, staff member, PTABOA

Deborah Smith, staff member, PTABOA

Betty Wilusz, Deputy Assessor, St. John Township

6. The Petitioner submitted the following evidence:

Petitioner Exhibit 1 – Air Agency Certificate issued by Department of Transportation Federal Aviation Administration to G & N Aircraft, Inc., dated January 15, 1988,

Petitioner Exhibit 2 – Aerial map prepared by Mid-States Engineering,

Petitioner Exhibit 3 – Twelve interior photographs of G & N Aircraft, Inc.

Petitioner Exhibit 4 – Copy of Ind. Code § 6-1.1-10-15,

Petitioner Exhibit 5 – Copy of Ind. Code § 8-22-1-4.5,

Petitioner Exhibit 6 – G & N Aircraft, Inc., brochure.

7. The Respondent submitted the following evidence

Respondent Exhibit 1 – State Board of Tax Commissioners’ Notice of Action on Review Application for Exemption, dated August 12, 1996,

Respondent Exhibit 2 – Hand drawn sketch of the building occupied by G & N Aircraft, Inc.¹

8. The following additional items are officially recognized as part of the record of the proceedings and labeled Board Exhibits:

Board Exhibit A – Form 132 petition with attachments,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Order Regarding Conduct of Exemption Hearing,

Board Exhibit D – Hearing sign-in sheet.

¹ The Petitioner objected to the introduction of Respondent’s Exhibit 2 on the ground that the Respondent failed to provide the Petitioner with a copy of the exhibit prior to hearing. The Respondent argued the evidence offered was a sketch of the areas as shown on the property record card. The Board’s rules require that “copies of documentary evidence or summaries of statements of testimonial evidence” be provided to other parties to the proceeding, “at least five (5) business days prior to the hearing.” 52 IAC 2-7-1. The Board may waive the deadlines “for materials that had been submitted at or made part of the record at the PTABOA hearing, a department hearing, or other proceeding from which the appeal arises,” 52 IAC 2-7-1 (d). Here, however, the drawing is new evidence introduced by the Respondent and the Petitioner had no opportunity to verify the information or to prepare responsive evidence. The Petitioner’s objection is, therefore, sustained.

9. The subject property is an airport facility consisting of seven buildings situated on an approximately 80 acre tract of land located at 1705 East Main Street, Griffith, St. John Township in Lake County.
10. The ALJ did not conduct an on-site visit of the property.
11. For 2000, the PTABOA determined that the land and improvements were 86% exempt and 14% taxable.
12. For 2000, the Petitioner contends that the only portion of the property subject to taxation is 1,300 square feet of a 33,920 square foot building, which is used by an insurance company. According to the Petitioner, this represents 3.8% of the 14% currently shown by the local officials as taxable.²

Jurisdictional Framework

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner's Burden

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and

² Based on the Petitioner's testimony the taxable portion of the subject property would be .0053% (3.8% x 14%). The Petitioner therefore contends the subject property is 99.9947% exempt and .0053% taxable.

specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

17. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
18. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

19. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 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 Ct. 1990)).
20. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Discussion of Issue

21. The Petitioner contends that the property at issue is exempt under Ind. Code § 6-1.1-10-15, because the property is used for public airport purposes. *Schlyer argument; Petitioner Exhibit 4.*³ According to the Petitioner, the Griffith – Merrillville Airport was certified by the Indiana Department of Transportation as a public-use airport on August 31, 1999. *Board Exhibit A.*
22. In support of its contention, the Petitioner presented the following testimony and other evidence:
 - a. The Petitioner argues that land used for the shelter, storage, or care of aircrafts, including hangars, is entitled to an exemption. Ind. Code § 6-1.1-10-15(c)(3); *Schlyer argument.* Mr. Schlyer contends that Ind. Code § 8-22-1-4.5, further defines aviation related property or facilities as “those properties or facilities that

³ The parties agreed that 86% of the property is entitled to an exemption under Ind. Code § 6-1.1-10-15. The focus of this appeal is the remaining 14% which the parties also agreed is a building containing 33,920 square feet and the area around it, occupied by G & N Aircraft, Inc., and an insurance company. *Schlyer argument; Thiros argument.*

are utilized by a lessee, or a lessee's assigns, who provide services or accommodations." *Schlyer argument; Petitioner Exhibit 5*. According to Mr. Schlyer, those services include but are not limited to fixed based operations, general aviation or military users, and aviation maintenance and repair facilities. *Id.*

- b. The Petitioner's witness, Craig Anderson, testified that the building at issue in this appeal consists of 33,920 square feet. *Anderson testimony*. 1,300 square feet of the building is leased to an insurance company and the remaining 32,620 square feet is leased to G & N Aircraft, Inc. (G&N).⁴ *Id.* The Petitioner argues that the portion of the building leased to G&N is used for aviation related purposes. *Schulyer argument*. According to Mr. Anderson, G&N's operations off-set the operational cost, as well as enhance air traffic to the facility because of the services available at the Griffith – Merrillville Airport. *Anderson testimony*.⁵
- c. Mr. Anderson testified that G&N was certified by the Department of Transportation – Federal Aviation Administration (FAA) on January 15, 1988, to operate a repair station rated to provide airframe, power plant, accessory, and specialized services for aircraft. *Anderson testimony; Petitioner Exhibit 1*. According to Mr. Anderson, the FAA supervises the operations of G&N with regular inspections to insure that its repair work meets the standards of the FAA and aircraft manufacturers and that the work is being performed by properly licensed personnel. *Anderson testimony*.
- d. The Petitioner's witness further testified that G&N provides services such as repair and overhauling of engines, and inspections and repair of wings, electrical

⁴ Mr. Schlyer admitted that the 1,300 square feet leased by the insurance company is not used for aviation related purposes. *Id.* Therefore that portion of the building is taxable. *Id.*

⁵ During the hearing Mr. Thiros questioned Mr. Anderson extensively on what type of financial impact G & N has on the Griffith – Merrillville Airport. Mr. Schlyer objected to Mr. Thiros' questioning as irrelevant to whether the property should be tax-exempt as an aviation maintenance and repair facility.

systems, brake systems, alternators, starters and turbo charging systems.

Anderson testimony; Petitioner Exhibits 3 & 6. Mr. Anderson testified that there is no manufacturing at the facility. *Anderson testimony.* The witness admits, however, that G&N services not only the aircraft using the Griffith – Merrillville Airport, but also services aviation maintenance and repair needs of aircraft throughout the United States. *Id.* Further, Mr. Anderson admits that the Griffith – Merrillville Airport could operate without G&N’s services. *Id.*

23. The Respondent contends that Ind. Code § 6-1.1-1-15(c) does not exempt all things aviation related. *Thiros argument.* According to the Respondent, 14% of the Petitioner’s property is used for a commercial operation that the State Board of Tax Commissioners determined to be taxable in 1996.⁶ *Fleming testimony; Respondent Exhibit 1.*

24. In support of its assessment, the Respondent presented the following testimony and other evidence:
 - a. According to the Respondent, the PTABOA denied the Petitioner’s exemption request because the building at issue was not used for public airport purposes, but rather for other commercial and manufacturing purposes. *Thiros argument; Respondent Exhibit 1.* The Respondent’s witness testified that the township believed that in 2000 the insurance company was leasing 3,720 square feet and that G&N was using 50% of the remaining square footage of the building as a small machine shop to repair engines that it shipped to customers throughout the United States. *Wilusz testimony.* Ms. Wilusz also testified that G&N is a for-profit operation that does not just service airplanes coming into the Griffith – Merrillville Airport, but provides repair and maintenance work for aircraft from across the country. *Id.*

⁶ The Indiana Board of Tax Review assumed jurisdiction of matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners.

- c. Finally, the Respondent argues that G&N fails to meet the criteria set forth in Ind. Code § 6-1.1-10-15, as land that is “reasonable necessary to and used for public airport purposes.” *Thiros argument*. According to Mr. Thiros, while G&N may provide services that enhance the attractiveness of the Griffith – Merrillville Airport, its services are not necessary to the operation of the airport. *Id.*

Analysis

25. Ind. Code § 6-1.1-10-15(a) provides that “[t]he acquisition and improvement of land for use by the public as an airport is a municipal purpose regardless of whether the airport is owned or operated by a municipality.” Further, the owner of any airport “may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes.” *Id.* The statute further defines “land used for public airport purposes” as including “property used in providing for the shelter, storage, or care of aircraft, including hangars.” Ind. Code § 6-1.1-10-15(c)(3). According to Ind. Code § 6-1.1-10-15(c), “the term does not include land areas used solely for purposes unrelated to aviation.” Aviation related property or facilities are further defined in Ind. Code § 8-22-1-4.5, as “those properties or facilities that are utilized by a lessee, or a lessee’s assigns, who provides services or accommodations: (1) For scheduled or unscheduled air carriers and air taxis, and their passengers, air cargo operations, and related ground transportation facilities; (2) For fixed based operations; (3) For general aviation or military users; and (4) As aviation maintenance and repair facilities.” Ind. Code § 8-22-1-4.5(a).
26. Here, the record reflects that the Griffith – Merrillville Airport is a public use airport with a current and valid certification from the Indiana Department of Transportation as described in Ind. Code § 6-1.1-10-15(a). *See Petitioner Exhibit 1*. The parties agree that 86% of the entire property is exempt. The dispute centers on a 33,920 square foot building currently leased to and occupied by an insurance company and G&N which represents 14% of the property. *Schlyer argument; Thiros argument*. The Petitioner admits that the 1,300 square feet of the building leased by the insurance company is non-

exempt. The Petitioner, however, argues that the remaining 32,620 square feet leased by G&N is exempt as “property used in providing for the shelter, storage, or care of aircraft, including hangars.” Ind. Code § 6-1.1-10-15(c)(3).

27. According to the Petitioner, G & N is certified by the FAA as an approved repair station to service airframe, power plant, accessories and perform specialized services on aircraft. *Anderson testimony; Petitioner Exhibit 1*. According to Mr. Anderson, G & N provides these aviation maintenance and repair services for the Griffith – Merrillville Airport as well as for people and businesses throughout the United States. *Id.; Petitioner Exhibits 3 & 6*. In addition, Mr. Anderson claims that lease monies received from G&N off-set the operational cost of the airport. *Id.*
28. The Petitioner further argues that the subject property would also qualify as being tax-exempt under Ind. Code § 8-22-1-4.5, which states in pertinent part; “properties or facilities that are utilized by a lessee or a lessee’s assigns, who provides services or accommodations: for fixed based operations, for general aviation or military users, and as aviation maintenance and repair facilities.” *Schlyer argument*. According to the Petitioner, G&N caters to general aviation users and is a fixed based operation, which performs aviation maintenance and repair at the facility. *Anderson testimony; see also* Ind. Code § 8-22-1-4.5.
29. Indiana Code § 6-1.1-10-15(c)(3) exempts property from taxation that is “used in providing, for the shelter, storage, or care of aircraft, including hangars.” The Petitioner presented sufficient evidence showing that G&N provides services for the “care of aircraft.” Thus, the Petitioner raised a prima facie case that the 32,620 square feet of space occupied by G&N is an exempt use.
30. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent alleges that G&N services are not

necessary to the operation of the airport. *Thiros argument; Wilusz testimony*. While the Petitioner’s witness admits that the Griffith – Merrillville Airport could operate without the services of G&N, we do not interpret the language that exempts “only so much of the land as is reasonably necessary to and used for public airport purposes” so narrowly. Ind. Code § 6-1.1-10-15(a). The statute specifically provides that “property used in providing for the shelter, storage, or care of aircraft, including hangars” is “land used for public airport purposes.” Ind. Code § 6-1.1-10-15(c)(3). Thus, evidence that the airport could operate without G&N services does not rebut the Petitioner’s prima facie showing that it is an exempt use.

31. The Respondent also contends that G&N is a for-profit operation catering to customers throughout the United States. Prior to 1989, the exemption statute at issue provided that “land used for public airport purposes” did not include “portions of the airport complex from which income is derived.” An amendment in 1989 eliminated that language. When language from an earlier version of a statute is deleted, the Legislature intended to change the law by removing that language. *Joe v. Lebow*, 670 N.E.2d 9, 19 (Ind. Ct. App. 1996); *Frey v. Review Bd. of Ind. Employment Sec. Div.*, 446 N.E.2d 1341, 1344 (Ind. Ct. App. 1983). *See also, College Corner, L.P., v. Department of Local Government Finance*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006) (“The language of Indiana Code § 6-1.1-10-16 is clear and unambiguous. It grants the charitable purposes exemption to *any* entity which otherwise qualifies. It does not differentiate between entities that are not-for-profit and entities that operate for profit. ... Thus, the fact that NCCDC is organized as a for-profit corporation is of no consequence.”) We decline any interpretation that would reinsert such language and, therefore, hold that evidence that G&N is a for-profit operation is insufficient to rebut the Petitioner’s case.
32. Further, the Respondent contends that the portion of the subject building occupied by the insurance company is 3,720 square feet and not the 1,300 square feet as claimed by the Petitioner. *Wilusz testimony*. The Respondent’s contentions, however, are unsupported by any evidence. Statements that are unsupported by probative evidence are conclusory

and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

33. Finally, the Respondent testified that the PTABOA denied the exemption on 14% of the Petitioner's property because, in 1996, the State Board of Tax Commissioners determined that 14% of the Petitioner's property was used for a commercial operation and was, therefore, taxable. *Fleming testimony; Petitioner Exhibit 1*. Whether a property was taxable in previous years is not determinative of its exempt status in the 2000 assessment year. Each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, the Respondent failed to rebut the Petitioner's showing.

Summary of Final Determination

34. The Petitioner established a prima facie case that the land and improvements occupied by G&N qualified for exemption. The Respondent failed to rebut the Petitioner's evidence. The Board, therefore, finds in favor of the Petitioner and holds that the subject property is 99.9947% exempt.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date written above.

Commissioner, 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at www.in.gov/judiciary/rules/tax/index.html. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.