

REPRESENTATIVE FOR PETITIONER:

Lynn Coyne, Assistant Vice President for Real Estate Indiana University
John Wilhite, Director of Real Estate for Indiana University Foundation
Daniel Dooley, Director of Finance and Facilities for Indiana University East

REPRESENTATIVE FOR RESPONDENT:

Charles Todd, Counsel for the Wayne County PTABOA

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

INDIANA UNIVERSITY)	Petition Nos.: 89-030-03-2-8-00001
FOUNDATION)	89-030-03-2-8-00002
)	
Petitioner,)	
)	Parcel Nos.: 46-21-000-111.000-29
v.)	46-21-000-112.000-29
)	
WAYNE COUNTY PROPERTY)	County: Wayne
ASSESSMENT BOARD OF)	Township: Wayne
APPEALS)	
)	
Respondent.)	Assessment Year: 2003

Appeal from the Final Determination of
Wayne Property Tax Assessment Board of Appeals

June 30, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Whether the Petitioner is required to file a Form 136 Petition in order to obtain property tax exempt status.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. James P. Perin, Senior Vice President for Indiana University Foundation (the Petitioner) filed an Application for Property Tax Exemption (Form 136) for the subject parcels on December 5, 2003. The Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the subject properties were 100% taxable on April 28, 2004, on the basis that the Petitioner's Form 136 was not timely filed.
2. Pursuant to Ind. Code § 6-1.1-11-7, James P. Perin, on behalf of the Petitioner, filed a Petition to the Indiana Board of Tax Review for Review of Exemption (Form 132), seeking administrative review of the PTABOA determination. The Form 132 petition was filed on May 25, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on March 15, 2006, in Richmond, Indiana. Debra Eads, 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, presided at the hearing.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Lynn Coyne, Assistant Vice President for Real Estate Indiana University
John Wilhite, Director of Real Estate for Indiana University Foundation

Daniel Dooley, Director of Finance and Facilities for Indiana University East
For the Respondent:

Michael Statzer, County Assessor and PTABOA Member

Marie Elstro, PTABOA Member

Richard Lee, PTABOA Member

Charles Todd appeared as counsel for the Wayne County PTABOA.

5. The parties presented the following exhibits:

Petitioner Exhibit 1 – Final Determination for Petition No.

45-030-00-2-8-00001

Petitioner Exhibit 2 – Lease agreement and addendums for subject property

Petitioner Exhibit 3 – Affidavit of John Wilhite

Petitioner Exhibit 4 –Ind. Code §§ 6-1.1-1-18; 6-1.1-10-2 and 6-1.1-11-4

Petitioner Exhibit 5 –Ind. Code § 20-12-6-11

Respondent Exhibit 1 – Printout of web search for the Petitioner

6. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 132 Petitions

Board Exhibit B – Notices of Hearings dated January 13, 2006

Board Exhibit C – Hearing Sign-in Sheet

Board Exhibit D – Notice of Appearance for Charles Todd

7. The subject properties are vacant parcels located at 2325 Chester Boulevard, Richmond in Richmond Township. The properties serve as a buffer between the Indiana University East campus and surrounding properties.

8. The ALJ did not conduct an on-site inspection of the subject property.

9. For 2003, the PTABOA determined the exempt status of the subject parcels to be 0% exempt for Parcel 46-21-000-111.000-29, and 0% exempt for Parcel 46-21-000-112.000-29.
10. For 2003, the Petitioner requests that the parcels be 100% exempt.
11. The Petitioner and Respondent are in agreement regarding the following facts:
 - a) Indiana University Foundation is a separate entity from Indiana University.
 - b) Indiana University has leased the subject properties from Indiana University Foundation, in their entirety, continuously from January 30, 1992, to the present.
 - c) Indiana University Foundation filed a Form 136 Petition for Property Tax Exemption on December 5, 2003, for the subject properties. Should there be a requirement for filing of the Form 136 Petition, the December 5, 2003, filing was not timely for the March 1, 2003, assessment date.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) 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.

BASIS OF EXEMPTION AND BURDEN

13. 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.
14. 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).
15. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiast*, 671 N.E.2d 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)).
16. 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 THE ISSUE

Whether the Petitioner is required to file a Form 136 Petition in order to obtain property tax exempt status.

17. The Petitioner contends that the Petitioner is a “state agency” as defined by Ind. Code § 6-1.1-1-18. The Petitioner further contends that the filing of a Form 136 Property Tax Exemption is not required because, as stated in Ind. Code § 6-1.1-11-4, the filing of a Form 136 is not required by a state agency. Alternatively, the Petitioner contends that because Indiana University East, as a state agency, leases the subject properties, the Petitioner was not required to file a Form 136.
18. The Respondent contends that the Petitioner is not a state agency and, as the owner of the subject properties, the Petitioner is required to file Form 136 Petitions in order to be considered exempt from property taxation. The Respondent further contends that Indiana University East’s leasing of the properties does not make the Indiana University Foundation a “state agency,” nor does it alter the Foundation’s requirement to file for an exemption.
19. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The Petitioner testified that when Indiana University East desires to purchase property and funds are not readily available, Indiana University East requests that the Petitioner purchase the property and lease it to Indiana University. *Coyne testimony*. According to the Petitioner, that is the situation with the subject properties. *Id.*
 - B. The Petitioner testified that from the time the Petitioner originally purchased the properties, Indiana University East has continuously leased them. *Coyne testimony; Petitioner Exhibit 2*. The Petitioner testified that the subject properties are part of the entranceway to Indiana University East and provide a buffer between the University’s property and the adjacent commercial properties. *Coyne testimony*.
 - C. The Petitioner contends that, as a state agency, an exemption from property taxation does not require the filing of a Form 136 petition in order to obtain the property tax exemption status. *Coyne testimony; See Ind. Code § 6-1.1-10-2*.

D. The Petitioner offered the Board's Final Determination in *P&A, LLC v. Lake County Property Tax Assessment Board of Appeals*, Petition No. 45-030-00-2-8-00001, issued May 1, 2002, as support for the Petitioner's position that, pursuant to Indiana Code § 30-12-6-11, the subject properties should be exempt for property taxation. *Coyne testimony; See Petitioner Exhibit 1.* The Petitioner claims that pursuant to the findings in *P&A, LLC*, when a state agency leases property, that state agency is considered to have acquired the property and as such is the "owner" of the property and is exempt from property taxation. *Id.* Therefore, the Petitioner alleges that the subject properties, because they are leased to a state agency, are exempt from the time of the original lease and no exemption filing was required to be made. *Id.*

20. The Respondent presented the following evidence and testimony in regard to this issue:

A. The Respondent contends that the Petitioner is a not-for-profit corporation and is a separate entity from Indiana University East. *Todd argument; Respondent Exhibit A.*

B. The Respondent agreed that as the lessee of the subject properties, Indiana University East would be exempt from property taxation, just as the *P&A LLC* case determined that because the tenant of *P&A LLC* was Purdue University, that property was exempt. *Todd argument; See Petitioner Exhibit 1.* The Respondent argues, however, that in the *P&A LLC* case, the Petitioner filed for an exemption. *Id.* Therefore, the Respondent claims, the case does not stand for the proposition that the filing of a Form 136 petition is not required in order to gain tax-exempt status, but only determined that 50% of the property was tax-exempt because Purdue University only leased 50% of the property. *Id.*

C. The Respondent contends that in the absence of the filing of a Form 136 petition, the Respondent would have no reasonable way to be aware of any relationship between

owner and tenant, or whether a tenant should or should not be tax exempt. *Todd argument.*

ANALYSIS

21. The parties do not dispute that the subject properties are owned by the Petitioner and leased to Indiana University East. Also not in dispute is that the Form 136 Petition for Review of Exemption was not timely filed by the Petitioner as required in Ind. Code § 6-1.1-11-3(a) if the Petitioner was required to file. Thus, the only issues before the Board are whether the Petitioner is a state agency or whether the Petitioner was required to file a Form 136 petitioner where its lessee, Indiana University East, is a state agency.
22. Indiana Code § 6-1.1-10-16 exempts real property from taxation “if it is owned, occupied, and used by a person for educational . . . purposes.” Ind. Code § 6-1.1-10-16(a). A taxpayer seeking an exemption from property taxation must file an application with the county in which the property is located “on or before May 15 on forms prescribed by the Department of Local Government Finance.” Ind. Code § 6-1.1-11-3(a). Failure to timely file, however, waives a taxpayer’s right to the exemption. Ind. Code § 6-1.1-11-1 (“An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation.”). However, an exemption application is not required if “the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision.” Ind. Code § 6-1.1-11-4.
23. Indiana Code § 6-1.1-1-18 defines state agency as “a board, commission, department, division, bureau, committee, authority, military body, college, university or other instrumentality of this state, but does not include a political subdivision or an instrumentality of a political subdivision.” The parties agreed that the Petitioner is a separate entity from Indiana University. The Petitioner further offers no evidence to show that they are defined under the Indiana Code definition of a state agency. The

Petitioner is not a university or college and it has not been “endowed by the state with powers or functions governmental in nature.” *Ayres v. Indian Heights Volunteer Fire Dept.*, 493 N.E.2d 1229, 1235 (Ind.1986) (citing *Evans v. Newton*, 382 U.S. 296, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966)). Moreover, in *State Board of Accounts v. Indiana University Foundation* 647 N.E.2d 342 (Ind. Ct. App. 1995), the Indiana Court of Appeals held that the Indiana University Foundation was not a public agency and did not hold private donations on or behalf of the state and therefore was not subject to review by the State Board of Accounts. The court further held that the Foundation is not a public entity because it is not supported by public funds. *State Board of Accounts*, 647 N.E.2d at 353. A foundation that is a private entity and not subject to state review lacks the dimensions of a state agency.

24. The Petitioner is not a state agency and, thus, is required to file a timely application in order to obtain an exemption on the properties. The Petitioner, however, argues that pursuant to the findings in *P&A, LLC*, when a state agency leases property, that state agency is considered to have acquired the property and as such is the “owner” of the property and is exempt from property taxation. *Coyne testimony; See Petitioner Exhibit 1*. According to the Petitioner, because Indiana University East leases the properties, the Petitioner was not required to file a Form 136 on their behalf.
25. Pursuant to Indiana Code § 6-1.1-11-4, an exemption application is not required if “the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). However, this subsection applies only when the property is used, and in the case of real property occupied by the owner...” Here, since the properties are owned by the Petitioner, they are not owned, occupied and used by Indiana University East. Thus, the Petitioner cannot claim that it is not required to file an application for exemption under this section.
26. We agree with the Respondent that the *P&A LLC* case does not stand for the proposition that the filing of a Form 136 petition is not required in order to gain tax-exempt status

when a university leases a property. In the *P&A LLC* case, the Petitioner filed for an exemption. The only determination made by the Board was that 50% of the property was tax-exempt because Purdue University leased 50% of the property.

27. Further, the Respondent's argument that in the absence of a Form 136 petition filing, the PTABOA would have no reasonable means to be aware of the owner/tenant relationship is a compelling one. The Petitioner suggests that because the properties are titled in the name of the Petitioner (Indiana University Foundation) and located adjacent to the Indiana University East campus, that the relationship between the Petitioner and Indiana University East is apparent. The mere suspicion by a county that a relationship might exist between two entities, however, is insufficient to grant a property tax exempt status based on the properties being part of a state agency. If property is not owned by a state agency, the only practical way for a county to be made aware that a state agency is the tenant is through the appropriate and timely filing of the Form 136 Petition for Review of Tax Exemption. *See* Ind. Code 6-1.1-11-3.
28. Here, the parties agreed that the required application was not timely filed. The Petitioner has, therefore, waived its right to an exemption.

SUMMARY OF FINAL DETERMINATION

Whether the Petitioner is required to file Form 136 Petition in order to obtain property tax exempt status.

27. Due to the absence of a timely filed Form 136 Petition for Review of Tax Exemption by the Petitioner, the subject properties are not exempt from property taxation for the March 1, 2003, assessment date.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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 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 <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.