

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

AMERICARE LIVING CENTERS,	)	Petition Nos.: 38-034-98-3-4-00001
	)	38-034-99-3-4-00002
	)	38-034-00-3-4-00003
Petitioner	)	38-034-98-3-4-00004
	)	38-034-99-3-4-00005
v.	)	38-034-00-3-4-00006
	)	County: Jay
JAY COUNTY PROPERTY TAX	)	Township: Wayne
ASSESSMENT BOARD OF	)	Parcel Nos.: 072020302600014
APPEALS & WAYNE TOWNSHIP	)	072010302200014
ASSESSOR,)	
	)	Assessment Years: 1998; 1999; 2000
Respondents)	
)	

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

July 21, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. The Petitioner, Americare Living Centers II, LLC, filed a Form 133 (Petition for Correction of Error) with the Jay County Property Tax Assessment Board of Appeals (PTABOA) on September 3, 2002.
2. The PTABOA denied the Petition on October 3, 2002, citing the Petitioner's lack of standing regarding any claim for refund of property taxes paid.
3. The Petitioner, by its taxpayer representative Edwin K. Dewald, appealed to the Indiana Board of Tax Review (IBTR) on November 18, 2002. In the appeal the Petitioner requests that the IBTR direct the PTABOA to consider the issues presented on the Form 133.
4. The applicable statutory language regarding a claim for refund of property taxes paid is found at Indiana Code § 6-1.1-26-1, which reads as follows: "Sec. 1. A person, or his heirs, personal representative, or **successors**, may file a claim for the refund of all or a portion of a tax installment that he has paid." (*Emphasis added*).
5. The Petitioner, through its representative Dewald¹, argues that while the Petitioner did not pay the taxes in question here, the Petitioner is a "successor" owner to the entity that did pay the taxes.
6. The Petitioner's argument is based on the definition of the "successor" as used in IC 6-1.1-26-1. In his brief DeWald cites numerous sources in defining "successor". The word can be defined in several ways the most pertinent being:

¹ The IBTR notes that this claim is based on a legal argument. The PTABOA rejected the appeal on the grounds that the Petitioner had no standing to collect a refund. In his submission DeWald argues the meaning of an Indiana Statute. DeWald is not an attorney. In *State Ex Rel. Indiana State Bar Association V. M. Drew Miller*, 770 N.E.2d 328 (Ind. 2002) the Indiana Supreme Court cautioned non-attorney taxpayer representatives against arguing legal issues regarding taxpayer appeals. Further pursuant to 50 IAC 15-5-5 a client of a non-attorney taxpayer representative must be advised and certify that "I further understand that the property tax representative is not an attorney and may not present arguments of a legal nature on my behalf".

- a. Successor-in-interest – This is a broad definition and applies in just about any circumstance including when one business entity succeeds another. Petitioner requests that this broad definition be applied to interpretation of the Statute.
 - b. Succession – Black’s Legal Definition also provides a narrow definition that alludes to a successor when an inheritance takes place.
7. It is the Board’s opinion that the context of the term suggests the more narrow interpretation is more appropriate.
 8. The Board’s interpretation of the statute limits refund claims to the person who paid the taxes or his/her heirs (applies when death is in testate), personal representatives (usually death is testate-appointed in the will or by the court) and successors (usually a devisee in the will).
 9. When the Indiana Legislature designated “heirs, personal representatives or successors” it seems unlikely they intended to include successor owners whose succession only occurred because the owner was a purchaser of the property.
 10. From a more practical standpoint, refunds must be limited to the person who paid the taxes or, if that person is deceased, any representative of the estate, heir or devisee who has a legal right to share in the deceased persons property.
 11. For all the above reasons, the IBTR finds that the Petitioner’s status as an “owner in succession” does not qualify it to claim this refund pursuant to IC 6-1.1-26-1.

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

Chairman, 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.