

REPRESENTATIVE FOR PETITIONERS:

S. Gregory Zubek, Attorney

REPRESENTATIVE FOR RESPONDENT:

Nicole Webb, Exemption Analyst, Marion County Assessor's Office

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Goodman Jewelers, Inc., Goodman	)	Petition Nos.: 49-101-14-2-8-00227
Court Street, Inc., & Goodman Quad Ltd..	)	49-101-14-2-8-00493
	)	49-101-14-2-8-00494
	)	
Petitioners,	)	Parcel Nos.: 1086017
	)	1046619
v.	)	1084368
	)	
Marion County Assessor,	)	County: Marion
	)	Township: Center
Respondent.	)	
	)	Assessment Year: 2014

---

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

---

**August 17, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review ("Board") has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

1. Was the property under appeal exempt from property taxation for 2014 pursuant to Ind.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

2. The subject property consists of three office buildings owned by Petitioners located at 2 West Washington Street, 20 West Washington Street, and 24 West Washington Street, all in Indianapolis.
3. On July 2, 2014, the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 120 Notices of Action on Exemption Application, finding the subject properties to be 100% taxable for 2014. On July 31, 2014, Petitioners filed Form 132 Petitions for Review of Exemption with the Indiana Board of Tax Review (“Board”).

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. On April 20, 2016, the Board’s Administrative Law Judge, Dalene McMillen (“ALJ”), held a hearing on the petitions. Neither the Board nor the ALJ inspected the subject properties.
5. John Goodman, owner, was sworn and testified on behalf of Petitioners. Nicole Webb, Exemption Analyst for the Marion County Assessor’s office, was sworn and testified on behalf of Respondent.<sup>1</sup>
6. Petitioners presented the following exhibits:
  - Petitioner Exhibit 1 – State of Indiana Office Lease pages 1 through 8,
  - Petitioner Exhibit 2 – Amendment No. 5 to State of Indiana Office Lease, dated June 18, 2001,

---

<sup>1</sup> Gabe Deaton, Director of Assessment from the Marion County Assessor’s office was sworn but did not testify.

Petitioner Exhibit 3 – Indiana State Department of Health Pro-rata Share of Operating Costs.

7. Respondent did not present any exhibits.
8. The following additional items are part of the record:
  - Board Exhibit A – Form 132 petitions with attachments,
  - Board Exhibit B – Notices of Hearing on Petitions,
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign-in sheets.

**SUMMARY OF PETITIONER’S CASE**

9. Petitioners contend that the portions of the subject properties occupied by the Indiana State Department of Health (“ISDH”) should be exempt under Ind. Code § 6-1.1-10-2. That statute provides that real property leased to a state agency is exempt from property taxes if the lease, regardless of the commencement date, requires the state agency to reimburse the owner for property taxes. If a state agency leases less than all of a parcel of real property, the exemption provided is a partial exemption that is equal to the part of the gross assessed value of the real property attributable to the part of the real property leased by the state agency. *Zubek argument.*
10. The subject properties were granted a partial exemption in 2009 and 2010, but it was removed in 2011. On January 1, 2014, the legislature changed Ind. Code § 6-1.1-10-2, which allowed an exemption to property leased to a state agency. Petitioners reapplied for the exemption in 2014, but the county denied the request stating that the tenant did not pay any operating costs from July 1, 2013, through June 30, 2014. The PTABOA, however, granted the exemption for 2015. *Zubek argument.*
11. According to Petitioners, the lease states that the tenants are responsible for taxes, which include all real estate and personal property taxes related to the operation of the three buildings. Included in the monthly base rent payment is an amount that is set aside for

property taxes and other expenses outlined in the lease. Petitioners testified that the original lease requires them, as the landlord, to efficiently manage the property and to maintain operating costs accordingly. Consequently, if a property tax exemption is granted for 2014, Petitioners will not benefit from that exemption, and any reimbursement of taxes will go back to the ISDH. *Zubek argument; Pet'r Ex. 1.*

12. The first building under appeal is located at 2 West Washington Street. It is an eight-story office building, which is referred to as the "Wasson Building." It is owned by Goodman Jewelers Inc., Goodman Court Street, Inc., and Goodman Quad Ltd., as tenants in common. ISDH occupies floors two through six, which is 71.9% of the building. *Zubek argument; Goodman testimony; Pet'r Ex. 3.*
13. The second building is located at 20 West Washington Street. It is a seven-story office building, which is known as the "Selig Building." It is owned by John Goodman. ISDH occupies floors two through seven, which is 72.4% of the building. *Zubek argument; Goodman testimony; Pet'r Ex. 3.*
14. The third building is located at 24 West Washington Street. It is a four-story office building, which is known as the "Liber Building." It is also owned by John Goodman. ISDH occupies floor two and a small portion of the first floor, which is 21.2% of the building. *Zubek argument; Goodman testimony; Pet'r Ex. 3.*
15. ISDH entered a nine year lease on July 1, 2001. The original lease has been amended six times, however, the only amendment relevant to this appeal is amendment number 5. *Zubek argument; Goodman testimony; Pet'r Ex. 1 & 2.*
16. The ISDH's lease requires that a cap be put on the monthly per square foot operating costs. For example, the base rent is \$13.75 per square foot per month, with \$6.75 of that amount allocated to operating costs. If the operating costs for the year amounted to \$7.50 per square foot per month, then the difference between the \$6.75 and \$7.50 would not be paid by ISDH, it would be the responsibility of the landlord. However, if the monthly

operating costs amounted to less than \$6.75 per square foot per month, then the ISDH would be responsible for the \$6.75 per month owed to the landlord. *Goodman testimony; Pet'r Ex. 1.*

17. Other tenants' expenses, on the other hand, are not capped, so if a tenant pays 1% of the operating costs, and the property taxes amount to \$100,000, then the tenants' share would be \$1,000. *Goodman testimony.*
18. Petitioners and ISDH amended their lease for the fifth time on January 3, 2013. The purpose of the amendment was to reduce the contracted space by approximately 29,612 square feet. Therefore, the total space rented by ISDH was approximately 131,865 square feet. *Goodman testimony; Pet'r Ex. 2.*
19. Petitioners stated that the lease end coincides with the state's fiscal year, which is July 1 through June 30. ISDH's lease for July 1, 2013, through June 30, 2014, shows that the base rent was \$14.17 per square foot. Because the ISDH was due a credit, the base rent was lowered to \$11.99 per square foot, which included \$7.05 for operating costs. *Goodman testimony; Pet'r Ex. 2.*
20. Petitioners stated that, for July 1, 2014 through June 30, 2015, the base rent was \$14.40 per square foot. The base rent included \$7.05 per square foot, plus \$0.28, or \$7.33 per square foot per month for operating costs. For July 1, 2015, through June 30, 2016, the lease indicates a base rent at \$14.65 per square foot, but due to a credit, ISDH paid \$12.49 per square foot. The base rent included \$7.05, plus an additional \$0.57, or \$7.62 per square foot for operating costs. *Goodman testimony; Pet'r Ex. 2.*
21. According to Petitioners, to determine the percent of the 2014 pay 2015 exemption, they analyzed the \$1,414,241.20 expenses paid in 2015. The total paid in real estate taxes was \$322,165.84 and, based on the percentage of occupancy of the three buildings, the ISDH portion of the real estate taxes was \$226,233.46. *Goodman testimony; Pet'r Ex. 3.*

22. Next, Petitioners calculated the percentage of real estate taxes based on ISDH's capped operating costs. For July 1, 2014, through June 30, 2015, ISDH's maximum operating cost was \$7.33 per square foot. Petitioners' actual costs were \$8.35 per square foot. ISDH's percent of the operating costs was 87.8% (i.e. \$7.33 divided by \$8.35). For July 1, 2015, through June 30, 2016, ISDH's percent of operating costs was 91.3% (i.e. \$7.62 divided by \$8.35). For the state's fiscal year, the combined ISDH average percent of operating costs was 89.6% rounded (i.e. 87.8% plus 91.3% divided by two). *Goodman testimony; Pet'r Ex. 3.*
23. ISDH's 89.6% capped operating cost was then applied to their portion of the real estate taxes paid based on ISDH's percent of occupancy. Next, ISDH's capped real estate taxes per building was divided by the total May and November 2015 taxes paid to determine the percent of exemption that should be applied to each building. *Goodman testimony; Pet'r Ex. 3.*
24. For 2 West Washington Street, ISDH's 71.9% portion of the real estate taxes based on occupancy was \$199,859.14. That amount, multiplied by the 89.6% operating cost cap, equaled \$179,073.79. The \$179,073.79 amount, divided by \$277,968.20 in total real estate taxes paid, indicates that 64.4% of the building should be exempt. *Goodman testimony; Pet'r Ex. 3.*
25. For 20 West Washington Street, ISDH's 72.4% portion of the real estate taxes based on occupancy was \$24,045.31, That amount, multiplied by the 89.6% operating cost cap, equaled \$21,544.60. The \$21,544.60 amount, divided by the \$33,211.76 in total real estate taxes paid, indicates that 64.9% should be exempt. *Goodman testimony; Pet'r Ex. 3.*
26. For 24 West Washington Street, ISDH's 21.2% portion of the real estate taxes based on occupancy was \$2,329.01. That amount, multiplied by the 89.6% operating cost cap, equaled \$2,086.79. The \$2,086.79 amount, divided by the \$10,985.88 in total real estate

taxes paid, indicates that 19.0% of the building should be exempt. *Goodman testimony; Pet'r Ex. 3.*

#### SUMMARY OF RESPONDENT'S CASE

27. Respondent claims that the county denied the exemption for 2014, because the language in the lease, specifically amendment number 5, does not specifically state that the tenant receives any reimbursement for the operating costs. Respondent argues that the tenant will be required to continue to pay at least the \$7.05 per square foot for operating costs to the landlord. *Webb testimony; referencing Pet'r Ex. 3.*
28. Respondent testified that in 2014, other state agencies amended their leases to state specifically that tenants pay their portion of the taxes. Petitioners, on the other hand, felt that their lease was sufficient and did not amend it. *Webb testimony.*
29. In response to questioning, Respondent contended while amendment number 5 states that the tenant doesn't pay any operating costs, including taxes on the original lease from July 1, 2013, through June 30, 2014, the first year of the lease did include \$7.05 per square foot for operating costs in the \$14.15 base rent per square foot. *Webb testimony.*

#### ANALYSIS

30. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. 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.
31. 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 a property owner 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).

32. The taxpayer seeking exemption bears the burden of proving that the property is entitled to exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hosp., Inc. v. Dept. of Local Gov't Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. St. Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Ind. Ass'n of Seventh Day Adventists v. St. Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).
33. Petitioners claimed an exemption under Ind. Code § 6-1.1-10-2(b), which, among other items, states that real property leased to a state agency is exempt from property tax if the lease, regardless of the commencement date, requires the state agency to reimburse the owner for property taxes. If a state agency leases less than all of a parcel of real property, the exemption provided by the statute is a partial exemption that is equal to the part of the gross assessed value of the real property attributable to the part of the real property leased by the state agency.
34. Petitioners presented probative evidence that they lease to ISDH, which is a state agency. The original lease states that the tenant shall be responsible for operating costs, which, among other items, include real estate taxes. Furthermore, Petitioners testified that the monthly base rent paid by ISDH has always included an amount for operating costs. Respondent does not appear to contest that ISDH pays the taxes, or that the monthly base rent includes an amount for operating costs.
35. Instead, Respondent contends that Petitioners, as opposed to ISDH, will be the beneficiary of any exemption that might be granted. However, there is undisputed testimony from Mr. Goodman that such is not the case under these circumstances. As



discussed, the lease is structured such that a portion of each of ISDH's monthly base payments is attributable to property taxes. When those taxes cease to exist as the result of an exemption, Petitioners do not keep the proceeds, but instead return them to ISDH. By way of example, Mr. Goodman stated that, for 2016, on the same day Petitioners will pay their property taxes, they also will write a check to ISDH for the amount of the exemption. In this case, Petitioners indicated ISDH will apply those proceeds to various endeavors within the organization. Under these circumstances, a property tax exemption would benefit ISDH as opposed to Petitioners.

36. Petitioners also included evidence to show ISDH leased 71.9% of 2 West Washington Street, 72.4% of 20 West Washington Street, and 21.2% of 24 West Washington Street. However, Petitioners stated that because the lease has built in operating costs caps, they calculated the ISDH's portion attributable to the real property exemption. Thus, Petitioners requested that 64.4% of 2 West Washington Street, 64.9% of 20 West Washington Street, and 19% of 24 West Washington Street be granted an exemption for March 1, 2014. Respondent did not challenge the computation.

#### **SUMMARY OF FINAL DETERMINATION**

37. Petitioners established a prima facie case that they are entitled to an exemption for the 2014 assessment year. The Board finds in favor of Petitioners and holds that 2 West Washington Street is 64.4% exempt, 20 West Washington Street is 64.9% exempt, and 24 West Washington Street is 19% exempt.

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

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.