

REPRESENTATIVE FOR PETITIONER:  
Mark I. Lillianfeld, Stuart & Branigin, LLP

REPRESENTATIVE FOR RESPONDENT:  
Jack C. Birch, Birch Law Firm, LLC

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

REIN Warsaw Associates, LP,	)	Petition Nos. 43-032-11-2-8-00001
	)	43-032-12-2-8-00001
Petitioner,	)	
	)	Parcel No. 0471300236
	)	
v.	)	
	)	Kosciusko County
Kosciusko County Assessor,	)	Wayne Township
	)	2011 and 2012 Assessments
Respondent.	)	

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Appeals from the Final Determinations of the  
Kosciusko County Property Tax Assessment Board of Appeals

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**November 5, 2013**

**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.

**CASE SUMMARY**

1. Indiana Code § 21-34-8-3(1) provides an exemption from property taxes for property that a state educational institution acquires through a qualifying lease. There is no dispute that 13% of the subject property, which the Petitioner leased to Purdue University, met

those criteria. The sole question in this appeal is whether the Indiana Supreme Court's holding in *Hamilton County PTABOA v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654 (Ind. 2010) required the Petitioner also show that it owned the property for an exempt purpose independent from the purposes for which Purdue leased the property. Because *Oaken Bucket* addressed a separate exemption provision with different statutory elements than Ind. Code § 21-34-8-3(1), the Board finds that the Petitioner did not need to make that additional showing.

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

### **PROCEDURAL HISTORY**

2. The Petitioner filed applications with the Kosciusko County Assessor claiming that 13% of the subject property should be exempt from taxation for the 2011 and 2012 assessment years. The Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") denied those applications, finding that the property was 100% taxable. The Petitioner timely filed a Petition for Review of Exemption with the Board for each assessment year. The Board's designated administrative law judge, Jaime S. Harris, held a hearing on June 25, 2013. Neither she nor the Board inspected the property.
3. Vicki Bandorbraun, Associate Executive Director of Indiana University Purdue University-Fort Wayne ("IPFW"), and Laurie Renier, Kosciusko County Assessor, were sworn as witnesses but did not testify. Instead, the parties offered their Stipulation of Facts, which is marked as Board Exhibit D.
4. The Petitioner offered the following exhibits:
  - Exhibit 1: Form 136 Application for Property Tax Exemption for 2011,
  - Exhibit 2: Form 120 Notice of Action on Exemption Application for 2011,
  - Exhibit 3: Form 132 Petition to the Board for Review of Exemption for 2011,
  - Exhibit 4: Form 136 Application for Property Tax Exemption for 2012,
  - Exhibit 5: Form 120 Notice of Action on Exemption Application for 2012,
  - Exhibit 6: Form 132 Petition to the Board for Review of Exemption for 2012,
  - Exhibit 7: Form 120 Notice of Action on Exemption Application for 2003,
  - Exhibit 8: Lease Agreement by and between REIN Warsaw Associates, LP and IPFW,

Exhibit 9: Exercise of Renewal Option for Lease Agreement for a Term of Five Years.

5. The Respondent did not offer any exhibits.
6. The following additional items are part of the record:
  - Board Exhibit A: Form 132 Petitions,
  - Board Exhibit B: Hearing notices,
  - Board Exhibit C: Hearing sign-in sheet,
  - Board Exhibit D: Stipulation of Facts.
7. The Petitioner filed a pre-hearing brief on June 6, 2013, and the Respondent filed a post-hearing brief on July 10, 2013. The Petitioner declined to file a post-hearing brief.

**SUMMARY OF THE PETITIONER'S CASE**

8. The subject property is a commercial building located at 2836 Frontage Road in Warsaw. On March 17, 2003, the Petitioner entered into an agreement to lease approximately 13.33% of the building (“leased premises”) to Purdue University on behalf of IPFW. The leased premises consists of classrooms that IPFW uses as a secondary location to its primary Fort Wayne campus. Although the lease’s initial term expired on May 31, 2008, Purdue had the option to renew the lease for two additional five-year terms. On September 17, 2007, Purdue exercised the first renewal option. *Bd. Ex. D at ¶¶ 1-7; Pet’r Exs. 8-9.*
9. When read in conjunction with Ind. Code § 21-34-3-4, Ind. Code § 21-34-8-3(1) exempts all property that a state educational institution acquires by entering into a lease of 40 years or less or that it uses for educational purposes. Purdue University is a state educational institution (*see* Ind. Code. § 21-23-2 and Ind. Code § 21-7-13-32(b)(5)), and it leased the property at issue for a maximum period of a little more than 15 years. The leased premises is therefore exempt from taxation. *Bd. Ex. D at ¶ 1; Lillianfield argument; Pet’r Brief at 8.*

10. The lease reflects the parties' expectation that given (1) Purdue's status as a state university, and (2) its intended use of the leased premises for purposes outlined in Ind. Code § 21-34, the leased premises would be exempt from taxation. The lease provides for Purdue's rent to increase to a level sufficient to compensate the Petitioner for the taxes assessed to the leased premises if, through no fault of the Petitioner, a property tax exemption is not secured or if an exemption does not continue through the lease's entire term. *Bd. Ex. D at ¶ 8; Pet'r Ex. 8.*
11. Since 2003, the Petitioner has applied for an exemption under Ind. Code 21-34-8-3 or its predecessor statute, Ind. Code § 20-12-6-11. The PTABOA granted the property a 13% exemption through 2010. *Pet'r Ex. 5.* In 2011, however, the PTABOA denied the Petitioner's exemption application, finding "I.C. 6-1.1-10-16(A) states the property must be owned, used & occupied by the party requesting the exemption" and "The lease submitted, if applicable, under I.C. Code 21-34-3-4(a)(1)(B) was not signed until after March 1, 2011." *Pet. Ex. 2.*
12. The PTABOA is mistaken. While Ind. Code § 6-1.1-10-16(a) requires a property to be owned, occupied, and used for an exempt purpose, the Petitioner did not claim an exemption under that statute. As the Board recognized in *P&A, LLC v. Lake County PTABOA*, pet. no. 45-030-00-2-8-00001 (Ind. Bd. Tax Rev. May 1, 2002), the statute exempting property acquired by state educational institutions does not have the same requirements as Ind. Code § 6-1.1-10-16(a). Thus, the Board granted the taxpayer an exemption even though the taxpayer leased the property at issue to Purdue as a profit-making venture. *Lillianfield argument; Pet'r Brief at 5-7.*
13. The Assessor's reliance on *Oaken Bucket* is misplaced for the same reason. Although the court held that the property owner in that case needed to prove that it had an exempt purpose distinct from the exempt purpose of the church that leased the property, the court was interpreting Ind. Code § 6-1.1-10-16, not Ind. Code § 21-34-8-3(1). If in this case the Petitioner had leased property to a private institution instead of to Purdue, it might not be entitled to an exemption. But an exemption under Ind. Code § 21-34-8-3(1) does not

require a property to be owned, occupied, and used for an exempt purpose. *Lillianfeld argument; Pet'r Brief at 5-7.*

#### SUMMARY OF THE RESPONDENT'S CASE

14. The Petitioner is a for-profit entity that is in the business of leasing property. None of the Petitioner's other property in the area is exempt. *Birch Argument.*
15. Indiana Code § 6-1.1-10 sets out the general structure for exemptions. While various sections within that chapter deal with specific exemptions, section 38 (Ind. Code § 6-1.1-10-38) incorporates additional exemptions from other parts of the Indiana Code. According to the Respondent, section 38 shows the legislature's intent to deal with all exemptions using the same general structure.
16. With that in mind, the sole issue raised in this appeal is whether the Indiana Supreme Court's holding in *Oaken Bucket* is limited solely to exemptions under I.C. § 6-1.1-10-16(a) or instead applies to exemption claims in general. Respondent contends that all exemptions must be analyzed under *Oaken Bucket*, because that case represents the Indiana Supreme Court's most recent pronouncement on the subject. *Birch Argument; Resp. Brief at 1-3.*
17. *Oaken Bucket* sets out the analytical framework to be applied when a for-profit landlord leases to an otherwise exempt tenant. The court held that an entity claiming a charitable-purpose exemption must demonstrate the property is "owned for exempt purposes." *Oaken Bucket*, 938 N.E.2d at 657 (citing *Sangrlea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997); see also, *Resp't Brief at 1*. The court quoted from an earlier decision, *Traveler's Insurance Co. v. Kent*, 151 Ind 349, 50 N.E. 562 (1898), in which it made the following observations while deciding a case under an earlier version of Ind. Code § 6-1.1-10-16(a): "The very objects for which taxes are in large part assessed are to carry on the educational benevolent institutions of the state.... None of these reasons, however, will apply in favor of a property owner who simply rents or leases his property, to be used for one of the purposes mentioned in the constitution."

*Id.* at 659 (quoting *Traveler's*, 50 N.E. at 564); *see also*, *Resp't Brief at 1-2*. The court also cited the following language from the Missouri Supreme Court with approval:

[w]hen the owner leases his land to the public for a public use, or to a quasi public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to anyone, but he stands before the law in exactly the same light as anyone else who leases his land for any other purpose, and uses the rents for his own advantage, and therefore he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt.

*Id.* (quoting *State ex rel. Hammer v. MacGurn*, 187 Mo. 238, 86 S.W. 138, 139 (1905); *see also*, *Resp't Brief at 1-2*).

18. The facts with respect to ownership, occupancy and use in the present case are identical to the facts of *Oaken Bucket*. The Petitioner has not shown its own exempt purpose. Rather, it relies solely on the exempt purpose of its tenant. The Petitioner contributes nothing to the public or charity and loses nothing by IPFW using its property. *Birch Argument; Resp't Brief at 1-3*.
19. According to the Respondent, the Indiana Supreme Court's reasoning in *Oaken Bucket* reinforces a January 19, 2010 memo from the Commissioner of the Department of Local Government Finance ("DLGF"). In the memo, the commissioner directed auditors and assessors to reclassify property "owned by" Ivy Tech Community College of Indiana as tax exempt. *Resp't Brief, Ex. A*. The concept of ownership refers to fee title rather than to a leasehold interest. Thus, the DLGF "finds no distinction between the tax exempt structures set out in IC 21-22 *et. seq.* and the exemptions under IC 6-1.1-10." *Resp't Brief at 2; see also, Birch Argument*.
20. The Petitioner relies on the Board's determination in *P & A, LLC v. Lake County PTABOA* for the proposition that the criteria for an exemption under Ind. Code § 21-34-8-3 differ from *Oaken Bucket's* "owned, occupied and used" test. But the Board decided *P & A* eight years before *Oaken Bucket*. The Board must therefore apply *Oaken Bucket*

rather than *P & A*. And under *Oaken Bucket*, the fact that the Petitioner is not a state university and lacks any exempt purpose of its own precludes an exemption. *Birch Argument; Resp't Brief at 2-3*.

#### ANALYSIS

21. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004)(citing Ind. Code § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.*
22. The Petitioner claimed an exemption under Ind. Code § 21-34-8-3(1), which, among other things, exempts “All ... the ... property acquired under authority of this article [Ind. Code § 21-34] or used for the purposes provided for in this article.” The Respondent does not appear to contest that 13% of the subject property meets that statute’s express criteria. Indeed, the parties stipulated that Purdue is a state educational institution established under Ind. Code § 21-23-2. Article 34 allows a state educational institution to “acquire” property through a lease or sublease of less than 40 years that the institution’s board of trustees determines necessary to “carry[] on the educational research, the public service programs, or the statutory responsibilities of the state educational institution. . . .” I.C. § 21-34-3-4(a) and (b). That is precisely what Purdue did when it leased part of the subject property for a maximum period of slightly more than 15 years to use as classrooms.
23. Instead, the Respondent contends that in addition to proving the elements laid out in Ind. Code § 21-34-8-3(1), the Petitioner needed to show that it owned the subject property for an exempt purpose independent from the purposes for which Purdue leased the property. According to the Respondent, the Indiana Supreme Court recognized such a requirement for all exemptions in *Oaken Bucket*. The Board disagrees.

24. In *Oaken Bucket*, the Indiana Supreme Court addressed a taxpayer’s claim that the portion of a building it leased to a church was entitled to an exemption under Ind. Code § 6-1.1-10-16(a). As the court explained, that statute provides an exemption where a property is “owned, occupied, and used” by a person for educational, literary, scientific, religious, or charitable purposes. *Oaken Bucket*, 938 N.E.2d at 657. The case turned on whether the taxpayer has shown that it owned the property for a charitable or religious purpose.
25. The Board found that the lease was a standard business arrangement and that the taxpayer failed to show that it owned the property for anything other than investment purposes. The Tax Court reversed. The Supreme Court ultimately agreed with the Board, explaining that while the tenant was a religious organization and therefore possessed an exempt purpose, the taxpayer failed to show an exempt purpose of its own separate and distinct from that of its tenant. *Id.* at 658.
26. As the Respondent points out, the court discussed the link between exemption and the provision of a public benefit. And it explained that a property owner does not show that he owns property for public benefit—instead of for his own private benefit—simply by renting it to a beneficent organization. *See id.* at 659-60 (quoting *Travelers’ Ins. Co. v. Kent*, 151 Ind. 349, 50 N.E. 562, 563-64 (1898) and *State ex. rel. Hammer v. MacGurn*, 187 Mo. 238, 86 S.W. 138, 139 (1905)). But the court explained those things in the context of the taxpayer’s claim under Ind. Code § 6-1.1-10-16(a), which requires a property to be “owned” for exempt purposes. The court did not purport to address any other statutory exemptions. It certainly did not purport to apply an “owned, occupied, and used” test to claims under other exemption statutes that do not include those elements. Indeed, doing so would conflict with the Supreme Court’s own rules for statutory construction. *See Whitacre v. State*, 274 Ind. 554; 412 N.E.2d 1202, 1206 (1980) (“We will not interpret a statute which is unambiguous on its face or add something to a statute which the legislature has purposely omitted.”).



27. The Respondent, however, points to Ind. Code § 6-1.1-10-38 for the proposition that the legislature intended for a uniform analysis to be applied to all exemption claims. That argument flies in the face of the section's plain language, which provides, "This chapter does not contain all of the property tax exemption provisions. The property taxation exemption provisions include, but are not limited to, the following sections[]" and then lists 16 sections from titles 20, 21, and 36 of the Indiana Code. I.C. § 6-1.1-10-38. If anything, by directing readers to other parts of the Indiana Code, Ind. Code § 6-1.1-10-38 evidences the legislature's intent that each type of exemption must be analyzed under its own statutory elements.
28. The DLGF's memo does not help the Respondent either. The DLGF issued the memo to clarify that property owned by Ivy Tech Community College of Indiana is exempt. The memo notes that Ivy Tech is a state college, which is included in the definition of a state agency. The memo further notes that property owned by a state agency is not only exempt from taxation under Ind. Code § 6-1.1-10-2, but that Ind. Code § 6-1.1-11-9(b) prohibits such property from even being assessed. *See Resp't Brief, Ex. A.* Thus, like *Oaken Bucket*, the DLGF's memo does not purport to address the requirements for an exemption under Ind. Code § 21-34-8-3(1).

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

29. The Petitioner proved that 13% of the subject property's land and improvements met the requirements for an exemption under Ind. Code § 21-34-8-3(1). The Board therefore finds in favor of the Petitioner and orders that a 13% exemption be applied to the property for 2011 and 2012.

This Final Determination of the above captioned matter is issued on the date first written above.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.