

REPRESENTATIVES FOR PETITIONER: Thomas Hendrickson, Property Tax Consultant & Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

SERVICE CORPORATION OF INDIANA,)	
)	Petition No.: 18-001-97-2-8-00002
Petitioner)	
)	County: Delaware
v.)	
)	Township: Center
DELAWARE COUNTY)	
PROPERTY TAX ASSESSMENT)	Parcel No.: 1526469000
BOARD OF APPEALS,)	
)	Assessment Year: 1997
Respondent)	
)	

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

July 17, 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

Issue

1. The issue presented for consideration by the Board were:

Whether Service Corporation of Indiana is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-27.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Thomas A. Hendrickson filed a Form 132, Petition for Review of Exemption, on behalf of Service Corporation of Indiana (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on October 22, 1999. The determination of the PTABOA was issued on September 28, 1999.

Hearing Facts and Other Matters of Record

3. On January 10, 2000 the former State Board of Tax Commissioners sent a Notice of Defect to the Petitioner because a copy of the determination by the PTABOA, on the property tax exemption application (Form 136) must be attached to this appeal.
4. On January 24, 2000, the State Board received from Petitioner a letter stating that the Form 136 filed with a 1996 date was considered as a 1997 application by the PTABOA. On the determination by the PTABOA, it states: "The petitions regarding the previous years 1995, 1997, 1998 were a direct result of failure to file for exemptions. The board denied request."
5. In the letter in response to the Notice of Defect, the Petitioner stated: "While '1996' was the date inserted at the top of the Form 136, the petitioner decided to concede the year 1996 as being claimed too late and to instead claim the petition effective for 1997, and the PTABOA elected to so treat and rule upon it as for 1997."

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

A. Letter received on January 24, 2000 and the attached Form 132 and Form 136.

Jurisdictional Framework

7. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

8. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

9. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

10. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

11. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory

statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

12. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

13. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
14. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
15. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

16. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
17. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
18. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
19. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 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 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 statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
21. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the

general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issue

Whether Service Corporation of Indiana is entitled to an exemption pursuant to Ind. Code § 6-1.1-10-27.

22. The sole issue considered in these findings is the timeliness of the Form 136. The Form 136, Exemption Application, was filed on October 6, 1998. The Form 136 was filed for assessment year 1996. During the process at the County level, the Petitioner conceded that the property would not be exempt for 1996, but asked the Form 136 to be treated as an application for 1997. Although the Petitioner’s response to the Notice of Defect indicates that the PTABOA elected to “so treat” the application as being for 1997, the record is unclear as to whether the PTABOA in fact complied with this request.
23. The Board will assume jurisdiction based on an acceptance of the Petitioner’s contention that the PTABOAQ considered the application as being for Tax Year 1997. Even if this application is considered as for Tax Year 1997, the exemption would be denied for the following reasons.¹
24. In Indiana, the general proposition is that all property is subject to taxation. (See ¶16). Furthermore, in Indiana, exemption statutes are construed strictly. (See ¶17). Finally, Ind. Code § 6-1.1-11-1 states: “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.”

¹ These findings only deal with the timeliness of the Exemption Application, and not the merits of the claim.

25. A person seeking an exemption is required to file an application for the exemption on or before May 15 of the year in which the exemption is sought. Ind. Code § 6-1.1-11-3. In the instant case, the exemption application for assessment year 1997 would have had to be filed before May 15, 1997. The Petitioner did not file an exemption application until October 6, 1998, well over a year late.
26. The Petitioner cites to Ind. Code § 6-1.1-11-5 in support of their position. This section requires an Auditor to send notice, by June 15, to a taxpayer that fails to file for an exemption application provided the taxpayer was exempt in the previous assessment year.² This section is not applicable in the present case, because the subject property was not exempt in 1996.
27. Instead, the Petitioner opines that Ind. Code § 6-1.1-11-5 should be given a liberal interpretation. However, this is not the case in Indiana where exemption statutes are strictly construed. (See ¶17). The Petitioner opines that the statute should be interpreted as directing that notices be sent to an exempt organization in each successive year it has over looked filing. (See letter dated October 22, 1999 attached to Form 132).
28. This is not a requirement of the auditor's office. The Auditor has responsibility to send if they fail to file and was exempt in the previous year. In the present case, even the Petitioner admits that the subject property was not exempt in the previous year.
29. The Petitioner also claims that "it has been a practice of some (other) County Boards, not especially publicized for practical reasons, to liberally construe Ind. Code § 6-1.1-11-5 in the manner recommended herein...." However, the court cases are clear. Exemption statutes are strictly construed. See ¶ 17.
30. The Board hereby DENIES the Petitioner's application for exemption because the Exemption Application was filed late. When a Petitioner does not timely file an Exemption Application, the Petitioner waives the exemption.

² Ind. Code § 6-1.1-11-5 also states that if an auditor fails to send notice, the taxpayer has until the first Monday in November of the year following the year in which the application was due. However, this does not apply in the instant case because the subject property was not exempt in the 1996 and the Auditor was under no duty to send out notice to the taxpayer.

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.