

REPRESENTATIVE FOR RESPONDENT:
Jessica L. Hoover, Blaney & Walton

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Michael Steinle,	)	Petitions:	56-012-08-2-8-00001
	)		56-012-08-2-8-00002
)		
Petitioner,)		
	)	Parcel Nos.:	0070616000
v.	)		0071129000
)		
)		
Newton County Assessor,	)	County:	Newton
	)	Township:	Lake
)		
Respondent.	)	Assessment Year:	2008
)		

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

March 12, 2009

FINAL DETERMINATION

The Board has 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 was whether the subject parcels qualify for property tax exemption as a public airport under Indiana Code § 6-1.1-10-15.

PROCEDURAL HISTORY

2. The Newton County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemption on both parcels on September 2, 2008. The Petitioner filed his Petitions for Review of Exemption (Form 132) on September 18, 2008.
3. Pursuant to Ind. Code §6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Ellen Yuhan, held a hearing on December 16, 2008, in Kentland, Indiana.
4. The following persons were present at the hearing:

For the Petitioner:

Michael Steinle, Taxpayer

Adele Steinle, Taxpayer

Kevin Rector, Manager, INDOT Office of Aviation

For the Respondent:

Jessica I. Hoover, Attorney, Blaney & Walton

Lester Terry Moore, Newton County Assessor

Terri Pasierb, Deputy Assessor

David L. Brown, PTABOA member.

5. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner:
 - Michael Steinle, Taxpayer
 - Kevin Rector, Manager, INDOT Office of Aviation
 - For the Respondent:
 - David L. Brown, PTABOA member.¹
6. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit A – State of Indiana Certificate of Approval as a Public-Use Airport,
 - Petitioner Exhibit B – Airport Master Record,
 - Petitioner Exhibit C – Security Guidelines for General Aviation Airports,
 - Petitioner Exhibit D – List of Privately Owned Public-Use Airports in Indiana.
7. The Respondent did not submit any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 Petitions,
 - Board Exhibit B – Notice of Hearing dated October 8, 2008,
 - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
 - Board Exhibit D – Sign-in sheet.
9. The subject property is an airport comprised of two parcels. Parcel No. 0071129000 is 16.838 acres and holds the runway and west taxi lane. Parcel No.

¹ The Petitioner objected to Mr. Brown’s testimony because the Respondent failed to provide a summary of witness testimony five business days prior to the hearing as required by the Board’s procedural rules. 52 IAC 2-7-1(b)(1) requires that “copies of documentary evidence and summaries of statements of testimonial evidence” must be provided to all other parties “at least five (5) business days before the hearing.” The Board sustains the Petitioner’s objection, but notes that there is little difference between Mr. Brown’s testimony and Ms. Hoover’s Memorandum of Law, which was submitted in a timely fashion.

0070616000 consists of 9.957 acres and is improved with storage buildings and a residential dwelling.

10. For 2008, the Newton County PTABOA determined the parcels to be 100% taxable.
11. For 2008, the Petitioner claims the property is 100% exempt.

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. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the

taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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, Nat’l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E. 2d 218 (Ind. Tax Ct.1996). The transfer of this obligation to other parcels by granting an exemption is not inconsequential. An exemption is granted when there is an expectation that a benefit will inure to the public because of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, (Ind. Tax Ct. 1990).
18. As a condition precedent to being granted an exemption, the taxpayer must demonstrate that it provides “a present benefit to the general public . . . sufficient to

justify the loss of tax revenue.” *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Bd. of Tax Comm’rs*, *aff’d* 571 N.E.2d (Ind. Tax Ct. 1991); *Indianapolis Osteopathic Hospital v. Dep’t. of Local Gov’t Fin.*, 818N.E.2d 1009,1014 (Ind. Tax Ct. 2004).

19. 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. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel, v. State Bd. of Tax Comm’rs*, 611 N.E. 2d at 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Bd. of Tax Comm’rs*, 512 N.E. 2d 936, 938 (Ind. Tax Ct.1987).

PARTIES’ CONTENTIONS

20. The Petitioner contends the airport is eligible for exemption pursuant to Ind. Code § 6-1.1-10-15 because it is licensed as a public-use airport by the Indiana Department of Transportation’s (INDOT) Office of Aviation.
21. The Petitioner presented the following evidence in regard to this issue:
 - a. The Petitioner contends the property is a licensed public-use airport. *Steinle testimony; Rector testimony; Petitioner Exhibit A*. According to the Petitioner’s witness, privately owned, public-use airports make up a third of the public-use airports in the state and are vital to the air transportation system. *Rector testimony*. Mr. Rector testified that, in his opinion, the tax exemption is an incentive to those individuals who offer their private property for the good of the public. *Id.*
 - b. The Petitioner further contends that having a public-use airport provides an economic benefit to the county. *Steinle testimony*. According to the

Petitioner, business operators use the airport on a regular basis. *Id.* In addition, Mr. Steinle testified, the civil air patrol uses the airport, as do glider clubs, one of which offers glider rides to the public. *Id.* In response to the Respondent's argument, the Petitioner argues that the airport is a base of operations and airport storage for a number of individuals and entities. *Id.* Similarly, Mr. Rector testified that, as a public-use airport, the property must allow anyone that wants to use the facility to use the facility. *Rector testimony.*

- c. The Petitioner argues that the PTABOA erred in its determination. *Steinle testimony.* According to the Petitioner, the County refers to the airport as a private airport which it clearly is not. *Id.* The Petitioner also notes that whether the airport is run as a business is irrelevant to the eligibility requirements of the Indiana Code. *Id.* Finally, the Petitioner argues that the County's contention that the property should be taxed because it is not a municipal airport is a clear contradiction of the Indiana Code. *Id.*
- d. While the Petitioner did not include the house in the list of buildings shown on his application for property tax exemption, he contends that the presence of the house is a mitigating characteristic or security enhancer, according to the May 2004 "Security Guidelines for General Aviation Airports" published by the Transportation Security Administration, Dep't of Homeland Security. *Steinle testimony; Petitioner Exhibit C.* The Petitioner contends that the house enables him to oversee the airport at all times and increases security for the premises and the aircraft stored at the airport. *Steinle testimony.*
- e. Finally, the Petitioner contends that the majority of other public-use airports that are privately owned are tax exempt. *Steinle testimony.* According to Mr. Steinle, of the twenty privately owned, public-use airports that responded to his inquiry, seventeen were property tax exempt. *Id.; Petitioner Exhibit D.*

The owners of the remaining three properties, Mr. Steinle argued, were unaware of the statute and had not applied for exemption. *Id.*

22. The Respondent contends the property is a business and is not eligible for an exemption.
23. The Respondent presented the following evidence in regard to this issue:
 - a. The Respondent contends that it denied the exemption for the Petitioner's property because it is not for "public use." *Hoover argument.* According to the Respondent, Black's Law Dictionary, 7th edition, published in 1999, defines "public-use" as "the public's beneficial right to use property or facilities subject to condemnation." *Id.* The Respondent contends that the public did not have a beneficial right to use Petitioner's property and that the property was used only for the benefit of private owners. *Id.*
 - b. The Respondent contends that the property is a private airport that should be run as a business and therefore taxed. *Hoover argument.* In support of this assertion, the Respondent argues that the Petitioner is making money from its operation of the airport. *Id.* Thus, the Respondent concludes, the airport is a business that should be subject to tax. *Id.*

Analysis

24. The Petitioner contends the property is a licensed public-use airport. The airport consists of two parcels which total approximately 27 acres. One parcel is 16.838 acres and is described as containing a runway and a taxi lane. The other parcel is 9.957 acres that is improved with a building that is used as a hangar, office and for aircraft maintenance, a pole building that is used for airport ground support equipment, two pole buildings that are used for airport storage, and the owner's residence.

25. Under Indiana Code § 6-1.1-10-15(a), “The owner of any airport located in this state, who holds a valid and current public airport certificate issued by the Indiana department of transportation, may claim an exemption for only so much of the land as is reasonably necessary to and used for public airport purposes.” Ind. Code § 6-1.1-10-15(a); 50 IAC 1-3-2. Indiana Code § 6-1.1-10-15 further defines “land used for public airport purposes” to include the following:

- (1) That part of airport land used for the taking off or landing of aircraft, taxiways, runway and taxiway lighting, access roads, auto and aircraft parking area, and all buildings providing basic facilities for the traveling public.
- (2) Real property owned by the airport owner and used directly for airport operation and maintenance purposes.
- (3) Real property used in providing shelter, storage, or care of aircraft, including hangars.
- (4) Housing for weather or signaling equipment, navigational aids, radios, or other electronic equipment.

Ind. Code § 6-1.1-10-15(c).

26. Here, the Petitioner owns an airport. It is certified by the Indiana Department of Transportation, Office of Aviation, as a “public-use” airport. These facts were not disputed by the Respondent. Therefore, the Petitioner is entitled to claim an exemption for “so much of the land as is reasonably necessary to and used for public airport purposes.” Ind. Code § 6-1.1-10-15(a).

27. The Petitioner’s property consists of one parcel containing a runway and a taxi lane. This property is exempt under Indiana Code § 6-1.1-10-15(c)(1). The second parcel is improved with a building used as a hanger, office and for aircraft maintenance, a pole building used for airport ground support equipment, two pole buildings used for airport storage, and the owner’s residence. The buildings used

as maintenance and storage are similarly entitled to exemption under Indiana Code § 6-1.1-10-15(c)(2) and (3).

28. The Petitioner contends that his residence should be exempt also. According to Mr. Steinle, the house enables him to oversee the airport at all times and increases security for the premises and the aircraft stored at the airport. *Steinle testimony*. He further argues that the presence of the house is a mitigating characteristic or security enhancer, according to the May 2004 “Security Guidelines for General Aviation Airports” published by the Transportation Security Administration, Dep’t. of Homeland Security. *Steinle testimony; Petitioner Exhibit C*. The evidence presented, therefore, establishes the Petitioner’s residence as a reasonably necessary use under Ind. Code § 6-1.1-10-15(c)(2).
29. Once the Petitioner has established a prima facie case for exemption, the burden shifts to the Respondent to rebut or impeach the Petitioner’s case. Here, the Respondent argued that because the airport may make some money in its operations, that the airport should be treated as a business, subject to taxation. The language of Ind. Code § 6-1.1-10-15, however, does not distinguish between for-profit and not-for-profit entities. Therefore a property owner’s for-profit status does not disqualify its property from receiving an exemption. Rather, it is the manner in which the Petitioner uses the property which is relevant. The Respondent presented no argument or evidence with regards to the exempt status of the Petitioner’s residence. Thus, the Respondent failed to rebut or impeach the Petitioner’s case.

SUMMARY OF FINAL DETERMINATION

26. The Petitioner raised a prima facie case to support his claim for property tax exemption. The Respondent failed to rebut the Petitioner’s case. The Board finds in favor of the Petitioner and determines both parcels to be 100% tax exempt.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>