

REPRESENTATIVES FOR PETITIONER: Noel Yarger, Vice-president, United Nations Association of St. Joseph County

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

United Nations Association of)	
St. Joseph County)	
)	
Petitioner)	Petition No.: 71-025-96-2-8-00003 ¹
)	County: St. Joseph
v.)	Township: Portage
)	Personal property
St. Joseph County Board of Review)	Assessment Year: 1996
)	
Respondent)	
)	

Appeal from the Final Determination of
St. Joseph County Board of Review

[January 6, 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:

¹ The petition number has been changed to reflect the proper year of appeal.

Findings of Fact and Conclusions of Law

Procedural History

1. Pursuant to Ind. Code § 6-1.1-11-3, United Nations Association of St. Joseph County (Petitioner) filed an application for property tax exemption with the St. Joseph County Auditor on May 15, 1996. On October 31, 1996, the St. Joseph County Board of Review (County Board) denied the Petitioner's application.
2. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petition petitioning the Board to conduct an administrative hearing. The Form 132 petition was filed December 18, 1996.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 12, 1997 in South Bend, IN before Hearing Officer George Helton. Mr. Noel Yarger, Vice-president, was present on behalf of the Petitioner. No one was present on behalf of the County Board.
4. At the hearing, the subject Form 132 petition and attachments were made a part of the record and labeled Board Exhibit A. The Notice of Hearing was made a part of the record and labeled Board Exhibit B. Copies of the 1995 and 1996 Business Tangible Personal Property Assessment Return, Form 103-Long, filed by the Petitioner were entered into the record as Board Exhibit C. In addition, the following exhibits were submitted to the State:

For the Petitioner:

Petitioner's Exhibit 1 - A copy of the Articles of Incorporation for The United Nations Association of St. Joseph County.

Petitioner's Exhibit 2 – A copy of the By-laws for The United Nations Association of St. Joseph County.

Petitioner's Exhibit 3 – A copy of a letter from the Internal Revenue Service regarding the Petitioner's federal tax-exempt status.

Petitioner's Exhibit 4 – Copies of the Petitioner's 1995 and 1996 Financial Reports.

Petitioner's Exhibit 5 – The program distributed at a dinner held by the Petitioner.

Petitioner's Exhibit 6 – A copy of the chronological history of The United Nations Association of St. Joseph County.

Petitioner's Exhibit 7 – Copies of various newspaper articles.

Petitioner's Exhibit 8 – Photographs of various items available for purchase at the Petitioner's gift shop.

5. As a result of testimony, the State requested the Petitioner provide an affidavit from the local officials confirming that an incorrect appeal form was given to the Petitioner and that this error caused a delay in filing the Form 132 petition with the State. On July 10, 1997, the State received, via US Mail, from the Petitioner a cover letter reiterating the conditions surrounding the filing of the Form 132 petition along with a letter from the St. Joseph County Auditor's office and an original power of attorney. This information was entered into the record as Petitioner's Exhibit 9.

6. The subject property is personal property consisting of office equipment, furnishings, and goods for sale. The subject property is located at 2310 Mishawaka Avenue, South Bend in the township of Portage and the county of St. Joseph. The assessment year for which

exemption is sought is 1996 with property taxes due and payable in 1997². The Hearing Officer did not view the property.

7. The issues presented for consideration by the Board were:

ISSUE 1-Whether the Form 132 petition was filed within the statutory time limitation to obtain a review of exemption by the State.

ISSUE 2-Whether the personal property owned by United Nations Association of St. Joseph County qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.

Jurisdictional Framework

8. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
9. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

10. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
11. Personal property includes all tangible property (other than real property) which is being:
- (A) held in the ordinary course of a trade or business;
 - (B) held, used, or consumed in connection with the production of income; or

² Although the Form 132 petition indicates the year of appeal as 1995, the Form 136 clearly sought exemption for the year 1996. Therefore, due to the statutory scheme of administrative review, the petition before the State will be viewed as a review of exemption for the assessment year 1996.

(C) held as an investment.

See Ind. Code § 6-1.1-1-11.

12. Indiana's personal property is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time is obtained. See 50 IAC 4.2-2-2

State Review and Petitioner's Burden

13. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.
14. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10)
15. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the Board would be forced to make a case for the taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
16. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain

sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

17. The Indiana Supreme Court stated in the case of *Orr v. Baker* (1853) 4 Ind. 86 at 88 the Indiana Supreme Court found that tax exemption for one class of persons puts an additional burden upon other classes of property. Hence, the courts do not favor exemptions. Statutes that exempt property from taxation must be strictly construed.
18. "Because an exemption releases property from the obligation of bearing its fair share of the cost of government and serves to disturb the equality and the distribution of the common burden of government upon all property, an exemption from taxation is strictly construed" against the taxpayer and in favor of the State. (*National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* citing *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989, aff'd 571 N.E. 2d 1247 (Ind. 1991))
19. In property tax exemption claims, the taxpayer bears the burden of proving that the property is entitled to the exemption. (*Monarch Steel Co., Inc v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993); In determining whether the property qualifies for an exemption, the dominant use of the property by an organization must be "predominantly and primarily educational, literary, scientific, religious or charitable within the broad constitutional definition of those words." *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*, 251 N.E.673,679 (Ind. App.1969). Furthermore, IC 6-1.1-10-36.3 provides that "property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one or more of those purposes during more than fifty percent (50%) of the time that used or occupied in the year that ends on the assessment date."

Discussion of Issue 1

ISSUE 1-Whether the Form 132 petition was filed within the statutory time limitation to obtain a review of exemption by the State.

20. The Petitioner contends that the Form 132 petition was filed late due the fact that the County Auditor's office inadvertently provided a Form 131 instead of the proper Form 132.

21. The applicable rules governing this Issue are:

IC 6-1.1-11-7(c)

If an exemption application is disapproved by the county board of review, the county auditor shall notify the applicant by mail. Within thirty (30) days after the notice is mailed, the owner may, in the manner prescribed IC 6-1.1-15-3, petition the Board to review the county board's determination.

IC 6-1.1-15-3(c)

In order to obtain a review by the Board, the party must file a petition for review with the county auditor within thirty (30) days after notice of the county board of review's action is given to the taxpayer.

22. Evidence and testimony considered particularly relevant to this determination include the following:

- (a) The Form 132 was not filed by November 31, 1996 because the Petitioner received the wrong petition form.
- (b) The county auditor's office verified that the Petitioner was originally sent the wrong form and it took several days to discover the error.

Analysis of Issue 1

23. The Petitioner seeks property tax exemption under Ind. Code § 6-1.1-10-16 claiming that the subject property is used for educational purposes.
24. Before exploring the question of whether the Petitioner meets the requirements set forth under Ind. Code § 6-1.1-10-16, the State must first determine whether the Petitioner statutorily complied with the requirements and limitations set forth under Ind. Code § 6-1.1-11-7 to obtain a review of a denied exemption application by the State.
25. If an exemption application is denied by the county board of review (or property tax assessment board of appeals), the county auditor shall notify the taxpayer by mail. The taxpayer may seek a review of the county board's action by filing a petition with the State within 30 days after the notice is mailed. Ind. Code § 6-1.1-11-7.
26. The fact that the Form 132 petition was filed outside of the 30-day time limitation is undisputed. The Petitioner acknowledges that the Form 132 petition was filed 48 days after the County Board's notice of denial was mailed. Therefore, the Form 132 petition clearly does not comply with the statutory requirement for review under Ind. Code § 6-1.1-11-7.
27. The Petitioner reasoned that the Form 132 petition was filed beyond the 30-day time limitation due to an error stemming from the County Auditor's office. Although the County Auditor did acknowledge that the Petitioner initially received the wrong appeal form, the evidence does not show that this mistake caused any unreasonable delay in filing the petition with the State. The evidence merely states that the wrong form was mailed and that the mistake was not discovered for several days. Furthermore, simply because the evidence shows that the County Auditor's office mistakenly provided the wrong appeal form, does not mean that the time limitations for filing the appeal have been waived. The statutory procedure for obtaining a review by the State does not provide any waiver of the timeframe within which review can be sought.

28. To repeat, an exemption is a privilege that may be waived if the owner of property does not comply with the statutory procedures for obtaining the exemption. The Petitioner did not comply with the statutory procedures set forth in Ind. Code § 6-1.1-11-7 for obtaining a review of its exemption claim. As such, exemption is waived and the subject property is wholly taxable for the year 1996 with property taxes due and payable in 1997.

ISSUE 2-Whether the personal property owned by United Nations Association of St. Joseph County qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.

29. The State will not examine the merits of this case or explore the educational nature of the Petitioner's activities in the matter before it today. As stated in the above findings, the Petitioner did not comply with the statutory procedures for obtaining a review of an application for exemption. As such, the exemption has been waived and must be denied without delving into the issue of whether the Petitioner is entitled to exemption pursuant to the cited statute.

Summary of Final Determination

Determination of ISSUE 1: *ISSUE 1-Whether the Form 132 petition was filed within the statutory time limitation to obtain a review of exemption by the State.*

30. The Petitioner failed to timely file the Form 132 petition. No change is made as a result.

Determination of ISSUE 2: *ISSUE 2-Whether the personal property owned by United Nation sAssociation of St. Joseph County qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of educational purposes.*

31. Since the Form 132 petition was not timely filed, a determination on this issue is irrelevant. No change is made as a result.

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.