



Property Tax Exemptions

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**Indiana Advisory Commission on Intergovernmental Relations
Friday, November 13, 2015**



The Legal Basis for Exemptions

Article 10, Section 1 of the Indiana Constitution permits the Legislature to exempt certain classes of property from property taxation.

IC 6-1.1-10 contains most of the exemptions available, but exemptions may be found throughout the Code.

Exemption procedures are found in IC 6-1.1-11. The procedures include application requirements, deadlines, et cetera.



The Legal Basis for Exemptions

- *HAMILTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS & HAMILTON COUNTY ASSESSOR v. OAKEN BUCKET PARTNERS, LLC*, 938 N.E.2d 654 (Ind. 2010):
- “Generally exemptions from taxation are granted when there is an expectation that the public will derive a benefit from the exemption. *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990). ‘Because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and 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.’ *Nat’l Ass’n of Miniature Enthusiasts v. State Bd. of Tax Comm’rs*, 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996) (internal quotation and citation omitted). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *Id.* at 221. The taxpayer bears the burden of proving it is entitled to an exemption. *Id.*”



The Legal Basis for Exemptions

- *Specific to the charitable exemption:*
- *HAMILTON COUNTY ASSESSOR V. SPD REALTY, LLC, 2014 IND. TAX LEXIS 22; 9 N.E.3D 773.*
- “A charitable purpose will be found to exist if ‘1) there is “evidence of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general”; and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.’ [Grandview Care, 826 N.E.2d at 182](#) (citation omitted). [Indiana Code § 6-1.1-10-16](#) requires the showing of a charitable purpose to ensure that the benefit conferred by the exemption both relieves the government of a cost that it would otherwise bear and does not primarily serve a commercial profit motive. See [College Corner, L.P. v. Dep't of Local Gov't Fin., 840 N.E.2d 905, 908 n.6 \(Ind. Tax Ct. 2006\)](#); [Sangralea Boys Fund, 686 N.E.2d at 959.](#)”



A privilege, not a right...

An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. IC 6-1.1-11-1.

Burden is on the applicant to show that the predominant part of the property claimed to be exempt is substantially related to the exercise or performance of the applicant's exempt purpose. IC 6-1.1-11-3(d).



Let's be precise, here...

Exemption → property is not taxable (to whatever extent)

- E.g., churches, charitable organizations
- IC 6-1.1-10; IC 6-1.1-11

Deduction → reduces the taxable AV of a property by a fixed dollar amount

- E.g., Homestead, Mortgage, Over 65, Disabled Veteran
- IC 6-1.1-12

Credit → reduces the net tax bill by a designated percentage or prevents a tax bill from exceeding a certain percentage

- Circuit Breaker, Over 65, LOIT Homestead



Applying for an Exemption

Application (Form 136) must be filed with the county assessor on or before:

- May 15, 2015, for the 2015-pay-2016 property taxes.
- April 1 starting in 2016!

However, the exemption application is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). This exception applies only when the property is used, and in the case of real property occupied, by the owner.



Applying for an Exemption

IC 6-1.1-11-4(d):

Ordinarily, the exemption must be re-filed every even year unless:

(1) the exempt property is:

(A) tangible property used for religious purposes described in IC 6-1.1-10-21;

(B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16;

(C) other tangible property owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes described in IC 6-1.1-10-16; or

(D) other tangible property owned by a fraternity or sorority (as defined in IC 6-1.1-10-24).

(2) the exemption application was filed properly at least once for a religious use under IC 6-1.1-10-21, an educational, literary, scientific, religious, or charitable use under IC 6-1.1-10-16, or use by a fraternity or sorority under IC 6-1.1-10-24; and

(3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24.



Applying for an Exemption

Question: Why are some properties automatically exempt from taxation, and why do some have to fill out Form 136?

Answer: Properties that are exempt by law, such as those owned by federal, state, or local units of government are exempt and do not require an Exemption Application. Other entities, that are exempt by filing (e.g., those that are owned, used, or occupied for educational, literary, scientific, religious or charitable purposes) must file and receive approval for their Exemption Application. See IC 6-1.1-11-4.



Changes in Ownership or Use

Through 2015: Exemption is valid after change in ownership **if** the property continues to meet the requirements under IC 6-1.1-10-16, IC 6-1.1-10-21 or IC 6-1.1-10-24. If the property does not continue to meet the exemption requirements, the exemption is to be removed for that same tax cycle. Notice that this practice differs from the way in which deductions are handled.

Deductions stay in place for the entire tax cycle even if property changes hands during the year, so long as the deductions were validly in place on March 1.

Starting in 2016: Exemption validly in place on assessment date remains in place for that assessment date despite change in use or ownership of property.



Changes in Ownership or Use

Question: What if ownership changes or the property is used for a non-exempt purpose?

Answer: The person who obtained the exemption, or the current owner, must notify the county assessor in the year that the change occurs.

- Include Form 136 CO/U “Notice of Change of Ownership of Exempt Property”
(<https://forms.in.gov/Download.aspx?id=7564>)



Changes in Ownership

If the county assessor discovers that title to property granted an exemption described in IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24 has changed, the county assessor must notify the persons entitled to a tax statement for the property of the change in title and indicate that the county auditor will suspend the exemption until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for the exemption.

Upon receipt of the affidavit, the county assessor must reinstate the exemption for the years for which the exemption was suspended and each year thereafter that the property continues to meet the requirements for the exemption.



Granting an Exemption

What is done to ensure that the administration of these rules are consistent within and across counties?

In order to grant an application for an exemption, in whole or in part, the county Property Tax Assessment Board of Appeals ("PTABOA") must find that the statutory prerequisites for an exemption have been met. If any of the statutory prerequisites have not been met, the exemption cannot be granted.

If the application is denied in whole or in part, notice of that action will be given on Form 120 (link: <https://forms.in.gov/Download.aspx?id=5600>).

An applicant may appeal to the Indiana Board of Tax Review ("IBTR") within thirty (30) days from the date the notice of rejection is given by the county PTABOA.

Note: IC 6-1.1-11-7(c) states the appeal must be filed within 30 days. The IBTR website and rules, following IC 6-1.1-15-3, state an appeal can be filed within 45 days of the notice of rejection.



What is the process by which a property owner establishes their property as exempt?

Are there cases when part of a property may be exempt and some may be taxable? For example, for a business use such as coffee shop, restaurant, or offices on the property. Are there grey areas?



Granting an Exemption

Exemption may include real property, personal property, or both.

Exemption amount may be 100%, or a certain percentage, depending on the circumstances.

Taxpayer must submit evidence that the property qualifies for exemption under a specific statute.

Failure to provide documentation such as Articles of Incorporation, By-laws, and Income and Expense Statements, may result in the denial of the exemption sought.



Exemptions meet Deductions

IC 6-1.1-12-46:

For an assessment date in 2011 or later, if:

1. Real property is not exempt on March 1;
2. Title is transferred before December 31; and
3. The new owner applies for an exemption for the next assessment date and the PTABOA determines the new owner qualifies for the exemption;

for the non-exempt assessment date, any deductions and related tax cap credits should be applied to the property such that the exempt property will benefit.



Exemptions meet Deductions

Example:

John Smith owns a property as of March 1, 2013, and is eligible to receive the homestead and mortgage deductions on this property. The property is not exempt for the March 1, 2013, assessment date. John Smith sells his property to a church on or before December 31, 2013. The church applies for an exemption for the March 1, 2014, assessment date and the PTABOA determines it is exempt for the March 1, 2014, assessment date. The church will receive John Smith's deductions for the 2013-pay-2014 property taxes, as well as the property tax cap that would have been applied to the property under John Smith's ownership. The church's exemption will apply for the 2014-pay-2015 property taxes.

(See DLGF's May 19, 2011, memo: [http://www.in.gov/dlgf/files/110519 - Stanley Memo - Exemptions HEA 1004-2011.pdf](http://www.in.gov/dlgf/files/110519_-_Stanley_Memo_-_Exemptions_HEA_1004-2011.pdf))



What uses of property are eligible to be completely property tax exempt?



United States Property

- The property of the United States (and its agencies and instrumentalities) is exempt from property taxation to the extent that this state is prohibited by law from taxing it.
- However, any interest in tangible property held by the United States must be assessed and taxed to the extent the state is not prohibited from taxing it by the Constitution of the United States.
(IC 6-1.1-10-1)



State Property

IC 6-1.1-10-2

State property; property leased to a state agency

Sec. 2. (a) Except as otherwise provided by law, the property owned by this state, a state agency, or the bureau of motor vehicles commission is exempt from property taxation.

(b) 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 by this subsection 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.



Political Subdivision and Municipal Property

IC 6-1.1-10-4

Political subdivision property

- Sec. 4. Except as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation.

IC 6-1.1-10-5

Municipal property

- Sec. 5. (a) Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service.

(b) For purposes of this section, property used to provide a municipal service includes:

- (1) a public school or library;
- (2) a municipally owned park, golf course, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium, or gymnasium; and
- (3) any other municipally owned property, utility, or institution.



“Charitable” Exemption

IC 6-1.1-10-16 Version b

Exemption of building, land, and personal property used for various purposes; termination of eligibility for exemption

Sec. 16. (a) All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

(b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.

(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

- 1) a building that is exempt under subsection (a) or (b) is situated on it;
- 2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it; or
- 3) the tract:
 - (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
 - (B) does not exceed five hundred (500) acres; and
 - (C) is not used by the nonprofit entity to make a profit.



Religious Property

IC 6-1.1-10-21

Churches or religious societies

Sec. 21. (a) The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

- (1) A building that is used for religious worship.
- (2) The pews and furniture contained within a building that is used for religious worship.
- (3) The tract of land upon which a building that is used for religious worship is situated.

(b) The following tangible property is exempt from property taxation if it is owned by, or held in trust for the use of, a church or religious society:

- (1) A building that is used as a parsonage.
- (2) The tract of land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated.

(c) To obtain an exemption for parsonages, a church or religious society must provide the county assessor with an affidavit at the time the church or religious society applies for the exemptions. The affidavit must state that:

- (1) all parsonages are being used to house one (1) of the church's or religious society's rabbis, priests, preachers, ministers, or pastors; and
- (2) none of the parsonages are being used to make a profit.

The affidavit shall be signed under oath by the church's or religious society's head rabbi, priest, preacher, minister, or pastor.

(d) Property referred to in this section shall be assessed to the extent required under IC 6-1.1-11-9.



Assessment of Exempt Property

IC 6-1.1-11-9

Assessment method; exemption for public properties

- Sec. 9. (a) Except as provided in subsection (b) of this section, all property otherwise subject to assessment under this article shall be assessed in the usual manner, whether or not it is exempt from taxation.
- (b) No assessment shall be made of property which is owned by the government of the United States, this state, an agency of this state, or a political subdivision of this state if the property is used, and in the case of real property occupied, by the owner.



Lease of Exempt Property

- IC 6-1.1-10-37
- Leases of exempt property; effect
- Sec. 37. (a) This section does not apply to the lease of a dwelling unit within a public housing project by the tenant of that dwelling unit.
- b) If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.
- c) If personal property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the personal property does not make it taxable, the leased personal property shall be assessed and taxed as if it were personal property owned by the lessee or his assignee.



Lease of Exempt Property

IC 6-1.1-11-3.8

Notice to county assessor of lease of certain property; county assessor notice to department of local government finance;

department rules

Sec. 3.8. (a) This section applies to real property that after December 31, 2003, is:

- (1) exempt from property taxes:
 - (A) under an application filed under this chapter; or
 - (B) under:
 - (i) IC 6-1.1-10-2; or
 - (ii) IC 6-1.1-10-4; and
- (2) leased to an entity other than:
 - (A) a nonprofit entity;
 - (B) a governmental entity; or
 - (C) an individual who leases a dwelling unit in:
 - (i) a public housing project;
 - (ii) a nursing facility referred to in IC 12-15-14;
 - (iii) an assisted living facility; or
 - (iv) an affordable housing development.

(b) After December 31, 2003, each lessor of real property shall notify the county assessor of the county in which the real property is located in writing of:

- (1) the existence of the lease referred to in subsection (a)(2);
- (2) the term of that lease; and
- (3) the name and address of the lessee.

(c) Each county assessor shall annually notify the department of local government finance in writing of the information received by the county assessor under subsection (b).



Exempt Property Purchased under Contract

IC 6-1.1-10-41

Exempt property purchased under contract of sale by person not qualifying for exemption

If state or political subdivision real or personal property:

- (1) is being purchased under a contract of sale by another person:
 - (A) whose real or personal property is not exempt from taxation;
and
 - (B) who is not engaged in an exempt purpose with the real or personal property; and
- (2) the contract of sale does not make the real or personal property taxable;

the real or personal property shall be assessed and taxed as if the real or personal property were owned by the purchaser or the purchaser's assignee.



The Oaken Bucket Case



The *Oaken Bucket* Case

HAMILTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS & HAMILTON COUNTY ASSESSOR v. OAKEN BUCKET PARTNERS, LLC, 938 N.E.2d 654 (Ind. 2010), is a Indiana Supreme Court decision that counties should take heed of when reviewing property tax exemption applications filed by landlords who rent to religious or charitable organizations.



What's in this *Oaken Bucket*?

Some of the key points from the case:

1. In order to qualify for an exemption, the landlord must demonstrate a unity of ownership, occupancy, and use. That is, that the property
 - a) is owned for exempt purposes,
 - b) occupied for exempt purposes, and
 - c) predominantly used for exempt purposes.

When unity of ownership, occupancy, and use is lacking, both the landlord and tenant must demonstrate that they possess their own exempt purpose.

2. Charging below market rent for part of a building rented to a church or other religious or charitable organization is insufficient, standing alone, to justify a religious or charitable purpose property tax exemption.
3. Although the fact that a landlord charges below market rent to a charitable or religious organization may demonstrate some indicia of the landlord's beneficent motives, more is required to show the landlord has its own exempt purpose.



What's in this *Oaken Bucket*?

In essence, charging below market rent to an exempt entity does not, without more, establish an exempt purpose on the part of the property owner.



Exemptions and Nursing Homes



On Exempting Nursing Homes

What are the rules for establishing hospitals, doctors' offices, nursing homes, senior housing as tax exempt?

Over the past several years, debate has brewed over whether nursing home facilities should be exempt.

On February 16, 2012, the Indiana Tax Court issued a decision involving the Tipton County Healthcare Foundation, Inc., f/k/a Tipton County Memorial Hospital Foundation, versus the Tipton County Assessor (see <http://www.in.gov/judiciary/opinions/pdf/02161201mbw.pdf>).



On Exempting Nursing Homes

Some key general holdings of the case that counties should take into consideration when reviewing property tax exemptions filed by nursing homes:

1. The sole issue in this case was whether the Foundation failed to raise a prima facie case that its assisted living facility is entitled to a charitable purposes property tax exemption under IC 6-1.1-10-16.



Revisiting *Oaken Bucket*

2. IC 6-1.1-10-16 provides that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
 - Unity of ownership, occupancy, and use is not required under IC 6-1.1-10-16.
 - But when this unity is lacking, each entity must demonstrate that it has its own exempt purpose and explain the connection between that purpose and its ownership, occupancy, and use of the property.
3. It has long been held that exemption statutes are to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish its right to an exemption.



Charity Begins at (the Nursing) Home

4. To qualify for a charitable purposes exemption, a taxpayer must show “obviously charitable acts different from the everyday purposes and activities of man in general” which are manifest in the relief of a person's needs.

Indeed, a charitable purpose is accomplished “by meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health....”



Charity Begins at (the Nursing) Home

5. IC 6-1.1-10-16 requires not simply the accomplishment of good and noble deeds, but the showing of a charitable purpose. This ensures that:
 - 1) The benefit that the exemption confers relieves government of a cost it would otherwise bear.
 - 2) The exemption's largess does not primarily fulfill a commercial profit motive.
6. Although an entity's for-profit status alone is not sufficient to show that a lease arrangement will result in private benefit, its status is germane.



Keep in mind:

7. While the Tax Court ruling (Foundation failed to raise a prima facie case that its assisted living facility was exempt from property tax under [Ind. Code § 6-1.1-10-16](#); there was no per se rule that a facility that cared for the elderly was automatically considered exempt by the mere character of its deeds.) is informative for when reviewing a property tax exemption for a nursing home, each situation stands on its own merits (i.e., the applicant's situation may not be analogous to the recent ruling).

Neither the language of one case nor an apparent trend from several cases has established a per se rule that an assisted living facility that cares for the elderly is automatically considered exempt by the mere character of its deeds.



Remember:

Every exemption case stands on its own facts and, therefore, is not susceptible to bright-line tests or other abbreviated inquiries.



Thank you!

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