

PROPERTY TAX EXEMPTION FOR NONPROFITS



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INDY 1495847v.3

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Biography

Marilee J. Springer, from Spartansburg, Pennsylvania, is a Senior Counsel in Ice Miller's Tax Section, concentrating her practice on the representation of donors and tax-exempt organizations. She received a dual bachelor of arts in psychology and law and society, *with distinction*, from Purdue University in 1993. She received her juris doctorate, *magna cum laude*, from Indiana University School of Law - Indianapolis in 1996, where she served as a note development editor for the *Indiana Law Review*.

In her work with donors, Springer assists clients in developing philanthropic priorities, making charitable grants, and assessing various vehicles for accomplishing their charitable purposes (e.g., direct grants, private foundations and donor-advised funds).

Springer represents various types of tax-exempt organizations including private foundations, public charities, colleges and universities, private schools, governmental entities, social service agencies, medical research organizations, churches and their religious affiliates, business leagues, and social welfare organizations. She is involved in all aspects of their operations from formation, applying for tax-exemption, advice regarding the impact of proposed or new legislation, conflicts of interest, board member relations, reviewing and negotiating material contracts, unrelated business income tax issues, grant programs, etc. In addition, she has assisted numerous tax-exempt clients in evaluating, structuring and documenting corporate reorganizations involving mergers, liquidations, dissolutions, taxable subsidiaries (C-Corporations and LLCs), and other sophisticated structuring options. Springer advises tax-exempt clients on the reasonableness of compensation to executives or insiders, including the application of the intermediate sanctions regulations.

Marilee Springer is admitted to practice law in the State of Indiana.

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PROPERTY TAX EXEMPTION FOR NONPROFITS

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March 3, 2005

I. Introduction

Except as expressly provided by law, all real and business tangible personal property in Indiana is annually subject to assessment and taxation for *ad valorem* property tax purposes.² Article 10, § 1 of the Constitution of Indiana authorizes the General Assembly to exempt from property tax all property “being used for...educational,...religious or charitable purposes.” The legislature must enact legislation for property to be exempt. The Constitution is permissive rather than mandatory, and is not self-executing.³ In response, the Indiana legislature has enacted a number of property tax exemptions for uses that advance general social policies. The exemptions are all provided by statute, and the procedures required to obtain the exemption must be strictly followed. Exemptions of general applicability are codified in Ind. Code § 6-1.1-10 (copy attached for your convenience as Exhibit A).

Many other exemptions of particular applicability appear elsewhere, with most of those exemptions cross-referenced in Ind. Code § 6-1.1-10-38. In addition, exemptions may be contained in the organic statutes for various types of entities (i.e., the statutes pursuant to which the entities are organized or operated).

II. Qualifying Property

Most property in Indiana qualifies for exemption based upon its use rather than the status of its owner. However, in some circumstances, property may qualify for exemption based upon its ownership.

A. Charitable, Religious, Educational, Literary and Scientific Purposes

¹ The author gratefully acknowledges Barton T. Sprunger's comments and peer review of this outline, as well as the accompanying presentation.

² Ind. Code § 6-1.1-2-1.

³ The Indiana University Foundation v. State Board of Tax Comm'rs, 527 N.E.2d 1166 (Ind. Tax Ct. 1988).

1. All or part of a building is exempt from property taxation if it is owned, occupied and used by a person for educational,⁴ literary, scientific, religious, or charitable purposes.⁵ The owner is not required to be a nonprofit organization or otherwise tax-exempt.
 - a. The Indiana Courts have consistently held that the words "educational, religious or charitable purposes" in the general exemption statute must be interpreted in their broadest constitutional sense.⁶
 - b. For example, the Indiana Tax Court recently reaffirmed its position that caring for the aged is a recognized benefit to the community at large and society as a whole, even where the residents are largely independent and financially secure.⁷
 - c. Organizations and activities have been recognized as religious, charitable or educational even if they primarily confine their benefits to fee paying individuals or members of a particular group or order.⁸

⁴ The Indiana Tax Court recently interpreted the term "educational" quite broadly as applied to a correspondence school that requested exemption for its office and the primary residence of its director. The Court ruled that the educational standard may be met by "providing courses found in tax-supported schools, or by providing courses that are related to those found in tax-supported schools, but not necessarily provided." While the nature of the classes were somewhat alternative (nature, science and personal health), the Court noted that Indiana "does not have a 'fixed and frozen definition' of education." Trinity School of Natural Health, Inc. v. Kosciusko County PTABOA, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003). See also, Richmond Gymnastics Training Center, Inc. v. DLGF, 2003 Ind. Tax LEXIS 114 (Ind. Tax Ct. 2003) (reversing State Board's denial of exemption for gymnastics training facility offering classes and private lessons to children).

⁵ Ind. Code § 6-1.1-10-16(a).

⁶ Le Sea Broadcasting Corp. v. State Board of Tax Comm'rs, 525 N.E.2d 637 (Ind. Tax Ct. 1988); Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue, 667 N.E.2d 810 (Ind Tax Ct. 1996); Sangrlea Boys Fund, Inc. v. State Board of Tax Comm'rs, 686 N.E.2d 954 (Ind. Tax 1997), *petition for discretionary rvw. denied*, 698 N.E.2d 1185 (Ind. 1998); and cases cited in the foregoing.

⁷ Wittenberg Lutheran Village Endowment Corporation v. Lake County PTABOA, 782 N.E.2d 483 (Ind. Tax Ct. 2003), *petition for rvw. denied*, 792 N.E.2d 48 (Ind. 2003), *citing*, Raintree, 667 N.E.2d 810.

⁸ State Board of Tax Comm'rs v. Professional Photographers of America, Inc. 268 N.E.2d 617 (Ind. Ct. App. 1971); State Board of Tax Comm'rs v. Trustees of Adoniram Lodge, 250 N.E.2d 605 (Ind. Ct. App. 1969); City of Indianapolis v. The Grand Master Etc. of the Grand Lodge of Indiana, 25 Ind. 518 (1865).

- d. The standard to be applied in determining whether a particular activity or use of property by an organization qualifies the property for exemption is whether it is “reasonably necessary” for the maintenance or effective welfare of the organization’s religious, charitable or educational purposes. The activity or use need not be essential or indispensable.⁹
2. A tract of land is exempt if it:
 - a. Holds a building used for exempt purposes;
 - b. Holds a parking lot or structure that serves a building used for exempt purposes; or
 - c. Is owned by a nonprofit entity established to retain and preserve land and water for their natural characteristics, provided it is no more than 500 acres and the entity does not use the land for profit.¹⁰
 3. Personal property is exempt if it is owned and used for exempt purposes.¹¹
 4. The Indiana Courts have recognized that the fact that property is owned by a for-profit entity does not preclude its exemption under the general exemption statute.¹² This result also follows from the statutory language for the exemption of buildings, which provides exemption if the buildings are "owned, occupied and used by a person" for exempt purposes.¹³ A "person" is defined as including a "sole proprietorship, partnership,

⁹ Le Sea Broadcasting Corp. v. State Board of Tax Comm'rs, 525 N.E.2d 637 (Ind. Tax Ct. 1988).

¹⁰ Ind. Code § 6-1.1-10-16(c).

¹¹ Ind. Code § 6-1.1-10-16(e).

¹² See, e.g., Indiana State Board of Tax Comm'rs v. Int'l Business College, Inc., 251 N.E.2d 39 (Ind. Ct. App. 1969); Word of His Grace Fellowship v. State Board of Tax Comm'rs, 711 N.E.2d 875 (Ind. Tax Ct. 1999).

¹³ Ind. Code § 6-1.1-10-16(a).

association, corporation, limited liability company, fiduciary, or individual," and thus is not limited to "tax-exempt" entities.¹⁴

5. To qualify for exemption, there must be a unity of ownership, occupancy and use by an entity for exempt purposes. The leasing of exempt property to another for purposes insufficiently related to the exempt purposes of the owner fails to meet such requirement, precluding any exemption for the property.¹⁵ If, however, the lessee operates the property in a manner consistent with the owner's exempt purposes, then the property may be "owned, occupied and used" for charitable purposes, even though the ownership and occupancy or use are by two different entities.¹⁶

B. Land Purchased for Future Improvement¹⁷

1. Land purchased with the expectation that a building, such as a church, will be constructed on it may be exempt even before the building is constructed.
2. The building to be constructed must be one which will be owned, occupied and used in such a manner that it will qualify for exemption.
3. After 3 years, the owner of the land must demonstrate substantial progress and active pursuit of the building project. Substantial progress and active pursuit may be demonstrated by factors such as the following:
 - a. Organization of, and activity by, a building committee or similar oversight group.
 - b. Completing and filing building plans with the appropriate authorities.

¹⁴ Ind. Code § 6-1.1-1-10.

¹⁵ St. Mary's Medical Center v. State Board of Tax Comm'rs, 571 N.E.2d 1247 (Ind. 1991).

¹⁶ Sangralea Boys Fund, Inc. v. State Board of Tax Comm'rs, 686 N.E.2d 954 (Ind. Tax Ct. 1997), *petition for discretionary rvw. denied*, 698 N.E.2d 1185 (Ind. 1998).

¹⁷ Ind. Code § 6-1.1-10-16(d).

- c. Cash reserves for the project that are sufficient so that a reasonable individual would expect that construction could begin within 3 years.
- d. Breaking ground and actually beginning construction.
- e. Any other facts which would lead a reasonable individual to believe that there is an active plan for construction and that the building could be completed within 6 years considering the circumstances of the owner.

C. Other Exemptions

- 1. Property owned by a hospital shared services organization (described in Sections 501(c)(3) or 501(e) of the Internal Revenue Code of 1986, as amended) is exempt if it is owned, occupied and used exclusively to furnish goods or services to a hospital whose property is exempt.¹⁸
- 2. Land (not exceeding 3 acres) acquired to erect, renovate or improve a single family residence to be given away or sold in a charitable manner by a nonprofit organization to low-income individuals is generally exempt, provided the owner demonstrates substantial progress and active pursuit within 3 years. The owner must notify the county auditor within 60 days if the owner conveys the property to any other person. In addition, the owner must similarly notify the county auditor, and will be liable for all taxes which would have been owed had exemption not been granted, if it:
 - a. Ceases to be eligible for the exemption;
 - b. Fails to transfer the property within 6 years of receiving exemption; or

¹⁸ Ind. Code § 6-1.1-10-16(g).

- c. Transfers the property to an individual who is not low-income or who does not use the property as a residence for at least one year.¹⁹
3. Property owned by the United States and its agencies and instrumentalities,²⁰ the State of Indiana²¹ and its political subdivisions,²² agencies and instrumentalities, and municipalities (if used to provide municipal services)²³ is generally exempt.
 4. Property which serves various public interests such as bridges,²⁴ public airports,²⁵ public libraries²⁶ and property owned by municipally-owned water companies,²⁷ nonprofit water companies,²⁸ and nonprofit sewage disposal companies²⁹ is generally exempt.
 5. Certain industrial waste control facilities³⁰ and air pollution control systems³¹ are exempt.
 6. Nonprofit corporation property located under or adjacent to a lake or reservoir is exempt.³²
 7. Property owned by an Indiana nonprofit corporation and used for activities in the field of the fine arts is exempt.³³
 8. Up to 800 acres (per county) of property owned, occupied and used by a manual labor school, technical high school, trade school or college incorporated in Indiana may be exempt.³⁴

¹⁹ Ind. Code § 6-1.1-10-16(i).

²⁰ Ind. Code § 6-1.1-10-1.

²¹ Ind. Code § 6-1.1-10-2.

²² Ind. Code § 6-1.1-10-4.

²³ Ind. Code § 6-1.1-10-5.

²⁴ Ind. Code § 6-1.1-10-3.

²⁵ Ind. Code § 6-1.1-10-15.

²⁶ Ind. Code § 6-1.1-10-5(b)(1); Ind. Code § 6-1.1-10-19.

²⁷ Ind. Code § 6-1.1-10-6.

²⁸ Ind. Code § 6-1.1-10-7.

²⁹ Ind. Code § 6-1.1-10-8.

³⁰ Ind. Code § 6-1.1-10-9 through 11.

³¹ Ind. Code § 6-1.1-10-12 and 13.

³² Ind. Code § 6-1.1-10-16.5.

³³ Ind. Code § 6-1.1-10-18.

9. Property owned by an Indiana nonprofit corporation and used in the operation of a hospital, health facility or residential facility for the aged is generally exempt.³⁵
10. Churches are generally exempt, as are parsonages (including up to 15 acres of land).³⁶
11. Dormitories of church colleges and universities are exempt.³⁷
12. Cemetery corporations are exempt.³⁸
13. Free medical clinics are exempt.³⁹
14. Property owned by various other organizations is generally exempt, including: fraternal beneficiary associations,⁴⁰ college fraternities and sororities,⁴¹ YMCA, YWCA, Knights of Columbus, Salvation Army, Young Men's Hebrew Association, Disabled American Veterans, Veterans of Foreign Wars, American Legion, American War Veterans, United States Spanish War Veterans, Boy Scouts of America, Girls Scouts of the USA, and others.⁴²

D. Predominant Use of Property

Where the exemption of particular property is dependent upon the property being used or occupied for one or more exempt purposes, the following rules apply in order to determine the status of the property.

³⁴ Ind. Code § 6-1.1-10-20.
³⁵ Ind. Code § 6-1.1-10-18.5.
³⁶ Ind. Code § 6-1.1-10-21.
³⁷ Ind. Code § 6-1.1-10-22.
³⁸ Ind. Code § 6-1.1-10-27.
³⁹ Ind. Code § 6-1.1-10-28.
⁴⁰ Ind. Code § 6-1.1-10-23.
⁴¹ Ind. Code § 6-1.1-10-24.
⁴² Ind. Code § 6-1.1-10-25.

1. Property used or occupied exclusively for an exempt purpose (or purposes) is entirely exempt.⁴³
2. Property used or occupied by a church, religious society or not-for-profit school predominantly for an exempt purpose (or purposes) is entirely exempt.⁴⁴
3. Property used or occupied predominantly by any other person is exempt to the extent of the exempt use or occupancy.⁴⁵
4. Property is “predominantly” used or occupied for an exempt purpose if it is used or occupied for such purpose during more than fifty percent (50%) of the year.⁴⁶
5. No portion of property used or occupied predominantly for non-exempt purposes is exempt.⁴⁷

The Indiana Supreme Court has reinforced the principle that exemption flows from the predominant use of the facility, not the applicant’s distribution of income for charitable purposes.⁴⁸

E. Leasing of Otherwise Exempt Property

1. Where an owner leases exempt property to a person whose property is not exempt, and such leasing does not make the property taxable, the lessee is taxable on its leasehold estate in the property.⁴⁹ This provision, which is primarily applicable to property owned by the state or a county, city, political subdivision or other instrumentality, subjects the leasehold estate (rather than the underlying property) to tax.

⁴³ Ind. Code § 6-1.1-10-36.3(c)(1).

⁴⁴ Ind. Code § 6-1.1-10-36.3(c)(2).

⁴⁵ Ind. Code § 6-1.1-10-36.3(c)(3).

⁴⁶ Ind. Code § 6-1.1-10-36.3(a).

⁴⁷ Ind. Code § 6-1.1-10-36.3(c)(4).

⁴⁸ State Board of Tax Comm'rs v. New Castle Lodge #147, 765 N.E.2d 1257 (Ind. 2002).

⁴⁹ Ind. Code § 6-1.1-10-37(b).

2. Owners of exempt property, including state agencies and political subdivisions, which lease that property to another entity are required to notify the County Assessor in writing of the existence of the lease, the term of the lease and the name and address of the lessee. While this requirement is principally imposed to assist the taxing authorities in identifying taxable leases, no penalty is currently imposed for failure to report such leases. Consequently, the requirement has not achieved its desired outcome as many governmental owners have failed to give the required notice.

a. There is an exception for property leased to:

(1) a nonprofit entity,

(2) a governmental entity, or

(3) an individual who leases a dwelling unit in a public housing project, a nursing facility, an assisted living facility, or an affordable housing development.

b. The Department of Local Government Finance (“DLGF”) was instructed to establish a deadline and procedures for the provision of such notices, but it has not yet done so.

III. Procedures for Obtaining Exemption

A. Introduction

Property tax exemption is a privilege which is waived if the owner fails to comply with the statutory procedures.⁵⁰ If an application for exemption is not timely filed, the County Property Tax Assessment Board of Appeals (“PTABOA”) is without power to grant an exemption.⁵¹ Indiana’s property tax exemption statutes are strictly construed in favor of the state

⁵⁰ Ind. Code § 6-1.1-11-1.

⁵¹ See, e.g., Ind. Cmty. Action Ass'n, Inc. v. Dep't of Local Gov't Fin., 797 N.E.2d 878 (Ind. Tax Ct. 2003).

and against the applicant.⁵² The burden is upon the applicant to show that the property clearly falls within the exemption statute.⁵³ The procedures for requesting exemption from property tax are codified at Ind. Code § 6-1.1-11 (copy enclosed for your convenience as Exhibit B).

B. Filing Requirements

1. An owner of tangible property that wishes to obtain an exemption must generally file Form 136, Application for Property Tax Exemption,⁵⁴ with the assessor⁵⁵ of the county in which the property is located annually.⁵⁶

Each nonprofit corporation in Indiana that wishes to obtain an exemption from property taxation (for real and/or personal property) must file Form 136 with the assessor of the county in which the property is located in every even-numbered year.⁵⁷

A nonprofit corporation need not file an application in an odd numbered year for property which received exemption in the previous year if the property's use remains unchanged.⁵⁸

A nonprofit corporation must file in an odd-numbered year if the property was not exempt the previous year (whether because exemption was denied or because the property first qualifies for exemption in an odd-numbered year) or if the exempt status of the property is under appeal for a previous year.

Query: Should a nonprofit corporation protectively file an exemption application each year if it purchases personal property in that year? The statute requires a nonprofit corporation to file a new or additional

⁵² Community Development Corp. v. PTABOA of Marion County, Indiana, 2004 Ind. Tax LEXIS 25 (Ind. Tax Ct. 2004), *petition for rvw. denied*, 2004 Ind. LEXIS 695 (Ind. 2004).

⁵³ Id.

⁵⁴ Form 136 actually consists of three separate documents that can each be found on the DLGF website: SP 198, State Form 9284, and State Form 5748.

⁵⁵ This represents a change from prior procedures which provided that applications were to be filed with the County Auditor's office.

⁵⁶ Ind. Code § 6-1.1-11-3(a).

⁵⁷ Ind. Code § 6-1.1-11-3.5(a).

⁵⁸ Ind. Code § 6-1.1-11-3.5(b).

application whenever it acquires property not previously exempted. However, as a matter of practice, nonprofit corporations rarely file new applications in an odd year to cover newly acquired personal property, and County Assessors typically discourage such filings unless the new property is substantial.

Attached as Exhibit C is a checklist established by the DLGF for use by the County PTABOs in reviewing exemption applications.

- a. You may obtain Form 136 from your County Assessor or online at www.in.gov/icpr/webfile/formsdiv/dlgf.html. A copy is attached for your convenience as Exhibit D.
 - b. Form 136 must be filed in duplicate.
 - c. The filing deadline is May 15th. We recommend that you obtain a file-stamped copy upon filing or retain proof of filing by certified mail or overnight delivery.
 - d. There is no filing fee.
2. If a nonprofit taxpayer fails to renew its exemption on previously exempt property by May 15th of an even year, the County Assessor is required by statute to mail a notice to the taxpayer stating that the property will become taxable unless the taxpayer applies for exemption within fifteen (15) days from the date the assessor's notice is mailed.⁵⁹ The County Assessor is required to mail this notice by June 15th of the year in which the exemption application is due.

The extension above may be contrasted with the situation where a County Assessor fails to give the notice by June 15th. In this latter situation, the statute provides that the "failure to give notice...does not continue an exemption unless an exemption application is filed by the owner and

⁵⁹ Ind. Code § 6-1.1-11-5(c).

approved by the county property tax assessment board of appeals on or before the first Monday in November of the year following the year in which the application should have been filed.”⁶⁰

Therefore, for a nonprofit taxpayer missing the May 15th filing date for an exemption renewal, the statute is more lenient if the County Assessor fails to give notice of the nonfiling.

C. Approval or Disapproval; Appeals

1. The County Assessor is obligated to submit each exemption application to the County PTABOA for examination.⁶¹
2. The County PTABOA must carefully examine each exemption application and approve or disapprove the application.⁶²
3. If the exemption application is approved, neither the County PTABOA nor the County Assessor has an express obligation to notify the taxpayer.
4. If the application is disapproved in whole or in part by the County PTABOA, the County Assessor must give notice of that action to the applicant by mail on Form 120, Notice of Action on Exemption Application (copy attached as Exhibit E).⁶³
5. An applicant is not entitled to a PTABOA hearing with respect to its application.
6. On or before August 1st, the County Auditor shall forward to the DLGF the duplicate copy of each approved exemption application.⁶⁴ The DLGF is required to review these applications and upon notice and hearing, may

⁶⁰ Ind. Code § 6-1.1-11-5(d).

⁶¹ Ind. Code § 6-1.1-11-6.

⁶² Ind. Code § 6-1.1-11-7(a).

⁶³ Ind. Code § 6-1.1-11-7(c).

⁶⁴ Ind. Code § 6-1.1-11-8(a).

deny any exemption if it determines that the property is not eligible for exemption.⁶⁵

7. An applicant may appeal any partial or whole denial of exemption to the Indiana Board of Tax Review within thirty (30) days from the date the notice of disapproval by the County PTABOA is mailed to the applicant by the County Assessor.⁶⁶ The appeal must be filed with the County Assessor on Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption (copy attached as Exhibit F). The appeal will proceed under the statutory terms of Ind. Code § 6-1.1-15-3 (copy of Ind. Code § 6-1.1-15 et. seq. attached as Exhibit G).
8. These procedural matters (including the procedures in front of the Indiana Board of Tax Review) will be discussed and described in much greater detail in the session and accompanying materials relating to “Property Tax Procedures.”

D. Recent Changes to Filing Requirements

1. In 2003, the Indiana General Assembly made several changes to the property tax exemption provisions in Indiana law, which require the following additional information to be included in any request for exemption:
 - a. Identification of each part of the property used or occupied for exempt purposes.
 - b. Identification of each part of the property not used or occupied for an exempt purpose.

⁶⁵ Ind. Code § 6-1.1-11-8(b).

⁶⁶ Ind. Code § 6-1.1-11-7(c).

- c. A copy of the Form 11, property record card, must be included with Form 136.⁶⁷
2. Unfortunately, the DLGF has not yet updated the Form 136 to reflect these new requirements.

Ice Miller distributes information to interested members of the legal and business community on a variety of legal developments. These materials do not constitute specific legal advice and may not address aspects of a legal development relevant to the reader's circumstances. This publication is intended for general information purposes only and does not constitute legal advice. The reader should consult legal counsel to determine how laws apply to specific situations.

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⁶⁷ P.L. 264-2003, Sec. 4.

Exhibits

- A. Ind. Code § 6-1.1-10 et. seq.
- B. Ind. Code § 6-1.1-11 et. seq.
- C. DLGF checklist for use by PTABOA in reviewing exemption applications
- D. Form 136, Application for Property Tax Exemption (including SP 198, State Form 9284, and State Form 5748)
- E. Form 120, Notice of Action on Exemption Application
- F. Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption
- G. Ind. Code § 6-1.1-15 et. seq.

Exhibit A

Ind. Code § 6-1.1-10 et. seq.

Exhibit B

Ind. Code § 6-1.1-11 et. seq.

Exhibit C

DLGF checklist for use by PTABOA in reviewing exemption applications

Exhibit D

Form 136, Application for Property Tax Exemption
(including SP 198, State Form 9284, and State Form 5748)

Exhibit E

Form 120, Notice of Action on Exemption Application

Exhibit F

Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption

Exhibit G

Ind. Code § 6-1.1-15 et. seq.