

TAX PLANNING INTERNATIONAL INDIRECT TAXES

International Information for International Business



VOLUME 12, NUMBER 2 >>> FEBRUARY 2014

www.bnai.com

Reproduced with permission from Tax Planning International Indirect Taxes, 12 IDTX , 2/28/14. Copyright © 2014 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>



US: Non-profit corporations in Indiana not automatically exempt from tax on property

Non-profit corporations in Indiana are not automatically exempt from tax on the property – either real (land and buildings) or personal (furniture and fixtures, machinery and equipment) – that they own or use. A non-profit cannot rely solely upon its status as an organisation described in Section 501(c)(3) of the Internal Revenue Code or upon the fact that it carries out good deeds for the public's benefit. The general rule is that all property is subject to tax. To obtain an exemption, the non-profit must file a Form 136 application for property tax exemption with the county assessor. A property tax exemption is approved or rejected by a county's Property Tax Assessment Board of Appeals (PTABOA), often based on the advice of the assessor. By statute, the filing deadline is May 15th of the current year for taxes payable in the next year. For example, to be exempt from property tax payments in 2015, the non-profit must file the exemption application no later than May 15, 2014. *If the application is not filed or is not filed on time, the non-profit's property may be subject to tax.* If that happens, the non-profit owner's financial viability could be threatened, and valuable program dollars will be paid to the county treasurer instead of being targeted to fulfil the non-profit's mission.

The source of exemptions

Property tax exemptions are permitted by the Indiana Constitution, but they are created by the Indiana General Assembly. And the legislature has created many. Most non-profits, however, rely on one exemption, Indiana Code § 6-1.1-10-16(a) (Section 16), which states, "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." A tract of land is likewise exempt under Section 16 if an exempt building is situated upon it. The property's owner must apply for the exemption, but the property may qualify for exemption even if a different entity "occupies" and "uses" it. The owner, occupier and user don't have to be non-profit entities. For profit owners have been granted exemptions in some circumstances. In a recent case, a property used by a for profit daycare provider was found exempt. In deciding to grant an exemption, the PTABOA will look to see if the property is predominantly used to further the claimed exempt purpose, as will the Indiana Board of Tax Review (the State agency reviewing county rulings) and Tax Court if a negative ruling by the PTABOA is appealed.

Deadlines matter

The General Assembly doesn't mince its words, explaining: "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." In a ruling issued last year, the property owner had filed its application on June 4th of the tax year, less than a month after the

May 15th deadline. There was no dispute that the property was used for charitable and religious purposes, and the owner asked the Indiana Board to "find a way to waive the filing deadline." But it was too little, too late. The Indiana Board couldn't waive the filing failure. The property was 100 percent taxable.

All may not be lost

If an organisation has harmed its exemption status due to a late-filing or non-filing, an exemption may still be possible. Based on your organisation's circumstances, the available options may (but do not necessarily) include the following.

■ An application may not have been required!

For non-profits, exemption applications are typically due in even-numbered years, although an application in an odd-numbered year may be required depending on when the property was acquired or how its use has changed. If a property has previously been found exempt under Section 16, a new application may not be required if the property "continues to meet the requirements for an exemption" under Section 16. An organisation shouldn't be punished for a deadline it didn't have to meet. In the late-filing case noted above, the owner failed to show that the property had previously been exempted for charitable or religious uses. If it had, the result may have been different.

■ Was the application, in fact, late?

That the assessor claims your application was late doesn't make it so. Showing that the Form 136 was timely filed (assuming the property otherwise qualifies) should preserve the exemption. In a ruling issued last August, the Indiana Board concluded that the evidence provided by a Diocese, an assistant's testimony, established that it had mailed the exemption applications on time (albeit "barely").

■ The legislative option

Exemption filing deadlines are codified on paper, not written in stone. The General Assembly has mandated the May 15th filing deadline, but it can – and often does – alter those deadlines when the circumstances justify the modification. Sometimes the only solution for a non-profit's exemption dilemma is a legislative one. At this moment, there is a bill pending in the Indiana House of Representatives that, if passed, would grant a non-profit youth baseball and softball association the opportunity to submit an exemption application in 2014 with respect to the assessment dates in 2008, 2009, and 2010. Legislation is often an organisation's most viable option. It is frequently a difficult, time-consuming process. But it can work.

There is no one-size-fits-all solution to a property tax exemption issue. Every non-profit owner has a unique situation.

Brent A. Auberry, Partner, Faegre Baker Daniels LLP, US

Email: brent.auberry@FaegreBD.com

This article is intended for general information purposes only and is not to be considered legal or tax advice. The information herein should not be acted upon without appropriate professional advice.