

REPRESENTATIVE FOR PETITIONERS: David R. Novak, Esq.

REPRESENTATIVE FOR RESPONDENT: Ayn Engel, Esq.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indiana Land Trust Company #2483,)	Petition Nos.: 45-033-19-2-8-01219-19
)	
Petitioner,)	Parcel No.: 45-11-01-200-009.000-03
)	
v.)	County: Lake
)	
Lake County Assessor,)	Assessment Year: 2019
)	
Respondent.)	

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence presented in the Parties' arguments, and having considered the issues, now finds and concludes the following:

I. INTRODUCTION

1. Indiana Code § 6-1.1-10-15 exempts "land used for public airport purposes," which the statute defines, in relevant part, as a building that provides "basic facilities for the traveling public" and is not used solely for purposes unrelated to aviation. The parties dispute whether a 2,027-square-foot portion of an airport terminal building out of which a tenant operated a restaurant that served the public as well as pilots, passengers, and others connected with the airport qualifies for exemption. Because restaurant food service is an amenity expected by travelers, we find that the restaurant space was land used for public airport purposes. We further find that the predominant-use test set forth in Ind. Code § 6-1.1-10-36.3 did not require evidence breaking down the percentages of the restaurant's customers who were connected to the airport and those who were not.

II. PROCEDURAL HISTORY

2. In March 2019, Indiana Land Trust Company #2483 (“Trust Company”) applied for a 100% exemption under Ind. Code § 6-1.1-10-15 for its real and personal property located at 1750 East Main Street, in Griffith. Trust Company uses the property to operate the Griffith-Merrillville Airport. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 120 determination finding that the land was 100% exempt and that the improvements were 99% exempt and 1% taxable. It did not address Trust Company’s claim for an exemption for personal property.
3. Trust Company responded by filing a Form 132 petition with us seeking a 100% exemption for both land and improvements. On September 19, 2022, our designated administrative law judge, Erik Jones (“ALJ”), held a telephonic hearing on Trust Company’s petition. Neither he nor the Board inspected the property. David R. Novak appeared as counsel for Trust Company. Ayn Engel appeared as counsel for the Assessor. Craig Anderson, airport manager and vice president of Griffith Aviation, and Laura Mercado, the Assessor’s employee, testified under oath.
4. The parties offered the following exhibits:
 - Exhibit 1: Hangar 5 restaurant information from Columbus Indiana Aviation website,
 - Exhibit 2: Property Record Card (“PRC”) for City of Columbus Airport terminal,
 - Exhibit 3: Hangar 5 restaurant operation and tax information from Columbus Indiana Aviation website,
 - Exhibit 4: I.C. § 6-1.1-10-15,
 - Exhibit 5: I.C. §§ 8-22-1-4.5; 8-22-1-4.6; and 8-22-2-12,
 - Exhibit 6: Photograph of view from Merk’s Family Dining,
 - Exhibit 7: Merk’s Family Dining information from Facebook,
 - Exhibit 8: Photograph of Merk’s Family Dining location,
 - Exhibit 9: Information about the Delaware County airport and Merk’s Family Dining from aopa.org website and tax information for Merk’s Family Dining,
 - Exhibit 10: PRC for Putnam County Airport Authority,
 - Exhibit 11: Final Approach information from Putnam County Regional Airport website,

- Exhibit 12: South Bend Airport restaurant, operation, and taxation information from various websites,
- Exhibit 13: Blackerby's Hangar 5 restaurant information from restaurant website,
- Exhibit 14: PRC for Terre Haute International Airport
- Exhibit 15: Terre Haute International Airport directory, including Corsair Café.

- Exhibit A: 2019 PRC for the subject property,
- Exhibit B: Satellite images of the subject property,
- Exhibit C: Lake County Request for Site Inspection and photographs,
- Exhibit D: Exemption calculation records,
- Exhibit E: Mi Tierra Menu,
- Exhibit F: Mi Tierra menu (alternate),
- Exhibit H: Information about Mi Tierra from Town of Griffith website,
- Exhibit I: Mi Tierra menu from DoorDash website,
- Exhibit J: Information from Griffith-Merrillville Airport website,
- Exhibit K: Definitions of "aviation" and "relation" from RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY (2nd ed.),
- Exhibit L: Excerpts from U.S. Department of Transportation Advisory Circular 5190.6B.

5. The official record also includes the following: (1) all petitions, motions, and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

III. OBJECTIONS

6. The parties made several objections. The ALJ ruled on some of the objections, and we adopt his rulings. He also took several objections under advisement, to which we now turn.

A. The Assessor's objections

7. The Assessor made hearsay objections to the entirety of Exhibits 1, 7, 11, 13, and 15, and to portions of Exhibits 3, 9, and 12. Each document includes information about restaurants at other Indiana airports. Trust Company neither contested the Assessor's characterization of the exhibits as hearsay nor argued that they fit within any generally recognized exception to the hearsay rule.

8. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. *See* Ind. Evidence Rue 801(c). Hearsay is inadmissible unless otherwise provided by the Indiana Rules of Evidence or other law. Evid. R. 802. Nonetheless, our procedural rules allow us to admit hearsay, with the caveat that if such evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, we cannot base our determination of an appeal solely on that evidence. 50 IAC 4-6-9(d).

9. All the contested exhibits include out-of-hearing statements. And it appears that Trust Company offered the exhibits to prove the truth of matters asserted in those statements, such as that the restaurants are in airports. Nonetheless, we find the exhibits sufficiently reliable and admit them over the Assessor’s objections. But we do not rely solely on the exhibits in reaching our determination of Trust Company’s appeal. To the contrary, to the extent we factor those other restaurants into our determination, we rely on Craig Anderson’s testimony about the restaurants, which he based on his personal knowledge and to which the Assessor did not object.

B. Trust Company’s objections

10. Trust Company objected to Exhibit E, a photograph of Mi Tierra’s menu, on relevance and hearsay grounds. It raised similar objections to Exhibit F, a photograph of an alternate Mi Tierra menu. Finally, it made a hearsay objection to Exhibit I, a menu for Mi Tierra from Door Dash’s website.

11. We begin with Trust Company’s relevance objections. The Assessor offered the menus to show, among other things, Mi Tierra’s hours of operation and the fact that it offered food and services to the public. Those things were central to her theory that the restaurant did not qualify as land used for public airport purposes, or at least that it was not predominantly used for those purposes. We therefore overrule Trust Company’s relevance objections.

12. Turning to Trust Company's remaining objections, we agree that the exhibits are hearsay. They all contain express or implied out-of-hearing statements offered to prove the truth of the matters asserted, such as that Mi Tierra offers various services to the public, including carryout and catering, and that Door Dash delivers Mi Tierra's food to customers. The Assessor did not lay a foundation for the exhibits' admission under a recognized exception to the hearsay rule. As with Trust Company's exhibits regarding restaurants in other airports, however, we find that the Mi Tierra menus are sufficiently reliable, and we admit them over Trust Company's objections. In any case, we do not rely on the exhibits in reaching our determination on Trust Company's appeal. Indeed, most of the hearsay assertions merely echo facts shown by other evidence to which Trust Company did not object.

IV. FINDINGS OF FACT

13. Trust Company, a non-governmental entity, owns the Griffith-Merrillville Airport, including the parcel under appeal. The Indiana Department of Transportation ("INDOT") and the Federal Aviation Administration ("FAA") have certified the airport as a public-use airport. The airport contains runways, ramps, and several buildings, including aircraft hangars and a terminal building. The terminal building, which is part of the parcel under appeal, contains space devoted to various things, including a small conference room, an area with vending machines that stock snacks and drinks, and a 2,027-square-foot space occupied by Mi Tierra restaurant. *Anderson testimony, Mercado testimony; Ex. J.*
14. The airport also hosts other businesses or entities, all of which are connected to its operation as a public-use airport. Chief among those businesses is Griffith Aviation, the airport's "fixed-base operator," which is an aviation term that applies to a business that is granted the right to act as the main provider of services at an airport and that usually operates out of the terminal. The FAA uses a similar definition of "fixed-base operator" in an advisory circular addressing the prohibition on granting exclusive rights at federally

obligated airport.¹ Griffith Aviation operates the terminal building. It also directs airplane traffic, provides fuel and support services for planes and pilots, and operates a flight school where it trains students from China. The airport also houses Northwest Aviation, which performs aircraft maintenance, G&N Aircraft, which overhauls and repairs aircraft engines, and the Lake County Sheriff's aviation unit. *Anderson testimony; Ex. L.*

15. The airport operates 24 hours per day, seven days a week. There are about 40 people who work at the airport on a typical day, including people employed by the various entities housed at the airport. The flight school has about 40-50 students at any given time. *Anderson testimony; Ex. J.*
16. Mi Tierra moved into the terminal space in 2001. Before that, it was located across the street from the airport. It originally signed a lease, but its tenancy has been month-to-month since that lease expired. Mi Tierra offers 15 tables for customers who wish to dine in the restaurant. It also offers carry-out as well as catering for parties of up to 50 people. Customers may also use Door Dash to have food from Mi Tierra delivered. Mi Tierra is open to the public, a fact that it advertises, and there is parking in front of the restaurant, although it is not exclusively for restaurant customers. Mi Tierra is open 10:30 a.m. to 8:30 p.m. Tuesday through Thursday, 10:30 a.m. to 9:00 p.m. Friday and Saturday, and 8:00 a.m. to 6:30 p.m. on Sunday. *Anderson testimony; Mercado testimony; Exs. E-F, H-I.*
17. Other than Mi Tierra, the only food option at the airport is the terminal's vending machines. The closest locations to get food offsite are a Casey's gas station, which is roughly ¾ of a mile away, and The Corner Café. But going to the Corner Café requires crossing railroad tracks. Because trains use those tracks frequently, there can be delays. Most other restaurants are a 12-15 minute round-trip from the airport, and Griffith

¹ That circular defines "Fixed-Base Operator" as "A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc." *Ex. L at 4.*

Aviation's employees have only a 30-minute lunch break. People can also have food delivered to the airport. Because of liability concerns, however, the airport no longer offers a courtesy car for pilots and passengers. And Griffith Aviation does not let flight-school students leave the premises during the day. *Anderson testimony.*

18. Between 10%-15% of the airport's 40 employees eat at Mi Tierra on a typical day. So do some of the flight-school students. There is no evidence to show how often pilots or passengers eat at Mi Tierra or order carryout or catering from the restaurant. Similarly, while Mi Tierra may be used to cater food for outbound flights, there is no evidence to show how often it does so. Neither side offered any evidence breaking down the percentage of Mi Tierra's customers who are related to the airport, such as employees, pilots, passengers and flight-school students, compared to customers who have no connection to the airport. *Anderson testimony, Mercado testimony.*
19. Having a restaurant in its terminal building is not unique to the Griffith-Merrillville Airport. Several other Indiana airports also have restaurants. Some, such as the South Bend International Airport, have multiple restaurants. *Anderson testimony; Exs. 1-3, 6-8, 11-13, 15.*
20. From at least 2001 through 2018, Trust Company applied for, and was granted, a 100% exemption for the parcel under appeal. In 2019, the Assessor's office inspected the airport and concluded that the restaurant space should not be exempt. As explained above, the PTABOA determined that the parcel's improvements were 99% exempt and 1% taxable for 2019. *Mercado testimony; Ex. D.*

V. CONCLUSIONS OF LAW AND ANALYSIS

21. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain kinds of property. *Hamilton Cty. Property Tax Assessment Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *State Bd. of Tax*

Comm'rs v. New Castle Lodge #147, Loyal Order of Moose, Inc. 765 N.E.2d 1257, 1259 (Ind. 2002). Every exemption appeal “stand[s] on its own facts,” and it is the taxpayer’s duty to walk the Board through the analysis. *Jonestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Ass’r.* 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).

22. Trust Company applied for an exemption under Ind. Code § 6-1.1-10-15. That statute exempts “land used for public airport purposes,” which it defines to include buildings that provide “basic facilities for the travelling public”:

(a) The acquisition and improvement of land for use by the public as an airport and the maintenance of commercial passenger aircraft is a municipal purpose regardless of whether the airport or maintenance facility is owned or operated by a municipality. *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.*

...
(c) As used in this section, “*land used for public airport purposes*” includes 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 aircraft parking areas, *and all buildings providing basic facilities for the traveling public.*
- (2) Real property owned by the airport owner and used for airport operation and maintenance purposes, which includes the following property:
 - (A) Leased property that:
 - (i) is used for agricultural purposes; and
 - (ii) is located within the area that federal law and regulations of the Federal Aviation Administration restrict to activities and purposes compatible with normal airport operations.
 - (B) Runway protection zones.
 - (C) Avigation easements.
 - (D) Safety and transition areas, as specified in IC 8-21-10 concerning the regulation of tall structures and 14 CFR Part 77 concerning the safe, efficient use and preservation of the navigable airspace.

(E) Land purchased using funds that include grant money provided by the Federal Aviation Administration or the Indiana department of transportation.

(3) Real property used in providing for the shelter, storage, or care of aircraft, including hangars.

(4) Housing for weather and signaling equipment, navigational aids, radios, or other electronic equipment.

The term does not include land areas used solely for purposes unrelated to aviation.

I.C. § 6-1.1-10-15 (emphasis added).

23. The undisputed evidence shows that INDOT has certified the Griffith-Merrillville Airport as a public-use airport. The Assessor does not argue otherwise, nor does she claim that the certificate is invalid or has expired. Indeed, she does not dispute that the land and most of the improvements are entitled to an exemption. Instead, the parties differ over whether the 2,027-square-foot space in the terminal that Mi Tierra occupies qualifies for exemption.

24. Trust Company argues that the restaurant space qualifies because it provides basic facilities for the travelling public and was not used solely for purposes unrelated to aviation. The Assessor disagrees, arguing that Griffith Aviation, not the for-profit restaurant Mi Tierra, provided facilities for the traveling public. According to the Assessor, Mi Tierra does not meet the FAA's definition of a fixed base operator, and the services it provided were not "related" to "aviation" within the dictionary definitions of those terms. Finally, the Assessor argues that even if serving food to passengers and other customers tied to the airport is related to aviation and qualifies as providing basic facilities to the travelling public, Mi Tierra also served the public at large. Finally, Trust Company failed to show that serving customers from the airport was the restaurant's predominant use because it did not offer any evidence breaking down the percentage of Mi Tierra's customers who came from the airport compared to those who were members of the public.

25. We agree with Trust Company and find that the disputed space in the terminal building occupied by Mi Tierra is exempt. That restaurant space qualifies as land “reasonably necessary to and used for public airport purposes” because it is a building that provides “basic facilities to the travelling public.” Food is a basic amenity for travelers, and the undisputed evidence shows that Mi Tierra used the space to provide pilots and passengers, among others, with food. Pilots and passengers could dine at the restaurant or order carryout. And the restaurant was available to cater food for outbound flights. Our conclusion is bolstered by the fact that other airports also have restaurants in their terminals, which indicates that restaurants are widely viewed as basic facilities for travelers.
26. The Assessor offered evidence showing that pilots and passengers had other options to get food. They could travel to restaurants outside the airport. They could also have food delivered, or they could get snacks or sodas from the terminal’s vending machine. But none of that evidence changes our conclusion. While the statute exempts only land that is “reasonably necessary” to public airport purposes, we do not read that as meaning that a building must be the only facility of its type that might be accessed by the travelling public. The first two options the Assessor points to—going to restaurants in town or having food delivered—are less convenient than getting food from Mi Tierra. Indeed, travelers would need to access transportation to go to other restaurants, none of which are located nearby. And getting snacks from a vending machine is hardly a substitute for a restaurant meal during normal mealtimes. In any event, whether a facility at an airport is exempt should depend on *its use*, not the vagaries of the proximity of offsite alternatives.
27. The Assessor also offered evidence to show that unlike the airport itself, Mi Tierra is not open 24 hours a day and seven days a week. But the statute does not require that an exempt building, or any distinct part of it, perfectly meet all travelers’ needs. In any case, the terminal building offered food to travelers at all hours. They could access Mi Tierra while it was open, which covered normal meal hours, and they could obtain snacks from the vending machine when Mi Tierra was closed.

28. Nor are we persuaded by the Assessor's argument that the Mi Tierra space was used solely for purposes unrelated to aviation. She points to the following dictionary definition of aviation: "the design, development, production, and use of aircraft, esp. heavier-than-air aircraft." *Ex K* (RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY (2nd ed.)). She similarly points to the following definition of "relation": "an existing connection [or] significant association between or among things[;] the relationship between cause and effect."² *Id.*
29. Apparently, the Assessor believes that the restaurant space is unrelated to aviation because Mi Tierra is not a fixed-base operator and the space is not connected to, or associated with, the aircrafts themselves. But the legislature did not intend such a narrow definition. It did not require that a fixed-base operator directly use a building for that building to qualify for an exemption. And it expressly defined "land used for public airport purposes" as including buildings that provide "basic facilities for the traveling public." As we have already explained, the restaurant provides a basic facility for the travelling public.
30. That brings us to the Assessor's final argument: Trust Company failed to prove that the restaurant space was predominantly used for an exempt purpose because it did not offer any evidence breaking down the percentage of its customers who came from the airport compared to the percentage of customers who were members of the public. Once again, we disagree.
31. The predominant-use test is codified at Ind. Code § 6-1.1-10-36.3. The test applies "[i]f a section of *this chapter* states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption." I.C. § 6-1.1-10-36.3(c) (emphasis added). To qualify for exemption, a property must be used or occupied for exempt

² The excerpt that the Assessor provided was not completely legible. We supplied the bracketed words and punctuation.

purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3. With certain exceptions, a property qualifies only for an exemption that “bears the same proportion to the total assessment” as the amount of time the property’s exempt use bears to its total use during the year that ends on the assessment date. I.C. § 6-1.1-10-36.3(c)(3). Property that is exclusively used or occupied for exempt purposes, however, is totally exempt. I.C. § 6-1.1-10-36.3(c)(1). Where a property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative distribution of time between exempt and non-exempt uses. *See Hamilton Cty. Ass’n v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017) (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”). Finally, property is not used or occupied for exempt purposes during the time that a predominant part of the property is used or occupied “in connection with a trade or business that is not substantially related to the exercise or performance” of an exempt purpose. I.C. § 6-1.1-10-36.3(d).

32. Because the airport exemption statute is in the same chapter (Ind. Code § 6-1.1-10) as the predominant-use test and requires property to be used for a stated purpose (“public airport purposes”), the predominant-use test generally applies to the exemption that Trust Company seeks. But we disagree with how the Assessor asks us to apply that test. In the Assessor’s eyes, the restaurant space was used for public airport purposes only when pilots, passengers, or other people connected with the airport bought food from it. That is not how the airport exemption statute is written, however. By definition, buildings that (1) provide “basic facilities for the traveling public,” and (2) are not used solely for purposes unrelated to aviation, are used for an exempt purpose. Put differently, property that meets the definition of land used for public airport purposes is necessarily used exclusively for exempt purposes under the predominant-use test. Rather than constituting an independent, non-exempt use, serving food to the public was compatible with, and substantially related to, the restaurant providing basic facilities for the traveling public.

Because the property is predominantly used as an airport, Trust Company has satisfied the predominant-use test.

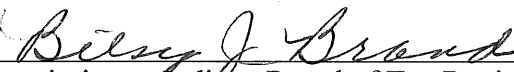
33. Because the restaurant space occupied by Mi Tierra was reasonably necessary to, and used for, public airport purposes, we find that it was entitled to an exemption.

VI. CONCLUSION

34. The disputed 2,027-square-foot space occupied by Mi Tierra is entitled to exemption under Code § 6-1.1-10-15. We therefore find for Trust Company and order that the improvements on the parcel under appeal be granted a 100% exemption.

Date: 3/6/2023


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.