

**Indiana State Bar Association  
Unauthorized Practice of Law Committee  
(the “Committee”)**

**Formal Opinion No. 1 of 2016  
Issued: July 2016**

**Question:** Do certain services of a person who is not licensed to practice law in Indiana (the “Non-Lawyer”), specifically the completion and subsequent filing of an Indiana Application for Property Exemption (“Form 136”) by a Certified Public Accountant (“CPA”), constitute the unauthorized practice of law?

**Answer:** **Qualified No.**

**OPINION**

The issue presented has not specifically been addressed by the Indiana Supreme Court (the “INSC”). However, the court has addressed related issues in a few cases, all of which aids in analyzing the issue presented. Further, the INSC has not attempted to provide a comprehensive definition of what constitutes the practice of law, because of the infinite variety of fact situations which must each be judged according to its own specific circumstances.<sup>1</sup>

However, the INSC has stated that “the core element of practicing law is the giving of legal advice to a client...and the management of (the client’s) affairs, is left totally in the hands of the attorney.”<sup>2</sup> This includes but is not limited to the following provided to another person:

- (1) Advice on a legal right;<sup>3</sup>
- (2) Negotiation or settlement of a legal right;<sup>4</sup>
- (3) Representation in a legal proceeding;<sup>5</sup>
- (4) Selection, preparation or completion of a legal document;<sup>6</sup>
- (5) Management of a law practice;<sup>7</sup> or
- (6) Any other conduct determined to be the practice of law by the INSC.<sup>8</sup>

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<sup>1</sup> Miller v. Vance, 463 N.E.2d 250 (Ind. 1984).

<sup>2</sup> Matter of Perrello, 386 N.E.2d 174, 179 (Ind. 1979).

<sup>3</sup> Fink v. Peden, 17 N.E. 2d 95 (Ind. 1938).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> State ex rel Indiana State Bar Association v Indiana Real Estate Association, Inc., 191 N.E. 2d 711 (Ind. 1963).

<sup>7</sup> Matter of Thonert, 693 N.E. 2d 559 (Ind. 1998).

<sup>8</sup> Matter of Contempt of Mittower, 693 N.E. 2d 555 (Ind. 1998).

The issue of Non-Lawyers representing taxpayers before the Indiana State Board of Tax Commissioners ("Tax Board") has been previously raised.<sup>9</sup> The INSC dismissed that action without prejudice, considering (in part) the Tax Board's proposed rules limiting representative matters by Non-Lawyers.<sup>10</sup> These proposed rules were eventually adopted as part of the Indiana Administrative Code.<sup>11</sup>

Form 136 (also known as State Form 9284) is "Prescribed by Department of local Government Finance,"<sup>12</sup> and is filed with the local County Assessor of the county where the property is located.<sup>13</sup> Further, the County property Tax Assessment Board of Appeals (the "County PTABOA") has power to grant exemptions claimed on Form 136.<sup>14</sup> After filing, the application is considered by the County PTABOA.<sup>15</sup> If the exemption is denied, the applicant may appeal by filing a Form 132 with the Indiana Board of Tax Review within 30 days of the notice of rejection, and a copy of Form 132 must also be mailed to the County Assessor.<sup>16</sup>

IC 6-1.1-15 is titled "Procedures for Review and Appeal of Assessment and Correction of Errors" before the Tax board.<sup>17</sup> Chapter 52 of the Indiana Administrative Code is titled "Indiana Board of Tax Review."<sup>18</sup> Its rules apply to "the Indiana Board of Tax Review," but also "its predecessor agency, the state board of tax commissioners, where necessary."<sup>19</sup> Further, "property tax assessment board of appeals" means the County PTABOA established under IC 6-1.1-28-1.<sup>20</sup> From a plain reading of the rules, it appears that the Indiana Code and Indiana Administrative Code sections only apply to matters before the Tax Board and the County PTABOA, but *not* the County Assessor. However, it seems that, although Form 136 must be filed with the County Assessor, the County PTABOA ultimately approves or disapproves of the exemptions claimed via Form 136.<sup>21</sup>

At first blush it seems that, since Form 136 is filed with the County Assessor, and not the Tax Board or County PTABOA, Form 136 filings would be outside the scope of rules pertaining to the Tax Board or County PTABOA. However, since the County PTABOA, not the County Assessor, is the body which ultimately grants or denies property exemptions to a filer, then it seems as though the rules should apply to Form 136.

Under the Indiana Administrative Code, a "Tax Representative" is "a person who

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<sup>9</sup> State ex rel. Indiana State Bar Assoc. v. State Board of Tax Comm., 714 N.E.2d 128 (Ind. Sup. Ct. 1999).

<sup>10</sup> Id. at 131.

<sup>11</sup> 26 IR 2316 (2003).

<sup>12</sup> Indiana Form 136.

<sup>13</sup> Indiana Form 136, instruction 1; see also Form 136, Application for Property Tax Exemption – General Information, "What Must I file?"

<sup>14</sup> Cf. Form 136, Application for Property Tax Exemption – General Information, "Why Must I File for an Exemption?"

<sup>15</sup> Form 136, Application for Property Tax Exemption – Action by the County Property Tax Assessment Board of Appeals; General Information, "What Happens After I File?"

<sup>16</sup> Id.

<sup>17</sup> IC 6-1.1-15

<sup>18</sup> 52 IAC.

<sup>19</sup> 52 IAC 1-1-2.

<sup>20</sup> 52 IAC 1-1-5.

<sup>21</sup> Cf. "What Happens After I File?" *supra*.

represents another person at a proceeding before the board under IC 6-1.1-15.”<sup>22</sup> Further, a CPA “may not represent a client on a personal property exemption matter.”<sup>23</sup> The rules also expressly prohibited Non-Lawyers from representing taxpayers in certain matters, including, among other things, “...representing taxpayers in matters *relating to* real and personal property exemptions *claimed* on a Form 132 or 136.”<sup>24</sup>

This language leaves one to ponder the meaning behind the words “*claimed*,” and “*representing*,” as well as the two words “*relating to*.” Does the word “*claimed*” pertain only to the past-tense (i.e. Form 136 was previously completed and submitted), or should it be read to mean “*being claimed*” (i.e., Form 136 has *not yet* been completed and submitted)? Were the words “*representing*,” or “*relating to*” intended to prohibit a Non-Lawyer from *completing and filing* Form 136 on a taxpayer’s behalf? Or, was this language only intended to prohibit a non-lawyer from engaging in matters *subsequent to* the completion and filing of Form 136 (i.e. rendering advice to a taxpayer, or *representing* a taxpayer in Tax Board proceedings after Form 136 has already been completed and submitted)?

A plain reading of the rules and pertinent case law leads the Committee to believe that the word “claimed” is used in the past tense, meaning, that the claiming had already been done, and that Form 136 had already been completed and filed. Further, the language “relating to” seems to pertain to matters *above and beyond* the mere completion and filing of Form 136. This could involve *representing* a taxpayer on an appeal before the Tax Board or County PTABOA, which may require particular skills and knowledge of quasi-judicial administrative procedures and formalities. Indeed, making arguments before the Tax Board regarding questions of constitutionality and preservation of issues for appeal have been held to be the unauthorized practice of law.<sup>25</sup> Advising clients on immigration matters, filing motions and appeals to immigration officials on behalf of clients, and accompanying clients to the immigration office has also been held to be the unauthorized practice of law.<sup>26</sup>

Generally speaking, the filling in of blanks in legal instruments, prepared by attorneys, which require only the use of common knowledge regarding the information to be inserted in said blanks, and general knowledge regarding the legal consequences involved, does not constitute the practice of law.<sup>27</sup> This includes the completion of certain legal instruments, so long as the routine service of filing-in information on a standard form is “incidental to and directly connected with” a normal course of business.<sup>28</sup> However, a non-lawyer may not “give advice or opinions as to the legal effects of the instruments he prepares or the legal rights of the parties,”<sup>29</sup> but giving legal advice, insofar as it is merely “directing or acting on matters of general knowledge,” even if it is “knowledge of a rule of law,” does not constitute the practice of law.<sup>30</sup> Further, a non-lawyer cannot provide advice as to what information should be provided in

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<sup>22</sup> 52 IAC 1-1-6.

<sup>23</sup> 52 IAC 1-1-6 (6).

<sup>24</sup> IAC 50-15-5-2 (b)(1) (*emphasis added*).

<sup>25</sup> *State ex rel. Indiana State Bar Association v. Miller*, 770 N.E. 2d 328, 330 (Ind. 2002).

<sup>26</sup> *State ex rel. Indiana State Bar Association v. Diaz*, 838 N.E.2d 433, 445 (Ind. 2005)

<sup>27</sup> See *Indiana Real Estate Association, Inc.*, *supra*, at 715.

<sup>28</sup> *Id.* at 252.

<sup>29</sup> *Id.* at 253.

<sup>30</sup> *Charter One Mortgage Group v. Condra*, 865 N.E. 2d 602, 607 (Ind. 2007).

blanks in complex and unique matters such as immigration, as errors can have disastrous results for a client because filing the wrong documents, missing a deadline, or misjudging relief available to a client can mean the difference between legal status and deportation.<sup>31</sup>

Form 136 is a form provided by a government agency. Although Form 136 may not have been reviewed by the Indiana Attorney General's office (a scenario which is hard to imagine), it has been invariably approved by the State of Indiana and the Tax Board. Finding information needed to complete Form 136 requires only common knowledge, since a CPA or Tax Representative can find most of the information via Real Property Assessment Records through the County Assessor's office.<sup>32</sup> A CPA or Tax representative may also be able to verify other information (such as use or non-profit status) necessary to complete Form 136 by consulting with the taxpayer. The penalty for errors involved in filing Form 136 are not only generally known, but disclosed within the Form 136 packet.<sup>33</sup> Further, filing Form 136 is "incidental to and directly connected with" the normal course of a business: providing tax filing and preparation services.

Considering all of the foregoing, it is the opinion of the Committee that a CPA or Tax Representative's completion and filing of Form 136 on behalf of a taxpayer is more akin to filing-in blanks on a legal document, and does not, in and of itself, constitute the unauthorized practice of law. However, anything *above and beyond* the completion and filing of Form 136 for a taxpayer, i.e., the *representation* of a taxpayer, rendering *advice or interpretations of law* to a taxpayer, or other services *subsequent or related to* Form 136, may constitute the unauthorized practice of law.

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<sup>31</sup> See *Diaz*, supra, at 445-446.

<sup>32</sup> See IC 6-1.1-5, *et seq.*

<sup>33</sup> Indiana Form 136, instruction 4; see also "Why Must I File?" *supra*.