

REPRESENTATIVES FOR PETITIONER:

John H. Sharpe, Attorney
Rick Richmond, Attorney

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

American Eagle)	Petition No. 29-014-10-2-8-00001
Sanders Glen, LLC)	
)	Parcel No. 09-10-06-01-04-001.000
Petitioner,)	
)	Hamilton County
v.)	
)	Washington Township
Hamilton County Assessor,)	
)	2010 Assessment Year
Respondent.)	

Appeal from the Final Determination of the
Hamilton County Property Tax Assessment Board of Appeals

June 25 , 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The use of the subject property as an assisted living facility was recognized as an exempt charitable use in prior years. The exemption application was denied in 2010 because the county determined that the use of this facility, one that cares for the elderly population, does not qualify for an exemption. Does the evidence establish that the subject property still qualifies for the charitable use exemption under Ind. Code § 6-1.1-10-16?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. On May 11, 2010, American Eagle Sanders Glen, LLC, (Sanders Glen), filed a Form 136, Application for Property Tax Exemption, seeking an exemption for its real and personal property for the 2010 assessment year.¹ The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on November 16, 2010, finding the Petitioner's real and personal property to be 100% taxable. On December 16, 2010, pursuant to Indiana Code § 6-1.1-11-7, Sanders Glen filed a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption, requesting that the Board conduct an administrative review of the 2010 exemption request.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Tom Martindale, held a hearing on April 23, 2013, in Noblesville, Indiana.
3. The following persons were sworn in at the hearing:

¹ The Petitioner's Form 136 states that 2009 is the assessment year under appeal. Nevertheless, both the Form 120 and Form 132 indicate that 2010 is the assessment year under appeal. At the hearing, the Petitioner's counsel cleared up the discrepancy and indicated that the proper year under appeal is in fact 2010.

For the Petitioner:

W. Thomas Watts, President and CEO, Exceptional Living Centers
Suzanne C. Hamaker, Administrator, Sanders Glen
Leslie A. Anderson, Regional Director of Operations, Exceptional Living Centers
Kevin Pahud, Partner, BKD, LLP

For the Respondent:

Robin Ward, Hamilton County Assessor

4. The Petitioner presented the following exhibits:

- Petitioner Exhibit 1 – Several photographs of the subject property,
- Petitioner Exhibit 2 – Articles of Organization for American Eagle Sanders Glen, LLC, dated August 4, 2005,
- Petitioner Exhibit 3 – Certificate of Organization for American Eagle Sanders Glen, LLC, dated August 4, 2005,
- Petitioner Exhibit 4 – Certificate of Assumed Business Name for American Eagle Sanders Glen, LLC, dated August 4, 2005,
- Petitioner Exhibit 5 – Operating Agreement of American Eagle Sanders Glen (sic), LLC, dated August 4, 2005,
- Petitioner Exhibit 6 – State of Tennessee Charter (Nonprofit Corporation) for American Eagle LifeCare Corporation dated June 5, 2002,
- Petitioner Exhibit 7 – Amended and Restated Bylaws of American Eagle LifeCare Corporation,
- Petitioner Exhibit 8 – Letter from the Department of the Treasury to American Eagle LifeCare Corporation dated November 15, 2002,
- Petitioner Exhibit 9 – Indiana Nonprofit Sales Tax Exemption Certificate for American Eagle LifeCare Corporation d/b/a Sanders Glen dated August 30, 2007,
- Petitioner Exhibit 10 – “Revenue Rule 79-18, 1979-1 C.B. 194,”
- Petitioner Exhibit 11 – “Revenue Rule 72-124, 1972-1 C.B. 145,”
- Petitioner Exhibit 12 – Sanders Glen Summary Profit & Loss Statement for 2009 and 2010,
- Petitioner Exhibit 13 – Sanders Glen floor plan,
- Petitioner Exhibit 14 – Sanders Glen booklet for perspective residents including: mission statement for Sanders Glen, pricing structure, apartment layouts, detailed list of services and amenities provided, hours of operation for the Cherry Blossom Cafe at Sanders Glen, and the hours of operation for the Cherry Street Inn at Sanders Glen,

- Petitioner Exhibit 15 – Residential Care Agreement for American Eagle Sanders Glen, LLC,
- Petitioner Exhibit 16 – Competition Rate Comparison,
- Petitioner Exhibit 17 – Sanders Glen event calendar for select months in 2009 and 2010,
- Petitioner Exhibit 18 – Several issues of the “Sanders Glen Gazette” from 2009 and 2010,
- Petitioner Exhibit 19 – Listing of outside organizations Sanders Glen supports and/or is affiliated with.

5. The Respondent presented the following exhibits:²

- Respondent Exhibit A – Property record card for Parcel No. 09-10-06-01-04-001.000,
- Respondent Exhibit B – Letter to the IRS from American Eagle LifeCare Corporation dated October 23, 2002,
- Respondent Exhibit C – 2010 Form 990 for American Eagle LifeCare Corporation,
- Respondent Exhibit D – 2009 Form 990 for American Eagle LifeCare Corporation,
- Respondent Exhibit E – “FY 2009 Income Limits Summary” for Hamilton County,
- Respondent Exhibit F – “FY 2010 Income Limits Summary” for Hamilton County.

6. The following additional items are officially recognized as part of the record of proceedings:

- Board Exhibit A – Form 132 Petition with attachments,
- Board Exhibit B – Notice of Hearing, dated January 31, 2013,
- Board Exhibit C – Hearing sign-in sheet.

7. The Respondent submitted its post-hearing brief and proposed findings of fact and conclusions of law on June 3, 2013, (Respondent’s brief). The Petitioner submitted its

² The Petitioner objected to Respondent’s exhibits B, C, and D as irrelevant to the exemption proceedings. The Petitioner’s objection, however, goes to the weight of the evidence rather than its admissibility. Further, the Petitioner objected to Respondent’s exhibits E and F on the grounds of hearsay. Mr. Sharpe argues that these are out of court statements (i.e. written assertions) from someone other than the declarant, which are being offered into evidence to prove the truth of the matter asserted. *See* Indiana Rule of Evidence 801. The Board’s procedural rules provide that hearsay evidence may be admitted. 52 IAC 2-7-3. Thus, the Petitioner’s hearsay objection is overruled and Respondent’s exhibit E and F are admitted into evidence. But because the objection was made, the Board’s final determination “may not be based solely upon the hearsay evidence.” 52 IAC 2-7-3.

post-hearing brief, hearing transcript and proposed findings of fact and conclusions of law on June 3, 2013, (Petitioner's brief). The Respondent submitted its reply brief on June 13, 2013, (Respondent's reply brief). The Petitioner submitted its reply brief on June 13, 2013, (Petitioner's reply brief).

8. The property at issue is an assisted living facility located at 334 South Cherry Street in Westfield.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2010, the Hamilton County PTABOA determined the Petitioner's real and personal property is 100% taxable.
11. The Petitioner contends both the real and personal property is entitled to a 100% exemption in 2010.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

SUMMARY OF PETITIONER'S CASE

13. The taxpayer, American Eagle Sanders Glen LLC (American Eagle) is a single member not-for-profit Indiana limited liability company. American Eagle's sole member is American Eagle LifeCare Corporation (LifeCare), which is also a 501(c)(3) not-for-profit organization. American Eagle owns the subject property, Sanders Glen. Sanders Glen

was purchased on December 2, 2005, by means of tax exempt bonds.³ Sanders Glen was deemed to be tax exempt since its purchase in 2005. *Sharpe argument; Watts testimony; Pet'r Ex. 2, 5, 6.*

14. Sanders Glen is managed by Medical Rehabilitation Centers (MRC), doing business as Exceptional Living Centers. Sanders Glen and MRC are “arm’s length” organizations and the management fees paid to MRC were below the general market rate. MRC is in charge of managing the day-to-day activities of Sanders Glen, including managing the staff and the payroll. The employees at Sanders Glen are not employees of MRC. They are employees of Sanders Glen. With the exception of residents’ leases and the lease of two apartments to MRC, Sanders Glen has not been subject to any leases. *Watts testimony; Pet'r Brief.*

15. Neither Sanders Glen nor LifeCare makes a profit from the operation of the subject property. According to the testimony of Mr. Watts, the operation of Sanders Glen lost around \$14,000 in 2009 and around \$22,000 in 2010. The Operating Agreement for Sanders Glen states that “no net earnings of the company shall inure to the benefit of any private person other than LifeCare”, and LifeCare’s Charter provides that “none of its net earnings shall inure to the benefit of any private person.” According to testimony, when a 501(c)(3) corporation does receive an income, that money is put into new endeavors to grow the mission of the company, such as when a new roof and new parking lot were installed at Sanders Glen. *Watts testimony; Pet'r Brief; Pet'r Ex. 5, 6.*

16. According to the Charter of LifeCare, the purpose of the corporation is “...exclusively charitable within the meaning of section 501(c)(3) of the Internal Revenue Code.” Further, LifeCare is authorized to “acquire, own, maintain, and operate nursing homes, hospitals, senior living facilities, and/or assisted living facilities and related facilities providing health care or other services to the elderly and infirm or disabled and/or disadvantaged persons throughout the United States.” The Sanders Glen operating

³ LifeCare also purchased two additional Indiana facilities, Home Place and Morning Breeze, on this day.

agreement states that it “shall operate in accordance with the same purposes as LifeCare.” The mission of Sanders Glen is “to foster individuality in residents and employees and to promote dignity and quality of life through our efforts to provide exceptional care to those we serve.” Residents are attracted to Sanders Glen for medical support and the safe environment it provides. *Hamaker testimony; Pet’r Brief; Pet’r Ex. 5, 6, 14.*

17. In 1996, while under different ownership, Sanders Glen was involved in litigation to determine its tax exempt status.⁴ Focusing more on income taxes rather than on property taxes, the Indiana Tax Court found the facility was tax exempt. This case identified the qualities that need to be present in order for a senior housing project to qualify for a charitable exemption. The Petitioner argues that Sanders Glen offers the same services now as it did in 1996. In fact, they offer more services. One important addition is the fact that in 2007 a portion of Sanders Glen obtained a license that allows the staff at Sanders Glen to oversee the nursing care and provide nursing services to the residents of Sanders Glen. The remaining portion of Sanders Glen was licensed in 2009. This change eliminated the need for residents to hire outside home healthcare agencies for their health care needs. Further, this licensure allowed residents access to several different levels of care, which is important because of the 112 current residents, only 19 are living independently. *Sharpe argument; Hamaker testimony; Pet’r Brief; Pet’r Ex. 14; Bd. Ex. A Tab C.*

18. Sanders Glen provides special amenities for its residents that suit the needs of the elderly population. The minimum age for admission is 55, but the average age of the residents is 85 or above. The average rates charged to Sanders Glen residents ranged from \$1,750 to \$1,900 a month, which is approximately 25% less than those charged by similar communities in the area. Sanders Glen offers eight apartments that are handicap accessible and ADA compliant. Furthermore, each of the 111 total apartment units comes equipped with bathroom and hallway grab bars, emergency pull cords, smoke detectors and fire rated doors. The apartments also feature low pile carpet for ease of use

⁴ See *Raintree Friends Hous., Inc. v. Ind. Dep’t of Rev.*, 667 N.E.2d 810,813 (Ind. Tax Ct.1996).

for those residents in wheelchairs and outlets which can be moved up or down depending on the needs of the resident. Throughout the entire building handrails have been installed to assist the residents, alarm systems have been installed on the doors exiting the facility and the entire facility is protected by a sprinkler system. Sanders Glen provides 24 hour nursing care. Sanders Glen also provides two on-site cafeterias offering three meals a day, seven days a week. *Hamaker testimony; Pet'r Brief; Pet'r Ex. 14, 16.*

19. Sanders Glen employs a full-time activities director who provides a variety of scheduled activities for the residents, coordinates volunteers to visit Sanders Glen and enables residents to continue serving as volunteers in the community. Sanders Glen also fosters relationships with other community organizations including the Westfield Historical Society, the Veterans of Foreign Wars, the American Legion, the Westfield High School National Honor Society and the Westfield Friends Church. Further, Sanders Glen keeps track of the attendance in the scheduled activities and “participation is always over 90%.” *Hamaker testimony; Pet'r Brief; Pet'r Ex. 17, 18, 19.*
20. Sanders Glen donated land to the Westfield Parks and Recreation Department to be used as a part of the “Midland Trace Trail.” Sanders Glen also hosts “concerts on the lawn,” which is open to the residents, families, staff and the community. Given that some of the residents suffer from physical limitations, these concerts bring the community to Sanders Glen. *Hamaker testimony; Pet'r. Ex. 19.*
21. There are instances at Sanders Glen when the residents exhaust their funds. In these instances the employees at Sanders Glen provide assistance to the residents in locating sources of support. If the residents are unable to find assistance, their charges are adjusted to allow them to remain at the facility. No resident has ever been discharged for lack of funds. Sanders Glen currently participates in the Medicaid Waiver program, which allows residents whose funds are diminished to stay at the facility rather than relocate to a nursing home. Further, the Medicaid Waiver program reimburses Sanders Glen for the care provided, ranging from \$63 a day to \$73 a day, whereas a nursing home would charge “anywhere between \$300 and \$400 a day.” *Hamaker testimony.*

22. According to several Internal Revenue Service Revenue rulings, retirement communities like Sanders Glen are charitable. The Petitioner argues that facilities will qualify for Federal tax law purposes if they meet three primary needs of aged persons, including housing, healthcare and financial security. Further, Mr. Sharpe argues that according to these rulings, an organization meets the housing needs of the elderly by building and operating a complex designed especially for seniors. These facilities are similar to Sanders Glen with grab bars, alarm systems, accessibility for handicap residents and recreation and social programs. Mr. Sharpe argues that Sanders Glen meets the criteria of these rulings to be considered charitable. *Sharpe argument; Pet'r Brief; Pet'r Ex. 6, 7.*
23. Finally, the Petitioner argues that Indiana case law recognizes that care for the “aged” is a charitable activity. According to case law “seniors also need a sense of community and involvement, a sense of security and safety, social interaction, supportive services that enable them to live more independently for a longer period of time, and the need to function at active levels.”⁵ Thus, based on Indiana case law, Sanders Glen is owned, operated and used for charitable purposes. *Pet'r Brief.*

SUMMARY OF RESPONDENT’S CASE

24. In the past this property received an exemption, but each year stands on its own and exempt status for one year does not prove exemption for another tax year. Sanders Glen must prove each year that it qualifies for an exemption. *Resp. Brief.*
25. In order to qualify for a charitable exemption an organization must show a relief of human want and show that the predominate and primary use of the facility is for charitable purposes. The use of Sanders Glen is not any different from the everyday purposes of man in general. Sanders Glen is providing a service and they are being compensated without benevolence. Furthermore, it is not enough for Sanders Glen’s

⁵ See *Wittenburg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E. 2d 483 (Ind. Tax Ct. 2003).

witness to state that the overall mission of the company is charitable. They must show more. *Meighen argument; Resp. Brief.*

26. Sanders Glen should not be granted an exemption simply because it claims the residents qualify as low income individuals. Sanders Glen did not provide any evidence to show the income levels of the residents are any different than the income levels of persons in the general population who rent. Sanders Glen does not relieve a government burden because the residents at the facility are the ones who carry the financial burden of carrying on Sanders Glen's business. Sanders Glen has income limitations because the limitations were a condition to receiving government bonds for the purchase of Sanders Glen. *Resp. Brief.; Resp. Ex. E & F.*

27. Under Ind. Code § 6-1.1-10-16.7 owners of Section 42 federal tax credit program properties may enter into payment in lieu of tax arrangements (PILOT) with local authorities in order to promote the acquisition or rehabilitation of housing to HUD low income persons. Exemption is provided only if PILOTS are arranged. Sanders Glen is not a Section 42 property, and Ind. Code § 6-1.1-10-16.7 does not apply. The existence of this statute is still significant because if a low income property were a charitable use property, the PILOT requirement of this statute would be nullified. Nullification would be improper, and owners of property renting to such individuals could side step the PILOT requirement that the General Assembly designed to benefit low income individuals. *Resp. Brief.*

28. An exemption should not be granted solely because Sanders Glen claims it charges rents below the rents charged by competitors. The Supreme Court and the Tax Court have held that renting below a market rent is insufficient for the granting of an exemption.⁶ *Meighen argument; Resp. Brief.*

⁶See *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 645 (Ind. 2010); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009).

29. Sanders Glen lists amenities and services that it provides to its residents. The residents are required to pay for the services provided with the costs being “fixed so as to return the amount necessary to pay for Sanders Glen.” The existence of these services is not enough. The offering of social involvement does not reflect any charity or benevolence on the part of the Petitioner. The Tax Court has ruled that benevolence must be proved in order for the property to qualify for an exemption. *Resp. Brief.; Resp. Reply Brief.*
30. Sanders Glen argues that a benefit exists because residents of the facility whose funds are depleted would have to go to a more costly nursing home “without the benefit of Sanders Glen.” Sanders Glen residents, however, do not require comprehensive care provided by nursing homes. Further, if a Sanders Glen resident requires comprehensive care, the “resident is terminated.” The benefit is actually a benefit to Sanders Glen so that Sanders Glen can continue to collect rent. *Hamaker testimony; Pet’r Ex. 15; Resp. Brief.*
31. According to tax documents, Sanders Glen is operating at a profit. According to tax forms for the parent company LifeCare, revenues exceeded expenses for 2009 and 2010. Further, the Board of Directors and the President of LifeCare were compensated for the work they do. In fact in 2010 the President of LifeCare was paid \$509,800 with an additional \$6,112 in other compensation. The parent company should be considered in determining whether a charitable use exists. And in this case LifeCare is a profit producing company. *Meighen argument; Watts testimony; Resp. Ex. C & D.*
32. Finally, Sanders Glen states that they operated at a loss in both 2009 and 2010. The Respondent argues that no company is able to operate at a loss for an extended period and stay in business. When questioned on this, the Petitioner’s witness stated that because Sanders Glen is part of a larger organization, they can be subsidized for the losses and still operate. Upon further examination of the profit and loss statement, the Respondent argues that if depreciation and amortization were not factored into Sanders Glens’ profit and loss statement for 2009 and 2010, the community would appear profitable. *Meighen argument; Watts testimony; Pet’r Ex. 12.*

BASIS OF EXEMPTION AND BURDEN

33. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
34. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, Nat'l Ass'n of Miniature Enthusiasts v. St. Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
35. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. St. Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
36. The taxpayer seeking exemption bears the burden of proving that the property is entitled to exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hosp., Inc. v. Department of Local Gov't Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. St. Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Ind. Ass'n of Seventh Day Adventists v. St. Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

ANALYSIS

37. Indiana Code § 6-1.1-10-16(a) provides that “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.” Further, “a tract of land ... is exempt from

property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(a). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

38. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. St. Bd. of Tax Comm’rs*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Bd. of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. St. Bd. of Tax Comm’rs*, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally 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 that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

39. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Pursuant to Ind. Code § 6-1.1-10-36.3, “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3(a). Further, “property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property

that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3(c).

40. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc.*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus, every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hosp., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis and cannot assume the evidence speaks for itself).
41. The Petitioner is a single member not-for-profit Indiana limited liability company, whose sole member, LifeCare, is also a 501(c)(3) not-for-profit organization. The grant of a federal or state income tax exemption, however, does not entitle a taxpayer to a property tax exemption because an income tax exemption does not depend so much on how property is used, but on how money is spent. *See Raintree Friends Hous., Inc.*, 667 N.E.2d 810,813 (Ind. Tax Ct.1996) (non-profit status does not automatically entitle a taxpayer to tax exemption). Thus, the Board must look at the use of the subject property to determine whether the property is entitled to a full exemption.
42. According to Ms. Hamaker, Sanders Glen’s mission is “to foster individuality in residents and employees and to promote dignity and quality of life through our efforts to provide exceptional care to those we serve.” Further, Ms. Hamaker indicated that the use of the subject property “shall operate in accordance with the same purposes as LifeCare” whose purpose is “providing health care or other services to the elderly and infirm or disabled and/or disadvantaged persons.” *Hamaker testimony; Pet’r Brief; Pet’r Ex. 5, 6, 14.*

43. Caring for the aged is a recognized benefit to the community at large and to society as a whole. *Raintree Friends Hous., Inc.*, 667 N.E.2d at 816 (Ind. Tax Ct.1996). Facilities that care for the aged qualify as “charitable” because they provide the relief of loneliness, 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. *St. Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 241 N.E.2d at 86 (Ind. Ct. App. 1968). In *Wittenberg*, the Tax Court again stated that a charitable purpose is accomplished by meeting the needs of the aging. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d at 488-89 (Ind. Tax Ct. 2003). The record contains a great deal of evidence that these are exactly the kinds of things that Sanders Glen provides.
44. Indiana Code § 6-1.1-10-16 requires that the property be owned, occupied and used for the charitable purpose. Sanders Glen is owned by American Eagle Sanders Glen LLC, an Indiana non-profit organization with the purpose of operating an assisted living facility and providing health services to the elderly. Sanders Glen is occupied by residents who are “elderly and infirm or disabled and/or disadvantaged.” Sanders Glen is used as an assisted living facility. Sanders Glen is charging a below market rent to its residents, and if the residents are not able to keep up with the rent the staff will find alternative ways to keep the residents at Sanders Glen. No resident has ever been evicted from Sanders Glen for the inability to pay their rent. Sanders Glen offers daily activities to keep the residents engaged and Sanders Glen has even “donated” part of its own property to the city of Westfield to encourage more citizens to interact with the residents of Sanders Glen. Sanders Glen uses common areas and activities and longstanding relationships with outside organizations to foster the “sense of community and involvement.” *Wittenberg*, 782 N.E.2d at 488 (Ind. Tax Ct. 2003). Furthermore, the profits obtained do not go to any individual, they instead go to the furtherance of the Petitioner’s mission. The property is owned, occupied and used for the purpose of operating an assisted living facility and for providing for the elderly population.

45. The Petitioner has demonstrated that the Sanders Glen facility provides housing and services to the “elderly and infirm or disabled and/or disadvantaged persons.” Furthermore, Sanders Glen is owned by the taxpayer and occupied by the taxpayer. Sanders Glen is not involved in any lease agreement, aside from the standard management agreement with MRC. This makes the case at hand distinct from other cases involving facilities lacking unity of ownership, occupancy and use. When the unity of ownership and use is lacking the nexus between the purpose and the ownership, occupancy and the use of the property must be examined. *See Oaken Bucket*, 938 N.E.2d 645 (Ind. 2010). The Petitioner established a *prima facie* case that Sanders Glen is owned, occupied and used for a charitable purpose.
46. Once the Petitioner establishes a *prima facie* case, the burden then shifts to the assessing official to rebut the Petitioner’s case. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). In the case at hand, the Respondent did not dispute the Petitioner’s evidence, nor did the Respondent dispute the Petitioner’s contentions that the facilities and services offered at Sanders Glen have been enhanced since the 1996 decision regarding the same facility. The Respondent argued instead that Sanders Glen should not be entitled to an exemption based on current case law. *See Oaken Bucket*, 938 N.E.2d 645 (Ind. 2010); *Tipton County Health Care Foundation, Inc., f/k/a Tipton County Memorial Health Foundation v. Tipton County Assessor*, 961 N.E.2d 1048 (Ind. Tax Ct. 2012). The issue in *Oaken Bucket Partners* and *Tipton County Health Care Foundation* revolved around the lack of unity of ownership and occupancy. The court in *Tipton County* noted that, where different entities own, use and occupy a property, each is required to show its own charitable purpose. That principle is not at issue in this case. There is no disagreement that the Petitioner owns, uses and occupies Sanders Glen.
47. The Respondent attempted to focus on profits. The Petitioner is a non-profit company and its sole member is a 501(c)(3) non-profit company. As discussed by the Petitioner’s witness, any profits realized by the organization are used in furtherance of the mission of the organization. Furthermore, the 990s presented by the Respondent did not focus solely on Sanders Glen, they were for several properties owned by LifeCare. The Respondent

failed to prove that Sanders Glen in particular was making a profit. Although the Board of Directors and the President are paid a salary, this fact is not sufficient to prevent Sanders Glen from receiving an exemption. Most non-profit organizations pay salaries to its Board of Directors and the President of the organization, but this does not take away the tax exemption for these non-profit organizations.

48. The Respondent also focused on the PILOT program and its relevance to Ind. Code § 6-1.1-10-16.7. As the Respondent correctly points out, Sanders Glen is not a Section 42 property and Ind. Code § 6-1.1-10-16.7 does not apply to the case at hand. The Respondent is speculating that some organizations designed to benefit low income individuals might be attempting to side step requirements put in place by the General Assembly. The Board will not conclude from the evidence that Sanders Glen is attempting to circumvent the PILOT requirements which do not apply.
49. The Respondent attempts to diminish the importance of the services provided at Sanders Glen by stating that the Residents actually pay for the additional amenities. The evidence fails to establish that Sanders Glen has a profit motive because it charges its residents for the additional amenities offered in the resident's rooms or in the common area of the facility. Even a non-profit entity is entitled to recoup costs. The mere fact that the residents "pay" for the additional amenities does not create a situation where the exemption should be forfeited by the Petitioner.
50. Similarly, the Respondent argues that according to case law, the use of facilities for social and leisure time activities are not charitable activities and the property is not entitled to tax exemption. *Sahara Grotto and Styx, Inc. v. St. Bd. of Tax Comm'rs*, 261 N.E2d 873 (Ind. App. 1970); *Indianapolis Elks Bldg. Corp. v. St. Bd. of Tax Comm'rs*, 251 N.E.2d 673 (Ind. App. 1969). Neither of these cases involved housing for the elderly. The problem with the Respondent's rationale when comparing the case at hand to these cases is that in *Sahara Grotto* the Indiana Court of Appeals actually did find that a portion of the property should have been found exempt. The problem with the comparison to *Indianapolis Elks Building Corporation* is that the facility was used for "eating, drinking, dancing, card playing, swimming and general relaxation." *Indianapolis Elks Bldg. Corp.*,

251 N.E.2d at 681 (Ind. App. 1969). Sanders Glen differs from both of the facilities mentioned by the Respondent in that it provides a safe living environment for the elderly population that fosters a sense of community and involvement, which the Tax Court has deemed a charitable activity. *Wittenberg*, 782 N.E.2d at 488 (Ind. Tax Ct. 2003).

51. The Board does not feel that the decision in *Oaken Bucket* changed the analysis regarding the outcome in this case. The Respondent is correct to assert that the Supreme Court has held that in order to receive an exemption more is required than just renting at below market rent. *Oaken Bucket*, 938 N.E.2d at 685 (Ind. 2010). However, that is not the sole basis for the Board's determination in this case. Further, *Oaken Bucket* involved renting business space and not the renting of apartment units for elderly individuals to reside in. The evidence in this case shows that the Petitioner owns, occupies and uses the property to provide housing and care for the elderly. The Tax Court has stated that a charitable purpose is accomplished by meeting the needs of the aging.
52. In making its determination, the Board is not ruling that every single assisted living facility is entitled to a charitable exemption. The Board continues to recognize the long standing principle that each exemption application must be examined on its own facts, as it was in this case.

SUMMARY OF FINAL DETERMINATION

53. The Petitioner made a case that the subject property is exempt. The Respondent provided some rebuttal evidence. The Board weighed the evidence and arguments presented by the Petitioner against the evidence and arguments presented by the Respondent. The Board is more persuaded by the Petitioner's evidence and arguments. Therefore, the Board finds in favor of the Petitioner and holds that the subject property, both real and personal, is 100% exempt for the 2010 assessment year.

The Final Determination of the above captioned matter is issued on the date written above.

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>