

REPRESENTATIVE FOR PETITIONER: Carolyn Fears Williams

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DEVOTED 2 HEALING, INC.,)	Petition:	45-004-18-2-8-00857-18
)		
Petitioner,)	Parcel No.:	45-08-04-378-012.000-004
)		
v.)	County:	Lake
)		
LAKE COUNTY ASSESSOR,)	Assessment Year:	2018
)		
Respondent.)		

Appeals from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals

April 23, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Devoted 2 Healing, Inc. claims that the subject property should be exempt from taxation because it has taken steps toward using the property as a community garden. However, Devoted failed to show that the property qualifies for an exemption for vacant land. Thus, we find the subject property to be 100% taxable.

PROCEDURAL HISTORY

2. Devoted filed a Form 136 exemption application with the Lake County Assessor's Office seeking a 100% charitable exemption for the 2018 assessment year for its property located at 757 Polk Street in Gary. On July 11, 2018, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") found the property to be 100% taxable and denied Devoted's application. Devoted then timely filed a Form 132 petition with the Board contesting the denial.
3. On February 3, 2021, our designated Administrative Law Judge ("ALJ"), David Smith, held a hearing on Devoted's petition. Neither he nor the Board inspected the subject property.
4. Carolyn Fears Williams, Michael Wiley, and Laura Mercado testified under oath.
5. Devoted submitted the following exhibits:

Petitioner Ex. 1:	Picture of subject lot
Petitioner Ex. 2:	Picture of man carrying two bricks
Petitioner Ex. 3:	Picture of four people working on a lot
Petitioner Ex. 4:	Picture of two men laying bricks
Petitioner Ex. 5:	2015 Internal Revenue Service ("IRS") 990-N filing confirmation
Petitioner Ex. 6:	2016 IRS Form 990-N filing confirmation
Petitioner Ex. 7:	2018 IRS Form 990-N filing confirmation
Petitioner Ex. 8:	Quitclaim Deed dated September 15, 2017
Petitioner Ex. 9:	Property Record Card ("PRC") for subject property
Petitioner Ex. 10:	Lake County "Real Property Maintenance Report" for subject property
Petitioner Ex. 11:	March 9, 2010 IRS notification letter of 501(c)(3) status
Petitioner Ex. 12:	June 2, 2011 Indiana Department of Revenue ("IDR") letter awarding exemption from sales tax ¹

¹ Devoted exchanged three additional photographs with the Assessor but failed to submit copies to the Board prior to the hearing. Our ALJ therefore declined to admit them and we adopt his ruling.

6. The Assessor submitted the following exhibits:
- | | |
|-------------------|---|
| Respondent Ex. A: | PRC for subject property |
| Respondent Ex. B: | Lake County PTABOA request for site inspection and pictures of subject lot |
| Respondent Ex. C: | Devoted 2 Healing's Treasurer's Report (January-December 2016) (CONFIDENTIAL) |
| Respondent Ex. D: | Devoted 2 Healing's Treasurer's Report (January-December 2017) (CONFIDENTIAL) |
| Respondent Ex. E: | Devoted 2 Healing's Treasurer's Report (January & February 2018) (CONFIDENTIAL) |
| Respondent Ex. F: | <i>Christ United Methodist Church v. Lake County Assessor</i> (IBTR February 6, 2019) |
7. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

8. Devoted is a 501(c)(3) not-for-profit entity. It took ownership of the subject property from the City of Gary Redevelopment Commission on September 15, 2017. Devoted intended to develop gardens on the property to produce food for people in need in the community, but there were health issues and family difficulties that diverted attention from the lot. Several volunteers, including Michael Wiley, worked to clear the vacant lot, cut the grass, and maintain the plantings in 2018. Devoted also received contributions from several entities, including two horse troughs from Tractor Supply Company. Those troughs were placed on the property in 2018 and planted with spinach and collard greens, but due to lack of consistent care, they produced only "one pot full" of spinach and collard greens each in 2018 that were then distributed from Devoted's office. *Williams and Wiley testimony; Pet'r Exs. 1-8, 11.*
9. The PTABOA requested a site inspection of the subject property, which was conducted on June 4, 2018. The inspector found no gardens or signage of any kind on the parcel. *Mercado testimony; Resp. Ex. B.*

CONCLUSIONS OF LAW

10. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer has the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Because exemption statutes release properties from bearing their fair share of the cost of government and disturb the equality and distribution of the common burden of government, they are strictly construed against the taxpayer. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2014).
11. Devoted claims the PTABOA erred in denying its exemption application for the subject parcel because it purchased the property with the intent to develop a food-producing community garden and it took steps toward achieving that goal. Devoted relies heavily on its IRS Code § 501(c)(3) non-profit status to support its exemption claim. However, eligibility for a federal or state income tax exemption does not alone entitle a taxpayer to a property tax exemption. *Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996).
12. All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. Ind. Code § 6-1.1-10-16(a); Ind. Code § 6-1.1-10-36.3. That exemption extends to the land on which the building is situated and to personal property contained therein. Ind. Code § 6-1.1-10-16(c), (e). However, Indiana law strictly limits the availability of property tax exemptions for unimproved land.

13. Ind. Code § 6-1.1-10-16(c)(3) provides an exemption for unimproved tracts of land that meet the following statutory requirements:

(3) the tract:

(A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;

(B) does not exceed five hundred (500) acres; and

(C) is not used by the nonprofit entity to make a profit.

Although Devoted's property meets the requirements of (B) and (C), it failed to offer any evidence showing that Devoted was established for the purpose of retaining and preserving the subject property for its natural characteristics.

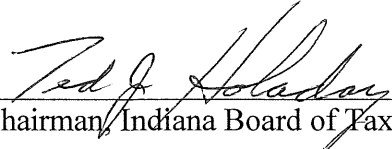
14. Ind. Code § 6-1.1-10-16(d) exempts a tract of land "purchased for the purpose of erecting a building that is to be owned, occupied, and used in such a manner that the building will be exempt under" Ind. Code § 6-1.1-10-16(a). However, Devoted's stated intention for the subject property was to develop gardens to produce food for people in need in the community. Thus, its property does not qualify for an exemption under Ind. Code § 6-1.1-10-16(d) either.

15. While Devoted has the laudable goal of using its property for a community garden, we conclude it failed to show that the subject property met the statutory requirements for an exemption.

CONCLUSION

In accordance with the above findings of fact and conclusions of law, we find subject property is 100% taxable for the 2018 assessment year.

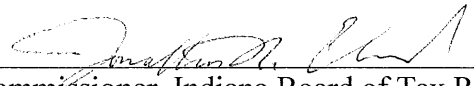
This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



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 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 after 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>.