

REPRESENTATIVES FOR PETITIONER: Sandra Bickel, Ice Miller

REPRESENTATIVES FOR RESPONDENT: Marilyn Meighen, Meighen & Associates,
P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

HOOSIER UPLANDS ECONOMIC)	Petition No.: 47-012-02-2-8-00002
DEVELOPMENT)	
))	
))	County: Lawrence
))	
))	Township: Marion
))	
))	Parcel No.: 1200099100
LAWRENCE COUNTY)	
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS)	
))	
))	Assessment Year(s): 2002
))	
))	

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

January 5, 2004

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
Whether 100% of the subject property should be exempt from property taxation.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Sandra Bickel, Ice Miller, on behalf of Hoosier Uplands Economic Development Corporation, filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on January 13, 2003. The determination of the Lawrence County PTABOA was issued on December 13, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 17, 2003 in Bedford, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Sandra Bickel, Ice Miller

David L. Miller, Executive Director, Hoosier Uplands

Bobby Lamm, Director of Housing, Hoosier Uplands

For the Respondent:

Marilyn Meighen, Meighen & Associates, P.C.

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

David L. Miller, Executive Director, Hoosier Uplands

Bobby Lamm, Director of Housing, Hoosier Uplands

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A copy of the intended witness and exhibit list dated May 30, 2003.

Petitioner's Exhibit B – A copy of the intended exhibit list dated June 12, 2003.

Petitioner's Exhibit C – Articles of Amendment for Hoosier Uplands Economic Development Corporation.

Petitioner's Exhibit D – Corporate By-Laws for Hoosier Uplands.

Petitioner's Exhibit E – Letter from the Internal Revenue Service approving Hoosier Uplands as a 501(c)(3) entity.

Petitioner's Exhibit F – Midtown Suites Application to the Indiana Housing Finance Authority.

Petitioner's Exhibit G – Rental Income Targeting Worksheet for Midtown Suites.

For the Respondent:

Respondent's Exhibit A – A copy of a letter, dated May 28, 2003, stating that Marilyn Meighen is representing Lawrence County at the hearing on Hoosier Uplands, June 17, 2003.

Respondent's Exhibit B – A copy of the tentative witness and evidence list dated June 12, 2003.

Respondent's Exhibit C – Final Determination from the Board for CME-Postbrook East, Inc.

Respondent's Exhibit D – Final Determination from the Board for Parkview Memorial Hospital, Inc.

Respondent's Exhibit E – Final Determination from the Board for West Indianapolis Development Corporation.

Respondent's Exhibit F – Property record card for Hoosier Uplands.

7. In addition, the following requested additional evidence was received from the Petitioner in a timely manner:

Petitioner's Exhibit H – Before and After Renovation photos of the subject property.

Petitioner's Exhibit I – A copy of a Memorandum sent to Barton Sprunger from Bill Waltz, dated September 2, 1997.

Petitioner's Exhibit J – A fiscal year 2002 Revenue and Expenditure Report for Midtown Suites.

Petitioner's Exhibit K – Declaration of Home Affordability Commitment for Midtown Suites.

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

Board Exhibit A - Copy of the Form 132

Board Exhibit B - Notice of Hearing

Board Exhibit C - Request for Additional Evidence given to the Petitioner at the hearing, dated June 17, 2003.

Jurisdictional Framework

9. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

State Review and Petitioner's Burden

10. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
11. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
12. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
13. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
14. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented

enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Constitutional and Statutory Basis for Exemption

15. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
16. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

18. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

19. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
20. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
21. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
22. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
23. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc.*

v. State Board of Tax Commissioners, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff'd* 571 N.E. 2d (Ind. Tax 1991)).

Discussion of Issue

ISSUE : *Whether 100% of the subject property should be exempt from property taxation.*

24. The Petitioner contends that all of the subject property should be 100% exempt from property taxation as it is rented to low-income clientele and operates under HUD rent restrictions.
25. The Respondent contends that the housing is Section 8 housing and does not meet all of the requirements for Federal Safe Harbor Section 8 housing. The housing should be 100% taxable.
26. The applicable rule(s) governing this Issue 1 is:
 - Indiana Code § 6-1.1-10-16 Buildings and land used for educational, literary, scientific, religious, or charitable purposes**
 - (a) 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.
 - Indiana Code § 6-1.1-10-36.3**
 - (a) For purposes of this section, property is predominantly used or occupied for one (1) or more state 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.
27. Evidence and testimony considered particularly relevant to this determination include the following:
 - A. The property is owned by Hoosier Uplands Economic Development, a 501(c)(3). *Miller Testimony*.
 - B. The Corporate By-Laws for Hoosier Uplands states the purpose of the

entity is “to provide or cause to be provided, affordable, decent, housing for low and moderate income families.” *Miller Testimony*.

- C. The subject property was purchased through a trust fund loan for \$35,000 from the Indiana Housing Finance Authority. Through the same application, a \$160,000 renovation loan was granted. *Lamm Testimony*.
- D. There are four apartments in the building and the building is under HUD rent restrictions, which is classified as fair market rent based on income. Hoosier Uplands is allowed to keep the proceeds as long as they meet the Indiana Housing Finance Authority guidelines. *Lamm Testimony*.
- E. The building was not occupied on March 1, 2002, but renovation was in progress. The first tenants moved in September 11, 2002. *Lamm Testimony*.
- F. According to the Corporate By-Laws, in the event of dissolution of the corporation, all assets remaining after payment of all debts of the corporation shall be transferred by the Board of Directors to the State of Indiana or any instrumentality or subdivision thereof exclusively for public purposes, or to any Not-For-Profit corporation whose purposes are substantially the same as those of this corporation, and which at the time of transfer, is exempt from Federal taxation under 501(c)(3).
Petitioner’s Ex. D.

Analysis of ISSUE

- 28. The Petitioner stated that the subject property should be 100% exempt. The Petitioner based his opinion on the fact that the building will be owned, used and occupied for charitable purposes. The subject building will consist of four apartments that will be rented out to low-moderate income people. The Petitioner cites charitable purposes as the reason for the exemption.

29. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).
30. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”:
- a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.
- Raintree Friends*, 667 N.E. 2d at 813-14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).
31. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).
32. It is equally clear the “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 67 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279.
33. Hoosier Uplands has presented testimony and evidence that it is a nonprofit organization recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

34. The fact that Hoosier Uplands is organized as a nonprofit organization and recognized as exempt from federal income tax has in the past been sufficient to satisfy the “charitable ownership” test.
35. The next test to be made is whether or not the property is occupied for charitable purposes. Hoosier Uplands claims to occupy this property to provide low-moderate income housing for people in need of help.
36. The State has previously recognized the providing of low-income housing as a charitable purpose as it relieves the poor and distressed by providing them one of life’s basic necessities and it relieves the government of some of its obligation to provide such housing to the needy.
37. The application to the Indiana Finance Housing Authority (*Petitioner’s Ex. F*) supports the Petitioner’s claim that the property was intended to be used and occupied for the charitable purpose. However, the property was not occupied on the assessment date. The actual tenants did not occupy the building until after September 11, 2003.
38. The third test is whether Hoosier Uplands’ predominant use of the property in question should be classified as charitable.
39. Pursuant to Indiana Code § 6-1.1-10-36.3(a) “*** 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 and that it is used or occupied in the year that ends on the assessment date of the property”.
40. In determining whether property qualifies for tax exemption, predominant and primary use of property is controlling. See *NAME*, 671 N.E. 2d at 221.

41. The Petitioner appealed the March 1, 2002 assessment. According to the Indiana Code the property would have to have been used or occupied in the year that ends on the assessment date of the property. (See IC 6-1.1-10-36.3) The predominately property was not used or occupied in the year before the assessment date of March 1, 2002. The renovation occurred between March 1, 2002 and September 11, 2002. The first tenants moved in on September 11, 2002.
42. Although the Petitioner has proven charitable ownership, the Petitioner has not proven that the property was used and occupied for the statutory time specified. The decision of the Lawrence County PTABOA is sustained.

Summary of Final Determination

Determination of Issue: *Whether 100% of the land should be exempt from property taxation.*

43. The Petitioner did not prevail by a preponderance of the evidence. There is no change in the assessment with regard to this issue.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.