

REPRESENTATIVE FOR PETITIONER:
Adrian M. Brooks, President.

REPRESENTATIVE FOR RESPONDENT:
Candy Wells, Vanderburgh Co. Property Tax Assessment Board of Appeals.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Memorial Place Apts., LP, Memorial	)	Petition Nos.:	Parcel Nos.:
Memorial Pointe Apts., LP, Memorial)		
Pointe II LP,	)	82-029-06-2-8-08782	11-060-21-038-020
	)	82-029-06-2-8-08101	11-12-37097 PP
	)	82-029-06-2-8-08767	11-270-24-035-003
Petitioner,	)	82-029-06-2-8-08769	11-08-22675 PP
	)	82-029-06-2-8-08771	11-270-24-035-008
	)	82-029-06-2-8-08772	11-280-24-045-011
	)	82-029-06-2-8-08773	11-280-24-045-013
	)	82-029-06-2-8-08774	11-280-24-045-010
v.	)	82-029-06-2-8-08775	11-280-24-045-015
	)	82-029-06-2-8-08776	11-280-24-045-012
	)	82-029-06-2-8-08777	11-280-24-045-014
	)	82-029-06-2-8-08778	11-270-24-035-006
	)	82-029-06-2-8-08770	11-08-22673 PP
Vanderburgh County PTABOA,)		
	)	County:	Vanderburgh
	)	Township:	Pigeon
Respondent.)		
	)	Assessment Year:	2006

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

December 16, 2008

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the Petitioner's real and personal property is exempt from taxation pursuant to the charitable provisions of Indiana Code §6-1.1-10-16.

PROCEDURAL HISTORY

2. Memorial Community Development Corporation (MCDC), General Partner, on behalf of Memorial Place LP, Memorial Pointe Apartments LP, and Memorial Pointe II LP, (together the Petitioners), filed Applications for Property Tax Exemption (Form 136) for real and personal property for the 2006 assessment year on June 6, 2006. An additional Form 136 for Memorial Pointe II LP's personal property was filed on June 12, 2006. The Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) issued determinations denying all the requests for exemptions and finding the real and personal property 100% taxable on July 12, 2006.
3. Pursuant to Indiana Code § 6-1.1-11-7, Cleo Nadine D'Abreu, manager, filed Petitions for Review of Exemption (Form 132) on behalf of the Petitioners on August 9, 2007. Following receipt of a Notice of Defect in Completion of Assessment Appeal Form dated September 24, 2007, from the Board, the Petitioners filed corrected Petitions on October 22, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on July 29, 2008, in Evansville, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Adrian Brooks, President,

For the Respondent:

Candy Wells, Vanderburgh County PTABOA Hearing Officer,

Tiffany Collins, PTABOA Administrative Assistant.

6. The Petitioner submitted the following exhibits:

Petitioner's Exhibit A – Statement of contentions and purpose of organization,

Petitioner's Exhibit B – Memorial Pointe II rent roll,

Petitioner's Exhibit C – U.S. Housing and Urban Development (HUD) Section 8 Tenancy Addendum,

Petitioner's Exhibit D – Rental Housing Tax Credit Compliance Manual for 2006 from Indiana Housing & Community Development Authority (IHCDA),

Petitioner's Exhibit E – HUD 2006 income schedules for Vanderburgh County,

Petitioner's Exhibit F – IHCDA statement of HUD 2008 income and rent limits for Section 42 housing with details and rents of Vanderburgh County facilities,

Petitioner's Exhibit G – Income and Expense Summary Reports for 2007 for the subject properties,

Petitioner's Exhibit H – List of Lake County properties that are exempt.

7. The Respondent presented the following exhibits.

Respondent's Exhibit A – PTABOA exemption recommendation,

Respondent's Exhibit B – Excerpt of minutes from the May 17, 2007, Vanderburgh County PTABOA meeting,

Respondent's Exhibit C – PTABOA's notices of the July 12, 2007 hearing.

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

Board Exhibit A – The corrected Form 132 Petitions,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing sign-in sheet,

Board Exhibit D – Order Regarding Conduct of Exemption Hearing and proof of mailing.

9. The subject properties are low-income apartment complexes and related personal property. Memorial Place, LP, is located at 645 Canal Street. Memorial Pointe

Apartments, LP, is located at 421-435 South Morton Avenue and Memorial Pointe II, LP, is located at 656-674 East Cherry Street. All three properties are in Pigeon Township, Evansville, Vanderburgh County.

10. The ALJ did not conduct an on-site inspection of the properties under appeal.
11. For 2006 the Vanderburgh County PTABOA determined the real and personal property to be 100% taxable. The Petitioner contends the property should be 100% exempt.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Indiana Code § 6-2.5-4-1(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.

ADMINISTRATIVE REVIEW AND THE PETITION'S BURDEN

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Article 10, § 1 of the Constitution of Indiana. This provision is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. These government 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 it would have paid to other parcels that are not exempt. See generally, *Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. 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. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
19. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Comm'rs*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

PETITIONER'S CONTENTIONS

20. The Petitioner contends the property should be 100% exempt under Indiana Code § 6-1.1-10-16.

21. The Petitioner presented the following evidence in regard to this issue:
 - a. The Petitioner argues that the three low-income apartment complexes under appeal are owned by Memorial Community Development Corporation (MCDC), a not-for-profit Indiana corporation as the General Partner, and Fifth Third Bank, a for-profit Indiana corporation as the Limited Partner. *Brooks testimony*. According to Reverend Brooks, the MCDC is an outreach ministry of Memorial Baptist Church. *Id.* MCDC only engaged in this corporate structure in order to finance the development of the low-income housing complexes. *Id.*

 - b. Reverend Brooks testified that the property offers housing to people with 40% of the median local income or less. *Brooks testimony*. The Petitioner argues that, because the purpose of the apartments is to provide housing for very low-income citizens at reduced rent rates, the appealed properties qualify for tax exemption under Indiana Code § 6-1.1-10-16. *Brooks argument*. In support of its contention, the Petitioner submitted information on the United States Department of Housing and Urban Development (HUD) Section 8 rent supplement program, and Evansville and Vanderburgh County's Median Income Schedules and Rent Limits. *Petitioner Exhibits B through F*.

 - c. The Petitioner also argues that the subject properties' rents are substantially lower than rents charged at other income-qualified apartments in the city. *Brooks argument*. In support of this argument, the Petitioner entered into evidence documentation from IHEDA detailing rental rates and unit information for several income-qualified apartment complexes in Evansville. *Id.; Petitioner Exhibits F and G*.

- d. If it is required to pay property taxes on the apartments under appeal, the Petitioner argues, MCDC would be forced to raise rent rates. *Brooks argument*. In support of this argument, the Petitioner presented Income and Expense Summary Reports for the appealed properties. *Id.* According to the Petitioner, the apartments are operated cost-effectively, but they often have a negative income flow. *Id.* In fact, Rev. Brooks testified that the church where he pastors recently made a \$126,000 loan to MDCD because of the negative cash flow. *Brooks testimony; Petitioner Exhibit G.*
- e. Finally, the Petitioner argues that three similarly owned and operated apartment complexes in Lake County, Indiana, are tax exempt. *Brooks testimony*. Rev. Brooks identified these properties as Madison Avenue Townhouses and Emerson Housing in Gary, and North Harbor in East Chicago. *Id., Petitioner Exhibit H.*¹ According to the Petitioner, this establishes a precedent for granting an exemption to the subject properties. *Brooks argument*.

RESPONDENT'S CONTENTIONS

22. The Respondent contends the properties are 100% taxable under Indiana Code § 6-1.1-10-16 and no exemption should be allowed on the apartments.
23. The Respondent presented the following evidence in regard to that issue:
 - a. The Respondent argues that the Petitioner failed to timely file for exemption in twelve of the Petitioner's thirteen cases. *Wells argument*. According to the Respondent's witness, Form 136 Applications for Exemption must be filed no later than May 15 for the year in question under Indiana law. *Id.* Here, however, Ms. Wells argues, the Petitions were not filed until June 6th of 2006. *Id.* In

¹ The Petitioner's representative, Rev. Brooks, tentatively identified two of the three complexes in Lake County at the hearing but asked the Board to allow him to provide the full identity later because he had forgotten to include his notes in the materials he brought to the hearing. Judge Barter, hearing no objection, granted a seven-day window of opportunity for post-hearing submission of additional evidence. The Petitioner timely filed and served a sheet identifying three apartment complexes in Lake County, Indiana. *See* Petitioner's Exhibit H.

support of this contention, the Respondent presented the hearing officer's recommendation to the PTABOA noting the late-filed petitions. *Respondent Exhibit A*. Ms. Wells testified that a Form 119 Notice of Lapse of Exemption was sent to the Petitioner regarding the personal property identified as 11-12-37097 PP at issue in Petition No. 82-029-06-2-8-08101. *Wells testimony*. Because the Form 119 provided fifteen additional days for filing, the application for exemption was considered timely filed in that case. *Id.* The remaining parcels, however, never had an exemption and therefore the applications in those cases were not timely filed. *Id.*

- b. In her exemption recommendation to the PTABOA, Ms. Wells argued that the exemption should be denied because of the limited partner's for-profit status.² *Respondent Exhibit A*. According to the recommendation, the General Partner contributed 0.1% of the investment to construct the apartments, and the Limited Partner contributed 99.9% of the cost. *Id.* Under 26 U.S.C. § 42, Fifth Third Bank gained Federal Low Income Housing Credits for its investment. *Id.* Therefore, Ms. Wells argues, the exemption should be denied. *Id.* This is supported by a previous Vanderburgh County PTABOA decision denying exemption to a similar Section 42 property, Washington Court Redevelopment Limited Partnership, that was upheld by the Board on June 26, 2001, in *Washington Court Redevelopment v. Vanderburgh County PTABOA*. *Id.*
- c. Finally, in her exemption recommendation, Ms. Wells, on behalf of the Respondent, contends that a denial of the exemption is supported by the legislature's enactment of Indiana Code § 6-1.1-10-16.7 in 2001. *Respondent Exhibit A*.

² In presenting the Respondent's case, Ms. Wells asked that the Board incorporate her recommendation to the PTABOA as evidence in this matter. The Board, therefore, treats her "recommendation" as a legal memorandum or brief.

ANALYSIS OF THE ISSUE

24. As a threshold issue, the Respondent contends that the applications for exemption on twelve of the Petitioner's thirteen Petitions were not timely filed and should be denied on that basis. *Wells argument*. The Respondent's witness testified that the petitions in this case were received on June 6, 2006, nearly three weeks after the deadline. *Wells testimony; Respondent Exhibit A*. The Petitioner did not dispute this evidence. The Petitioner's witness merely testified that he was not aware that the Applications for Exemption had been filed late. *Brooks testimony*.
25. A taxpayer seeking an exemption from property taxation must file an application with the county in which the property is located "on or before May 15 on forms prescribed by the Department of Local Government Finance." Ind. Code § 6-1.1-11-3(a). The plain language of Ind. Code § 6-1.1-11-3(a) makes no exception. *Id.* Failure to timely file waives a taxpayer's right to the exemption. Ind. Code § 6-1.1-11-1 ("An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. If the exemption is waived, the property is subject to taxation."). Therefore, the Petitioner waived any right to an exemption in twelve of its cases by failing to timely file its applications.
26. Even if the applications had been timely filed, the Board finds the Petitioner is not entitled to the exemptions it seeks for its properties. Here the Petitioner contends that it should be exempt under Ind. Code § 6-1.1-10-16 because it provides low income housing. *Brooks argument*. Pursuant to Ind. Code § 6-1.1-10-16(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." The Petitioner claims its purpose is charitable. Thus, it bears the burden of proving, by a preponderance of the evidence, that the subject property is owned, occupied, and predominately used for charitable purposes. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004).

27. The Respondent, on the other hand, argues that the exemption should be denied because of the corporate setup of the Petitioner with the for-profit partner receiving tax credits under 26 U.S.C. §42. *Respondent Exhibit A*. According to the Respondent, the legislature's enactment of Ind. Code § 6-1.1-10-16.7 supports its argument. *Id.* Ind. Code § 6-1.1-10-16.7 states that "All or part of real property is exempt from property taxation if (1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42, (2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority; and (3) the owner of the property has entered into an agreement to make payments in lieu of taxes under Ind. Code § 36-1-8-14.2." The payments in lieu of taxes (PILOT) are in the same amount that would have been levied if the property were not exempt. *See* Ind. Code § 36-1-8-14.2; Ind. Code § 36-2-6-22. Careful reading of these statutes indicates the legislative intent is to use payments in lieu of taxes to establish a fund to encourage rehabilitation of affordable housing and to establish programs with resources for individuals and families needing affordable housing at the state and local level.
28. Despite Rev. Brooks' obvious dedication to the MCDC and the appealed properties and his testimony regarding quality of life issues for the low-income tenants of the apartments, the Board concludes that the PTABOA is correct in its assessment that the corporate setup, an option which Petitioner testified was the only one available if the apartments were to be financed and built, precludes an exemption until such time as the tax credits expire and the ownership reverts to the General Partner only. The Petitioner's properties are owned and operated for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. § 42. The properties are therefore subject to the requirements of Ind. Code § 6-1.1-10-16.7. The Petitioner has not made PILOT payments pursuant to those requirements. Thus the subject properties are not exempt.
29. Further, because the properties are not exempt under Ind. Code § 6-1.1-10-16.7, they should not be exempt under Ind. Code § 6-1.1-10-16. When interpreting a statute, the

Board must consider not only the objects and purpose of the statute, but also the effects and repercussions of its interpretation. *See Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). Here, if the Board were to interpret the charitable-use exemption statute to include low-income housing providers operating under contract with HUD, the PILOT statutes would be nullified. Project owners could merely claim a property tax exemption for charitable use, and side step the “payment in lieu of taxes” requirement that the state legislature designed in Ind. Code § 6-1.1-10-16.7 to benefit low income families. This cannot be the legislative intent of Ind. Code § 6-1.1-10-16(a).³

30. The Petitioner also argues that three properties in Lake County, operated in a similar manner as the subject properties, were granted exemptions and therefore the subject properties should be exempt. *Brooks argument*. Even if such an argument could support an exemption for the subject properties, Rev. Brooks merely submitted the name of the three purportedly exempt apartment complexes in support of its contention. *Petitioner Exhibit H*. The Petitioner failed to present any evidence regarding the ownership or operation of those properties. Further, the Petitioner presented no evidence that the “comparable” properties were, in fact, exempt, or the basis for such exemption. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); *and Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
31. The Board finds that the Petitioner failed to raise a prima facie case that the subject properties are entitled to exemption for the March 1, 2006, assessment date. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the determination with substantial evidence is not triggered.

³ To the extent the Petitioner could have raised an argument that Ind. Code § 6-1.1-10-16(a) applied to the personal property at each of the three apartment complex at issue, the Board notes that no argument was raised, nor evidence presented regarding the content or use of the personal property at issue in these matters. The Petitioner bore the burden of proving, by a preponderance of the evidence, that the personal property is predominately used for its charitable purposes. *See Indianapolis Osteopathic Hospital Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004). Without specific evidence of what property is being claimed and how that property is being used, the Board will not infer such a purpose.

See Lacy Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

32. The Petitioner failed to raise a prima facie case that the subject properties are entitled to an exemption. The Board finds in favor of the Respondent on each of the thirteen petitions presented.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the exemptions should be denied.

ISSUED: December 16, 2008

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

\

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.