

**STATE OF INDIANA
Board of Tax Review**

WEST INDIANAPOLIS DEVELOPMENT CORPORATION,)	On Appeal from the Marion County Board of Review
Petitioner,)	
v.)	Petition for Review of Exemption Form 132
)	
MARION COUNTY BOARD OF REVIEW,)	Petition No. 49-101-97-2-8-00102
)	Parcel No. 1024398
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the real property and improvements owned by West Indianapolis Development Corporation ("WIDC") qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, West Indianapolis Development Corporation (WIDC) filed an application for property tax exemption, Form 136, with the Marion County Board of Review (“County Board”) seeking exemption for charitable purposes. The application was filed on May 15, 1996 for the tax year 1996, payable 1997. The Marion County Board of Review denied WIDC’s application for exemption, and on September 19, 1997, mailed notice of the same to WIDC. The Form 120 Notice stated that the property tax exemption for the tax year 1997, payable 1998, was denied.

3. Pursuant to Ind. Code § 6-1.1-11-7, WIDC filed a Form 132 petition requesting a review by the State. The Form 132 petition was filed on October 15, 1997.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 20, 2000 before Hearing Officer Sandra M. Oakes. Ms. Cami Demaree, C.P.A., R.J. Pile & Company, LLC. , and Ms. Joan Beckdol, Administrative Coordinator of WIDC, represented WIDC. Mr. Andrew Seiwert, Assistant Corporation Counsel for the City of Indianapolis and Marion County, and Patsy Sharpe, Chief Deputy, Marion County Assessor, represented the County Board. A Power of Attorney for Ms. Demaree was submitted at the hearing.

5. At the hearing, the Form 132 Petition and attachments (including a copy of the Form 120 Notice from the County Board) were made a part of the record and identified as Board Exhibit “A.” In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1: Articles of Incorporation

Petitioner's Exhibit 2: By-Laws

Petitioner's Exhibit 3: WIDC's 1996 Financial Statements

Petitioner's Exhibit 4: Tax Statements for 3/1/96 Assessment.

6. The Petitioner, WIDC, and the Respondent County agreed that the tax year at issue was 1997.
7. The subject property at issue is a duplex located at 1222-1224 Shepard Street in Center Township, in Marion County. The Hearing Officer did not view the subject property.
8. The purpose of WIDC's existence as a non-profit organization is to provide affordable, safe, sanitary housing for persons in the community through construction rehabilitation and new construction. The property at issue is a duplex that was a rehabilitation project similar to other activities that WIDC undertakes with federal and state funds. However, in this instance, WIDC actually purchased the property, kept it, and then rented it. In the rental process, WIDC used the same eligibility standards they use in other housing ventures, which are the same eligibility standards HUD uses for low-income housing determinations. Prior to the March 1, 1997 exemption application, there was an exemption on this property for the same purpose, as residential real estate, and then subsequently the exemption was denied. *Demaree Testimony*.
9. The property was originally purchased in 1995 for \$20,000. Along with WIDC, Eli Lilly had offered to rehab this property, to bring it up to code standards and to improve the neighborhood and provide affordable housing. Eli Lilly assisted for a couple of years on this project, helping to rehab it, and then they went on to different things and WIDC had some contractors come in and finish rehabilitating it. WIDC has about \$ 70,000.00 into the project, as it was a total rehabilitation

project. There was no federal funding on this project. The rehabilitation was completed on one side in September of 1996, and the first tenants moved in 1996. The tenants for the remaining side of the duplex moved in after its completion in May of 1997. Originally, there was a lease on one side of the duplex, however the property is being leased on a month-to-month basis at this time. It was always WIDC's intention to rent the property; WIDC never considered selling the property. The rent has never changed on the property. Eligibility is determined by looking at income and whether the tenants of the property meet WIDC requirements. The rent is not directed toward payment on the note, rather it goes into WIDC's funds. *Berlock Testimony*.

10. The County Board requests the Hearing Officer take judicial notice of Ind. Code § 6-1.1-10-16, subsections (i),(j), and (k). *Seiwert Testimony*.
11. The property was denied exemption because it was renovated and monies were collected for rent. The application for exemption was based upon charitable purpose. During the renovation stage, the property was granted an exemption because there was no tenant and no monies collected. *Sharpe Testimony*.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the Board of Review pursuant to Ind. Code § 6-1.1-15-3.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative

appeal based upon the evidence presented.

3. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. “ Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
6. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc.*

v. State Board of Tax Commissioners, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

10. Article 10, § 1 of the Indiana Constitution reads:

(a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

11. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied and used for the above stated purposes in general. It reads in pertinent part:

- (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, or charitable purposes.
12. The justification for tax exemption is the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N. E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*
 13. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the tax burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.
 14. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id.* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938, (Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.

15. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220, (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Buildings Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
16. The use of the property for exempt purpose is the minimum requirement for exemption, but the General Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Ind. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax 1997).

C. Conclusions Regarding Claim Under Indiana Code § 6-1.1-10-16.

17. The Petitioner requests that the subject property be exempt from taxation because it is low-income housing and WIDC is a not-for-profit corporation.
18. The Petitioner claims exemption under Indiana Code § 6-1.1-10-16. This statute plainly exempts tangible property from taxation if the property is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.
19. Subsection (16)(i) of the statute provides, in pertinent part:
 - (i) A tract of land or a tract of land plus all or part of a structure on the land is exempt from property taxation if:
 - (1) the tract is acquired for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold:
 - (A) in a charitable manner;
 - (B) by a nonprofit organization; and
 - (C) to low income individuals who will:

- (i) use the land as a family residence; and
- (ii) not have an exemption for the land under this section;

20. Subsections 16(i)(2) and 16(i)(3) of the statute set forth further requirements for exemption, stating that the property is exempt if:

- (2) the tract does not exceed three (3) acres;
- (3) the tract of land or the tract of land plus all or part of a structure on the land is *not used for profit while exempt under this section*. (emphasis added)

21. In Indiana, the fact that a nonprofit entity owns the property under examination does not establish any inherent right to exemption. 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. Therefore, the Petitioner's status as a 501(c)(3) entity does not provide a basis for exemption.

22. The question remains whether the duplex property owned by the Petitioner otherwise qualifies for exemption for charitable purposes under Ind. Code § 6-1.1-10-16.

23. Ind. Code Section 6-1.1-10-16(i) sets forth the parameters under which exemption shall be granted to properties that are acquired for the purpose of construction or rehabilitation to provide single-family, low-income housing. First,

the statute requires that the property be acquired for the purpose of erecting, renovating, or improving a *single-family* residential structure, which does not encompass the duplex owned by the Petitioner. Ind. Code § 6-1.1-10-16(i)(1).

24. Second, the statute applies to tracts of land that are to be “given away or sold,” rather than rented, as is the subject property. Ind. Code § 6-1.1-10-16(i)(1).
25. Third, the statute clearly states that the land plus all or part of the structure is not to be used for profit while exempt under this section.
26. The statute clearly contemplates the sale or conveyance of the property as
Subsection (j) of the statute reads as follows:
 - (j) An exemption under subsection (i) terminates when the property is conveyed by the nonprofit organization to another owner.
27. The exemption for single-family low-income housing rehabilitation projects is statutorily limited both in duration and in purpose. The Petitioner has failed to meet its burden in demonstrating that the subject property falls within these statutory requirements for exemption from property taxation.
28. At the hearing, the Petitioner did not produce evidence as to the specific circumstances surrounding the acquisition and financing of the property, the outstanding note, or the tax credits or other benefit gained or derived by third parties as a result of this venture. The Petitioner did not present evidence as to the exact nature of the relationship with third parties in this venture, nor of the rent charged for each rental unit and of the market rate of comparable units so as to enable the State to determine whether the property is in fact owned, occupied and used for charitable purposes sufficient to confer a public benefit

and to justify the loss of taxation. An organization's declaration that it is "charity" does not make the organization's activities and endeavors the sort that the law recognizes as charitable and therefore entitled to tax exemption. *NAME*, 671 N.E.2d at 221.

29. The Petitioner has not met its burden in demonstrating that the subject property qualifies for exemption from property taxation. For all of the above reasons, the State finds that the Petitioner is not entitled to exemption and is subject to 100% taxation for the tax year 1997, payable 1998.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review