

REPRESENTATIVES FOR PETITIONER: Katrina Clingerman, Ice Miller

REPRESENTATIVES FOR RESPONDENT: Elbert Hinds, President, Jefferson County  
Property Tax Assessment Board of Appeals

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

HICKORY CREEK HEALTHCARE	)	Petition No.: 39-011-02-2-8-00011
FOUNDATION, INC. d/b/a	)	
HICKORY CREEK AT MADISON,	)	
	)	
Petitioner,	)	County: Jefferson
	)	
v.	)	Township: Madison
	)	
JEFFERSON COUNTY	)	Parcel No.: 0110034400
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS,	)	
	)	
Respondent.	)	Assessment Year: 2002

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

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**September 25, 2003**

**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 the real and personal property owned by Hickory Creek is entitled to exemption from property taxation under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5.*

### **Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-7, Barton Sprunger and Paul Jones, Jr., attorneys with Ice Miller, filed a Form 132, Petition for Review of Exemption on behalf of Hickory Creek Healthcare Foundation, Inc. (Hickory Creek), petitioning the Board to conduct an administrative review of the above petition. The exemption application was filed on December 16, 2002. The Jefferson County Property Tax Assessment Board of Appeals (PTABOA) denied the application on November 19, 2002. Hickory Creek filed the Form 132 petition on December 30, 2002.

### **Hearing Facts and Other Matters of Record**

3. Prior to the hearing, Hickory Creek complied with all the requirements set forth concerning the exchange of discovery, including the exchange of a list of witnesses and exhibits at least fifteen (15) days before the hearing, and an exchange of evidence and a summary of witness testimony at least five (5) days before the hearing. The Respondent did not comply, but Hickory Creek did not want to continue the hearing to a later date. Hickory Creek noted for the record the non-compliance by the Respondent, but continued with the hearing as scheduled.
4. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was conducted on April 10, 2003 in Madison, Indiana, before Jennifer Bippus, the duly designated Administrative Law Judge appointed by the Board pursuant to Ind. Code § 6-1.5-3-3.

5. The following persons were present at the hearing:

For the Petitioner:

Katrina Clingerman, Attorney, Ice Miller  
Joanna Kreis, Administrator of Hickory Creek

For the Respondent:

Gail Sims, Jefferson County Assessor  
Elbert Hinds, President, Jefferson County PTABOA  
Deloris Barnes, Member, Jefferson County PTABOA  
George Thomas, Member, Jefferson county PTABOA

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

For the Petitioner:

Joanna Kreis, Administrator of Hickory Creek

For the Respondent:

Gail Sims, Jefferson County Assessor  
Elbert Hinds, President, Jefferson County PTABOA  
Deloris Barnes, Member, Jefferson County PTABOA  
George Thomas, Member, Jefferson County PTABOA

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Letter from the IRS recognizing the  
exemption of Hickory Creek from federal income  
tax under I.R.C. § 501(a) and § 501(c)(3).

Petitioner's Exhibit B – Not-for-profit Tax Registration Certificate issued  
by the Indiana Department of Revenue  
recognizing Hickory Creek as exempt from  
Indiana sales tax and gross income tax

Petitioner's Exhibit C – Articles of Incorporation, Articles of Amendment,

Certificate of Name Change Amendment, and  
Certificate of Incorporation issued by the Georgia  
Secretary of State

Petitioner's Exhibit D – Certificate of Authorization issued by the Indiana  
Secretary of State

Petitioner's Exhibit E – Bylaws of Hickory Creek

Petitioner's Exhibit F – Balance Sheet and Statement of Operations for  
Hickory Creek as of December 31, 2001

Petitioner's Exhibit G – License issued by Indiana State Department of  
Health to Hickory Creek

Petitioner's Exhibit H – A copy of the Hickory Creek at Madison Fire  
Evacuation Plan

Petitioner's Exhibit I – Application for Property Tax Exemption, Form  
136, filed by Hickory Creek for March 1, 2002  
assessment date

Petitioner's Exhibit J – Business Tangible Personal Property Return filed  
by Hickory Creek for March 1, 2002 assessment  
date

Petitioner's Exhibit K – Notice of Action on Exemption, Form 120, from  
the Jefferson County PTABOA, denying the  
exemption

Petitioner's Exhibit L – Copy of the Form 132, Review of Exemption  
Petition to the Indiana Board of Tax Review for  
Hickory Creek

Petitioner's Exhibit M – Final Determination issued by the State Board of  
Tax Commissioners on October 18, 2000 for  
Metro Health/Indiana d/b/a Jeffersonville  
Nursing Home

Petitioner's Exhibit N – Memorandum of Law

Petitioner's Exhibit O – Power of Attorney

For the Respondent:

Respondent's Exhibit A – A copy of the Form 136, Application for  
Property Exemption

Respondent's Exhibit B – A copy of the property record card for Hickory  
Creek Healthcare/Madison

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

Board Exhibit A - Copy of the Form 132

Board Exhibit B - Notice of Hearing dated February 27, 2003

9. The subject property is located at 1945 Cragmont Street, Madison, Madison Township, Jefferson County, Indiana.
10. Jefferson County PTABOA denied the exemption and found the property to be 100% taxable for the March 1, 2002 assessment date.

### **Jurisdictional Framework**

11. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-5-5.

### **State Review and Petitioner's Burden**

13. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).

14. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119; *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
15. 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, 1024-1025 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
16. 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 Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
17. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax 1998); *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 Board (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 Board 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**

18. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.
19. Article 10, §1 of the Indiana Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
20. In Indiana, the 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 Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

21. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
22. 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 – 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. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

23. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).
24. 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 exemption is being claimed. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

### **Discussion of Issue**

*Whether the real and personal property owned by Hickory Creek is entitled to exemption from property taxation under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5.*

25. Petitioner contends that all of the subject property should be 100% exempt from both personal and real property taxation.
26. Respondent contends that the property should be 100% taxable because Hickory Creek is not an Indiana corporation.
27. The applicable rules governing this Issue are:

**Ind. 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.

\* \* \*

(c) A tract of land is exempt from property taxation if a building which is exempt under subsection (a) or (b) is situated on it and the tract of land does not exceed



one hundred fifty (150) acres in the case of an educational institution or a tract that was exempt on March 1, 1987, or fifteen (15) acres in all other cases.

\* \* \*

(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

**Ind. Code § 6-1.1-10-18.5 Nonprofit corporation property used in operation of health facility or home for the aged**

Sec. 18.5 (b) Tangible property is exempt from property taxation if it is:

- (1) owned by an Indiana nonprofit corporation; and
- (2) used by that corporation in the operation of a hospital licensed under 16-21, a health facility licensed under IC 16-28, or in the operation of a residential facility for the aged and licensed under IC 16-28, or in the operation of a Christian Science home or sanatorium.

***Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals, 782 N.E.2d 483, 488-89 (Ind. Tax Ct. 2003).***

“[B]y meeting the needs of the aging, namely, relief of loneliness and 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, a charitable purpose is accomplished.”

***Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm’rs, 521 N.E.2d 1360 (Ind. Tax Ct. 1988).***

Specific exemption statute for health care facilities and residential facilities for the aged (Ind. Code § 6-1.1-10-18.5) does not preclude claiming an exemption under Ind. Code § 6-1.1-10-16. Ind. Code § 6-1.1-10-18.5 is not a limitation upon exemptions granted for the purposes listed in Ind. Code § 6-1.1-10-16.

28. Evidence and testimony considered particularly relevant to this determination include the following:

- A. Hickory Creek bases its case on two statutes, but only compliance with one statute is needed to qualify for the exemption. The Petitioner believes Hickory Creek qualifies for exemption under both Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5. *Clingerman argument.*
- B. Ind. Code § 6-1.1-10-16 will be the main basis of the request for the exemption. *Clingerman argument.*

- C. Hickory Creek knows that the corporation is not an Indiana not-for-profit corporation, but is Georgia based. Hickory Creek contends that Ind. Code § 6-1.1-10-18.5 is unconstitutional. The Federal Constitution and the Indiana Constitution prohibit the State from passing laws that discriminate against out-of-state corporations with respect to in-state corporations, unless there is some reasonable basis for doing so. In this particular situation, Hickory Creek does not believe that there is any reasonable basis for doing so. *Clingerman argument.*
- D. The facility is owned, occupied and used by Hickory Creek and healthcare is considered charitable according to *State Bd. of Tax Comm'rs v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). *Clingerman argument.*
- E. The facility is licensed by the State of Indiana, is a not-for-profit corporation, is recognized for State and Federal income tax purposes as exempt, has a non-discrimination policy in effect, and takes into account all methods available for helping care for the elderly. No one is turned away. *Kreis testimony.*
- F. The County does not believe the facility qualifies for exemption because it is not owned by an Indiana not-for-profit corporation. *Hinds testimony.*
- G. The County had a previous case before the State Board of Tax Commissioners, and the State Board denied the exemption based on Ind. Code § 6-1.1-10-18.5 because the facility in that case was incorporated in Florida. *Hinds testimony.*
- H. The County did not address exemption as charitable under Ind. Code § 6-1.1-10-16.

#### Analysis of the Issue

*Whether the real and personal property owned by Hickory Creek is entitled to exemption from property taxation under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5.*

- 29. Petitioner claims a charitable purpose exemption under both Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5.

Ind. Code § 6-1.1-10-16 - Charitable

30. 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. *Nat’l Assoc. of Miniature Enthusiasts*, 671 N.E.2d at 221.
31. In *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003), *review denied*, the Tax Court stated:
- [c]aring for the aged is a recognized benefit to the community at large and society as a whole. Indiana law recognizes that the aged require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will justify. Thus, by meeting the needs of the aging, namely relief of loneliness and 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, a charitable purpose is accomplished.
- Id.* at 488-489 (citing *Raintree Friends*, 667 N.E.2d at 814-15).
32. Petitioner presented evidence that Hickory Creek provides comprehensive care for its elderly residents, including 24 hour nursing care, meal preparation, daily social activities, physical therapy, rehabilitation services, and laundry services. This type of comprehensive service falls within the definition of charity as defined by the Tax Court in *Wittenberg Lutheran Village*. See *Kreis Testimony; Pet. Exhibit I (attachment to Form 136)*.
33. Petitioner also presented evidence that Hickory Creek goes to great lengths to accommodate residents that cannot afford its standard rates. “Unlike other nursing home owners, Hickory Creek has a firm policy against the discharge of residents owing to lack of funds. [Hickory Creek] strives to collect a fair and reasonable charge so that it may continue to operate for the benefit of all. So long as the financial viability of the charity will not be adversely affected, no resident of a nursing home will be discharged for lack

of resources.” *Pet. Exhibit I (attachment to Form 136)(emphasis in original); Kreis Testimony.* This policy would also clearly fall within the broad definition of charity as set forth in *Wittenberg Lutheran Village*.

34. Respondent did not present any testimony or evidence to dispute that the property is owned, occupied and used in a charitable manner. *Hinds testimony.* The only defense offered by the PTABOA was that it denied the exemption based on Ind. Code § 6-1.1-10-18.5(b)(1). *See infra*, ¶ 37. The fact that Petitioner is incorporated in Georgia is irrelevant to the question of exemption under Ind. Code § 6-1.1-10-16.
35. Petitioner has shown by a preponderance of evidence that it meets the qualifications for property tax exemption pursuant to Ind. Code § 6-1.1-10-16, as property owned, occupied and used for charitable purposes.

Ind. Code § 6-1.1-10-18.5

36. Although Petitioner has already demonstrated entitlement to property tax exemption under Ind. Code § 6-1.1-10-16, the Board will briefly discuss Petitioner’s alternative argument. Once a taxpayer has demonstrated entitlement to exemption under one statute, it is not necessary to show exemption under another statute. In this case, however, the PTABOA used Ind. Code § 6-1.1-10-18.5 as the basis for denial of the Petitioner’s application.
37. Respondent’s defense relies on Ind. Code § 6-1.1-10-18.5(b)(1), which states that the property must be “owned by an Indiana nonprofit corporation” to be exempt. *Id.* Petitioner is incorporated under the laws of the state of Georgia. *Exhibit C.* Respondent believes that the PTABOA has followed the law by denying the exemption based on Ind. Code § 6-1.1-10-18.5. *Hinds testimony.*
38. Petitioner concedes that it does not meet the qualification of Ind. Code § 6-1.1-10-18.5(b)(1), but argues that the statute is in violation of the Commerce and Equal

Protection clauses of the Federal Constitution and Article I, § 23, of the Indiana Constitution. *Clingerman argument*.

39. Administrative agencies do not have the power to declare a statute unconstitutional. IND. CONST. Art. III, § 1; *see also State v. Sproles*, 672 N.E.2d 1353, 1360 (Ind. 1996), *Johnson v. Robinson*, 415 U.S. 361, 368 (1974).
40. The Board need not address the constitutional issue brought up by the Petitioner. Petitioner has argued in the alternative, and proven its entitlement to exemption under Ind. Code § 6-1.1-10-16. Therefore, the Board hereby declines to address the constitutionality of Ind. Code § 6-1.1-10-18.5.

### **Summary of Final Determination**

*Whether the real and personal property owned by Hickory Creek is entitled to exemption from property taxation under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5.*

41. Petitioner has shown that it is entitled to an exemption under Ind. Code § 6-1.1-10-16. The building, land, and personal property are 100% exempt from taxation.

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

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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.