

REPRESENTATIVES FOR PETITIONER: Katrina Clingerman, Ice Miller

REPRESENTATIVES FOR RESPONDENT: Scott Potts, PTABOA Member

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

HICKORY CREEK HEALTHCARE)	Petition Nos.: 52-021-02-2-8-00001
FOUNDATION, INC.)	52-021-02-2-8-00002
)	52-021-02-2-8-00003
Petitioner)	
)	County: Miami
v.)	
)	Township: Peru
MIAMI COUNTY PROPERTY)	
TAX ASSESSMENT BOARD)	Parcel Nos.: 0213041800
OF APPEALS)	0213042700
)	0213042500
Respondent)	
)	Assessment Year: 2002

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

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 Hickory Creek Healthcare Foundation is exempt from property taxation under Indiana Code § 6-1.1-10-16 and Indiana Code § 6-1.1-10-18.5.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Barton T. Sprunger and Katrina Clingerman, Attorneys with Ice Miller, filed Form 132, Petitions 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 (Form 136) was filed on May 15, 2002. The PTABOA denied the application on October 10, 2002. Hickory Creek filed the Form 132 petition on November 12, 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. *Clingerman testimony.*
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on May 29, 2003 in Peru, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner:

Katrina Clingerman, Attorney, Ice Miller
Shawna Sopher, Administrator, Hickory Creek
Seth Thomas, Law Clerk, Ice Miller

For the Respondent:

Nancy Hardwick-Gates, Miami County Assessor
Michael Chittum, Peru Township Assessor
Scott Potts, Member, Miami County PTABOA

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

For the Petitioner:

Shawna Sopher

For the Respondent:

Nancy Hardwick-Gates
Michael Chittum
Scott Potts

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Letter from the Internal Revenue Service (IRS) recognizing the exemption of Hickory Creek from federal income tax under Section 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, dated November 20, 2001.

Petitioner's Exhibit C – Certificate of Name Change Amendment, Articles of Amendment to the Articles of Incorporation, Certificate of Incorporation issued

by the Georgia Secretary of State, and Articles of Incorporation.

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 Hickory Creek's excavation 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 (Form 104 and 103-Long) filed by Hickory Creek for March 1, 2002 assessment date.

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

Petitioner's Exhibit L – Copies of the Form 132, Review of Exemption Petition to the Indiana Board of Tax Review for Hickory Creek for parcel numbers 0213041800, 02113041800, and 0213042500.

Petitioner's Exhibit M – A copy of the 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 issued by Hickory Creek to Barton Sprunger and Katrina Clingerman, dated October 23, 2002.

For the Respondent:

No exhibits were presented.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 petition.
 - Board Exhibit B – Notice of Hearing on Petition (Form 117), dated April 17, 2003.
9. The subject property is located at 390 West Boulevard, Peru, Peru Township, Miami County, Indiana.
10. The Miami County PTABOA denied exemption on 100% of the subject real and personal property for the March 1, 2002 assessment date.

Jurisdictional Framework

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-4-1

State Review and Petitioner's Burden

12. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
13. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax*

Commissioners, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

14. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
15. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
16. 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 matter officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

17. 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.

18. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
19. 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

20. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
21. 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*, 611 N.E. 2d 708 (Ind. Tax 1993).
22. 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.

23. 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)).
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 the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventist v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
25. 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

Whether Hickory Creek Healthcare Foundation is exempt from property taxation under Indiana Code § 6-1.1-10-16 and Indiana Code § 6-1.1-10-18.5.

26. The Petitioner contends that all of the subject property should be 100% exempt from both personal and real property taxation.
27. The Respondent contends that property should be 100% taxable because Hickory Creek is a Georgia not-for-profit corporation not an Indiana not-for-profit corporation.
28. The applicable rules and statutes governing this issue are:

Ind. Code § 6-1.1-10-16 Buildings and land used for educational, literary, scientific, religious, or charitable purposes

Sec. 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.

Sec. 16 (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.

Sec. 16 (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 non-profit 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 v. Lake County PTABOA, 782 N.E. 2d at 488-89
Raintree Friends v. SBTC, 667 N. E. 2d at 813-14
SBTC v. Methodist Home for the Aged, 143 Ind. App. at 422, 241 N.E. 2d at 86

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.

Lincoln Hills Development Corporation v. SBTC, 521 N.E. 2d at 1360

Specific statute (Ind. Code § 6-1.1-10-18.5) for health care facilities and residential facilities for the aged 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.

29. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioner's basis for the request for the exemption is Ind. Code § 6-1.1-10-16. *Clingerman testimony.*
 - b. Hickory Creek is basing its case on two statutes, however only compliance with one statute is required to qualify for the exemption. Hickory Creek believes they qualify for exemption under either Ind. Code § 6-1.1-10-16 and/or Ind. Code § 6-1.1-10-18.5. *Clingerman testimony.*
 - c. Hickory Creek understands they are not an Indiana not-for-profit corporation, is a Georgia not-for-profit corporation. Hickory Creek contends that Ind. Code § 6-1.1-10-18.5 is unconstitutional and violates the Equal Protection Clause contained in the Fourteenth Amendment to, and the Commerce Clause in Article 1, Section 8 of the United States Constitution and Article 1, Section 23 of the Indiana Constitution, to the extent of limiting exemption to domestic corporations. The Federal and Indiana Constitutions prohibit the State from passing laws that discriminate against out-of state corporations with respect to in-state corporations, unless there is a valid basis for doing so. In this situation, Hickory Creek does not believe that there is any reasonable base for doing so. *Petitioner's Ex. N and Clingerman testimony.*
 - d. The subject facility is owned, occupied and used by Hickory Creek for residential care for the aging, therefore is considered charitable according to the court case *Methodist Home. Clingerman testimony.*
 - e. The subject facility is owned by Hickory Creek, is licensed by the State of Indiana, is recognized for Federal and State purposes as exempt, is a Georgia not-for-profit corporation, has a non-discrimination policy and takes into account all methods available for caring for the elderly. Hickory Creek has a firm policy against discharging any resident that is unable to pay the established fees. *Sopher testimony.*
 - f. The Respondent agrees that Hickory Creek is a not-for-profit corporation, however, it is based in Georgia not Indiana, therefore the County does not believe

that the facility would qualify for exemption based on Ind. Code § 6-1.1-10-18.5.
Potts testimony.

- g. The County did not address the charitable statute of Ind. Code § 6-1.1-10-16.
Board Ex. A.

Analysis of Issue

30. The Petitioner is requesting a charitable exemption under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18-5.

Ind. Code § 6-1.1-10-16 - Charitable

31. 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 Building Corporation v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).

32. “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”; namely:

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)).

33. It is equally clear that “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*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical*

Center, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can be seen as a benefit to the public at large.

34. The evidence presented by the Petitioner demonstrates that it is a non-profit corporation. The fact that fees are charged for use of the facility does not automatically result in non-exempt status. *Raintree Friends*, 667 N.E. 2d at 816.
35. Caring for the aged is a recognized benefit to the community at large and to society as a whole. *Raintree Friends, supra*. Facilities that care for the aged qualify as “charitable” because they provide the relief of loneliness, 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. *Methodist Home for the Aged*, 241 N.E. 2d at 86. In *Wittenberg*, the Tax Court again stated that a charitable purpose is accomplished by meeting the needs of the aging. *Wittenberg*, 782 N.E. 2d at 488-89.
36. The Petitioner has demonstrated that it is an extended care facility tending to the needs of the aged and, thus, qualifies for the charitable purpose exemption.
37. The Respondent did not present any testimony or evidence in regard to the Petitioner’s claim for exemption pursuant to Ind. Code § 6-1.1-10-16.
38. The Petitioner has shown that it meets the qualifications for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 as charitable.

Ind. Code § 6-1.1-10-18.5

39. Although the Petitioner has already demonstrated entitlement to property tax exemption under Ind. Code § 6-1.1-10-16, the Board will discuss Ind. Code § 6-1.1-10-18.5. Once a taxpayer has demonstrated entitlement to an 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 for exemption.

40. The Respondent testified that Ind. Code § 6-1.1-10-18.5, states the corporation needs to be "owned by an Indiana nonprofit corporation" to qualify for property tax exemption. Hickory Creek is a not-for-profit corporation based out of Georgia.
41. The Petitioner agrees that the corporation is based in Georgia, but contends that the Indiana statute is in violation of the United States and Indiana Constitutions. Both Constitutions prohibit the state from passing laws that discriminate against out-of state corporations with respect to in-state corporations, unless there is a valid basis for doing so. The Petitioner contends there is no such basis in this case and that the statute is unconstitutional.
42. The Board need not address the constitutional issue brought up by the Petitioner. The Petitioner claimed an exemption and cited two statutes as the basis for the exemption. Once a taxpayer is proven to be exempt under one statute, it is not necessary to be exempt under another statute. The Petitioner has shown that it qualifies for exemption pursuant to Ind. Code § 6-1.1-10-16. Therefore, the Petitioner is not required to show that it qualifies under Ind. Code § 6-1.1-10-18.5.
43. In the case of *Lincoln Hills*, the State Board determined that Ind. Code § 6-1.1-10-18.5 precluded the taxpayer from claiming an exemption under Ind. Code § 6-1.1-10-16. The Tax Court found the State Board's determination erroneous. The Tax Court found 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. *Lincoln Hills Development Corporation v. SBTC*, 521 N.E. 2d 1360 (Ind. Tax 1988).
44. The *Lincoln Hills* case is on point, the Respondent cannot impose the requirements of Ind. Code § 6-1.1-10-18.5 on the Petitioner. The Petitioner has claimed and shown that it

is entitled to exemption under Ind. Code § 6-1.1-10-16. The Petitioner is not required to show that it also qualifies for exemption under Ind. Code § 6-1.1-10-18.5.

Summary of Final Determination

Whether Hickory Creek Healthcare Foundation is exempt from property taxation under Indiana Code § 6-1.1-10-16 and Indiana Code § 6-1.1-10-18.5.

45. The Petitioner has shown that it is entitled to an exemption under Ind. Code § 6-1.1-10-16. It is not necessary for the Petitioner to also show it is exempt under Ind. Code § 6-1.1-10-18.5. The building, land, and personal property are 100% exempt from taxation.

The above stated findings of fact and conclusions of law 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.

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.