

REPRESENTATIVES FOR PETITIONER: Katrina Clingerman, ICE MILLER

REPRESENTATIVES FOR RESPONDENT: None

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

HICKORY CREEK HEALTHCARE )	Petition No.: 21-008-02-2-8-00001
FOUNDATAION, INC., d/b/a HICKORY )	
CREEK AT CONNERSVILLE, )	County: Fayette
)	
Petitioner, )	Township: Harrison
)	
v. )	Parcel No.: 2110166300
)	
FAYETTE COUNTY PROPERTY TAX )	Assessment Year: 2002
ASSESSMENT BOARD OF APPEALS, )	
)	
Respondent. )	

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

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**April 22, 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 the property qualifies for a property tax exemption under either Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18.5(b).*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7 Barton T. Sprunger, ICE MILLER, filed a Form 132, Petition for Review of Exemption, on behalf of Hickory Creek Healthcare Foundation, Inc., d/b/a Hickory Creek at Connersville (Hickory Creek)(Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on November 8, 2002. The determination of the PTABOA was issued on October 11, 2002.

### Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 and 6-1.5-4-1, a hearing was held on January 28, 2004, at the Fayette County Courthouse before Brian McKinney, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were present at the hearing:

For the Petitioner: Katrina Clingerman, Ice Miller  
Lisa Chappelow, Administrator of Hickory Creek at  
Connersville  
For the Respondent: NONE<sup>1</sup>

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

For the Petitioner: Lisa Chappelow  
For the Respondent: NONE

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<sup>1</sup> Despite proper notice, no one appeared to represent the PTABOA at the Board's hearing.

6. The following exhibits were presented:

For the Petitioner:

- A. 501(c)(3) letter from Internal Revenue Service;
- B. Not-for-profit registration number with the Indiana Department of Revenue;
- C. Articles of Incorporation;
- D. Certificate of Authorization issued by Indiana Secretary of State;
- E. Bylaws;
- F. Balance Sheet as of December 31, 2001;
- G. License issued by Indiana State Department of Health effective for November 1, 2001, through October 31, 2002;
- H. Fire Evacuation Plan;
- I. Form 136 for March 1, 2002, assessment date;
- J. Personal Property return for March 1, 2002, assessment date;
- K. Form 120 issued on October 11, 2002, by the Fayette County PTABOA;
- L. Form 132 seeking review of the Fayette County PTABOA decision on the Form 136;
- M. Final Determination issued by former State Board of Tax Commissioners on October 18, 2000 to Metro Health/Indiana, Inc. d/b/a Jeffersonville Nursing Home; and
- N. Memorandum of Law.

For the Respondent:

NONE

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

- Board Exhibit A – Form 132 Petition
- Board Exhibit B – Notice of Hearing

### **Jurisdictional Framework**

8. 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.

9. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Indiana Code § 6-1.5-4-1.

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

10. 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).
11. 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.]
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, 1024-1025 (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 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.]
14. 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**

15. 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.
16. Article 10, §1 of the Indiana Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
17. 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**

18. 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.

19. 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).
20. 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).
21. 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 property qualifies for a property tax exemption under either Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18.5(b).*

22. The Petitioner contends the subject property is entitled to a 100% exemption from property taxes under either Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18.5(b).
23. The PTABOA found the subject facility to be 100% taxable. *See Board Exhibit A.*

24. The applicable statutes and case law governing this Issue are:

**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.

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(c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:

(1) a building which is exempt under subsection (a) or (b) is situated on it;

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(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(b)**

(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 IC 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.

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

A. The subject facility is a 38-bed skilled care facility licensed by the State of Indiana. Skilled care is anything from therapy to intermediate care for those that cannot provide for themselves. *Chappelow testimony.*

B. Fees are charged only to cover the expenses of the facility. Hickory Creek has a policy against discharging patients if they become unable to pay, and will work with the patients to secure alternate payments. *Chappelow testimony.*

Analysis of Issue

26. Hickory Creek seeks exemption under either Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18.5(b). The Board will address each statute in turn.

Ind. Code § 6-1.1-10-16

27. Petitioner contends that the subject facility is owned, occupied, and used by Hickory Creek for residential care for the aging, and therefore qualifies as charitable under *State Bd. of Tax Comm'rs. v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). *Clingerman argument*.
28. 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 v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 221 (Ind. Tax Ct. 1996).
29. 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 Housing, Inc. v. Ind. Dep't of State Revenue*, 667 N.E.2d 810, 814-815 (Ind. Tax Ct. 1996)).
30. Caring for the aged is a recognized benefit to the community at large and to society as a whole. *See Raintree Friends*, 667 N.E.2d at 815. 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. *Wittenberg Lutheran Village*



*Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 488-89.

31. Petitioner provided testimony that the nursing home provides everything from skilled care (which includes therapy) to intermediate care for those that cannot care for themselves. *Chappelow testimony*. 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.
32. The Respondent did appear and 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.
33. The Petitioner has shown that the property is owned, used, and occupied for charitable purposes and therefore meets the qualifications for property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

Ind. Code § 6-1.1-10-18.5(b)

34. 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. *See, e.g., Lincoln Hills Dev. Corp. v. State Bd. of Tax Comm'rs*, 521 N.E.2d 1360 (Ind. Tax Ct. 1988). 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.
35. Petitioner concedes that it does not meet the qualifications 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*.

36. 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).
37. The Board need not address the constitutional issue presented 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 property qualifies for a property tax exemption under either Ind. Code § 6-1.1-10-16 or Ind. Code § 6-1.1-10-18.5(b).*

38. The 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.**