

REPRESENTATIVES FOR PETITIONER: Katrina M. Clingerman, Attorney, Ice Miller

REPRESENTATIVES FOR RESPONDENT: Noel B. Carpenter, Randolph County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

HOOSIER CARE II, INC., d/b/a	)	Petition No.: 68-021-00-2-8-00025
RANDOLPH NURSING HOME,	)	
	)	
Petitioner	)	County: Randolph
	)	
v.	)	Township: White River
	)	
RANDOLPH COUNTY	)	Parcel No.: 021-00911-00
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS,	)	
	)	Assessment Year: 2000
Respondent	)	
	)	

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

**September 16, 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 Hoosier Care II, Inc. d/b/a Randolph Nursing Home (Hoosier Care II) is entitled to 100% exemption from property taxation under Indiana 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 T. Sprunger, Attorney with Ice Miller filed a Form 132, Petition for Review of Exemption on behalf of Hoosier Care II, petitioning the Board to conduct an administrative review of the above petition. The exemption application was filed on May 15, 2000. The PTABOA denied the application on July 28, 2000. Hoosier Care II filed the Form 132 petition on August 24, 2000.

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

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was conducted on June 24, 2003 in Winchester, Indiana, before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:  
For the Petitioner: Katrina Clingerman, Attorney, Ice Miller  
Roxanne Welch, Administrator, Randolph Nursing Home  
James R. Johnson, VP of Finance, Hoosier Care II  
  
For the Respondent: Noel B. Carpenter, County Assessor  
Rick Carpenter, White River Township
5. The following persons were sworn in as witnesses and presented testimony:  
For the Petitioner: Roxanne Welch  
James R. Johnson

For the Respondent: Noel B. Carpenter  
Rick Carpenter

6. Neither the Petitioner nor the Respondent presented exhibits at the Board hearing. The Petitioner referred to the Petitioner's List of Exhibits, which was submitted prior to the Board hearing.
7. Prior to the hearing, the Petitioner presented the following exhibits :
  - Petitioner's Exhibit A – Letter from the Internal Revenue Service (IRS) recognizing the exemption of Hoosier Care II from federal income tax under Section 501 (c)(3).
  - Petitioner's Exhibit B – Not-For-Profit Tax Registration Certificate from the Indiana Department of State Revenue recognizing Hoosier Care II as exempt from Indiana sales tax and gross income tax, dated 12/4/89.
  - Petitioner's Exhibit C – Articles of Incorporation with amendments and Certificate of Incorporation for Hoosier Care II issued by the Indiana Secretary of State.
  - Petitioner's Exhibit D – Bylaws for Hoosier Care II.
  - Petitioner's Exhibit E – Audited Financial Statements for Hoosier Care II, as of 6/30/00.
  - Petitioner's Exhibit F – License issued by Indiana State Department of Health pursuant to Ind. Code § 16-28, effective 6/21/99 to 5/31/00.
  - Petitioner's Exhibit G – Diagram illustrating the layout of the Randolph Nursing Home.
  - Petitioner's Exhibit H – Application for Property Tax Exemption, Form 136, filed by Hoosier Care II d/b/a Randolph Nursing Home for the 3/1/00 assessment date.
  - Petitioner's Exhibit I – Business Tangible Personal Property Return filed by Hoosier Care II for the 3/1/00 assessment date.

Petitioner's Exhibit J – Form 115, Notice of Assessment by the Randolph County PTABOA, dated 7/28/00.

Petitioner's Exhibit K – Form 132, Petition to the Board for Review of Exemption filed by Hoosier Care II, dated 8/24/00.

Petitioner's Exhibit L – Copy of Power of Attorney.

Petitioner's Exhibit M – Memorandum of Law.

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

Board Exhibit A – Subject Form 132 Petition with attachments.

Board Exhibit B – Subject Notice of Hearing on Petition (Form 117).

9. The real and personal property at appeal is located at 701 S. Oak Street, Winchester (White River Township, Randolph County). The Administrative Law Judge did not view the subject property.

10. The Randolph County PTABOA denied exemption on 100% of the subject real and personal property for March 1, 2000. The assessed values at appeal are: Land \$6,500; Improvements \$240,510; and Personal Property \$50,350.

### **Jurisdictional Framework**

11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

### **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. See Ind. Code § 6-1.1-2-1.
21. The courts of some states construe constitutional and statutory tax exemption 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*, 669 N.E. 2d 199 (Ind. Tax 1996).
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 Adventists 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 the Issue**

#### *Whether Hoosier Care II is entitled to an exemption from personal and real property taxation under Indiana Code § 6-1.1-10-16 and Ind. 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 property exemption application was denied and determined to be 100% taxable by the Randolph County PTABOA.

28. 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**

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.

29. Evidence and testimony considered particularly relevant to this determination includes the following:

- a. The Petitioner is basing its case on two statutes. The Petitioner believes Hoosier Care II qualifies for exemption under both Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5. Indiana Courts have declared, however, that compliance with



only one of the above statutes is all that is necessary to qualify for exemption.

*Clingerman Testimony.*

- b. Ind. Code § 6-1.1-10-16 requires that a property be owned, occupied, and used for charitable purposes. The subject facility has shown that it is charitable organization exempt for state and federal purposes. *Clingerman Testimony; Petitioner's Exhibit A and B.*
- c. Ind. Code § 6-1.1-10-18.5 provides exemption for property owned by an Indiana not-for-profit corporation, used in the operation of a residential facility for the aged if they are licensed according to Ind. Code § 16-28. *Clingerman Testimony.*
- d. The subject facility is a not-for-profit Indiana corporation and is licensed by the Indiana Department of Health as a long-term care facility for the aged with Medicare and Medicaid certification. *Welch and Johnson Testimony; Petitioner's Exhibit F.*
- e. Hoosier Care II is exempt from Indiana sales and income tax, and federal tax. The facility has been used *exclusively* for charitable purposes according to its 501(c)(3) status since June 1990. *Johnson Testimony; Petitioner's Exhibit A, B and M.*
- f. The *State Board of Tax Commissioners v. Methodist Home for the Aged* court case has set forth the view that residential facilities for the aged, and providing care of the aged fall within the definition of charitable. This is true regardless of the fact that the facility may charge for the services it provides. *The Methodist Home* case states that it is necessary to charge some fees in order to stay in business, but that as a nonprofit organization those fees are not to benefit any private individuals or corporations. *Clingerman Testimony; Petitioner's Exhibit M.*
- g. The subject facility is not making a profit at this time. However, as a requirement of the Petitioner's exempt status, no profits can come out of the corporation to inure benefit to private owners, shareholders, or investors. *Johnson Testimony; Petitioner's Exhibit D and E.*
- h. Hoosier Care II owns five nursing homes in Indiana, all of which have been declared as exempt from taxation, with the exception of the subject property. *Johnson Testimony.*

- i. The Respondents questioned whether the subject nursing home's profits go towards its charitable operation and if all nursing homes in the State are considered exempt. *Noel and Rick Carpenter Testimony.*
- j. The Petitioner asserted profits that benefit shareholders, private owners, or investors were prohibited under Hoosier Care II's nonprofit status. The only nursing homes in the State of Indiana entitled to property tax exemption are nonprofit facilities. For-profit corporations would not be eligible for exemption under Indiana law. *Johnson Testimony; Clingerman Testimony; Petitioner's Exhibit M.*
- k. The Respondents did not rebut the Petitioner's charitable requests. Rather, they were concerned of the impact to their county's financially depressed status if the Petitioner prevails and the assessment is entitled to property tax exemption. *Rick Carpenter Testimony.*

#### Analysis of the ISSUE

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

#### Ind. Code § 6-1.1-10-18.5

31. The Board will first address Ind. Code § 6-1.1-10-18.5 with respect to the Petitioner's exemption claim. Ind. Code § 6-1.1-10-18.5 provides an exemption to Indiana nonprofit corporation property used in the operation of a health facility or home for the aged, provided said facility is licensed under Ind. Code § 16-21 or Ind. Code § 16-28.
32. The Petitioner has demonstrated that it is: 1) an Indiana nonprofit corporation; and 2) that it is used exclusively as an extended care nonprofit facility for the aged, licensed with the Indiana Department of Health under the provisions of Ind. Code § 16-28. *See, Petitioner's Exhibits C & F.*

33. The Respondent did not address Ind. Code § 6-1.1-10-18.5 or offer a rebuttal to the Petitioner's contentions.
34. The Petitioner prevailed in this case with substantial evidence and testimony by shifting the burden to the Respondent. The Board finds the Petitioner qualifies for exemption under Ind. Code § 6-1.1-10-18.5.

Ind. Code § 6-1.1-10-16 – Charitable

35. Although the Petitioner has already demonstrated entitlement to property tax exemption under Ind. Code § 6-1.1-10-18.5, the Board will discuss Ind. Code § 6-1.1-10-16. Once a taxpayer demonstrates entitlement to exemption under one statute, it is not necessary to show exemption under another statute. In this case, however, the Board will discuss Ind. Code § 6-1.1-10-16.
36. 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)).
37. “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 (5<sup>th</sup> ed. 1979)).

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. The Petitioner has shown that it meets the qualifications for property tax exemption pursuant to Ind. Code § 6-1.1.10-16 as charitable.

### **Summary of Final Determination**

*Whether Hoosier Care II is entitled to an exemption from real and personal property taxation under Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-18.5*

44. The Petitioner prevailed by a preponderance of the evidence on this issue. The Petitioner has shown that it qualifies for exemption under both Ind. Code § 6-1.1-10-18.5 and Ind. Code § 6-1.1-10-16. The land, improvements, and personal property are 100% exempt from property 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.**