

REPRESENTATIVES FOR PETITIONER:
Tracy Nagle, Indiana Health Centers, Inc.

REPRESENTATIVE FOR RESPONDENT:
Greg Bowes, Marion County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indiana Health Centers, Inc.,)	Petition No.: 49-400-06-2-8-00001
)	
Petitioner,)	
)	Parcel: 4026680 and
v.)	Personal Property
)	
Marion County Property Tax)	County: Marion
Assessment Board of Appeals,)	Township: Lawrence
)	
Respondent.)	Assessment Year: 2006

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

June 12, 2009

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

Issues

1. The issue presented for consideration by the Board is whether Indiana Health Centers, Inc.'s, real property and personal property qualifies for a 100% charitable purpose exemption under Ind. Code § 6-1.1-10-16.

Procedural History

2. Pursuant to Indiana Code § 6-1.1-11-7, on October 26, 2006, the Petitioner, Indiana Health Centers, Inc., (Indiana Health Centers) filed a Form 132 Petition for Review of Exemption (Form 132 Petition), petitioning the Board to conduct an administrative review of the partial denial of the Petitioner's application for exemption. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 22, 2006.

Hearing Facts and Other Matters of Record

3. Pursuant to Indiana Code § 6-1.1-15-4, Carol Comer, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, held a hearing on March 24, 2009, in Indianapolis, Indiana.
4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Tracy Nagle, Chief Financial Officer, Indiana Health Centers, Inc.

For the Respondent:¹

Melissa Tetrick, Marion County Deputy Assessor

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Indiana Health Centers’ Articles of Incorporation, dated November 2005,

Petitioner Exhibit 2 – Indiana Health Centers’ By-laws, dated November 19, 2005,

Petitioner Exhibit 3 – 2005 – Return of Organization Exempt From Income Tax – Form 990 with attachments, prepared by RSM McGladrey,

Petitioner Exhibit 4 – First Amendment to Agreement of Lease between Indiana Health Centers and Natural Solutions, LLC, dated January 30, 2006, and Lease Agreement between SCN Partners, LLC, and Rev 2, Inc., dated August 15, 2000.

6. The Respondent did not present any exhibits.

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

Board Exhibit A – Form 132 Petition with attachments,

Board Exhibit B – Notice of Hearing on Petition.

8. The property at issue is a 14,950 square foot general office, light warehouse, utility storage building on 1.144 acres, located at 8003 Castleway Drive, Indianapolis, in Lawrence Township, Marion County.

9. The ALJ did not conduct an on-site inspection of the subject property.

¹ Mr. Greg Bowes, Marion County Assessor served as counsel and presented legal argument, but he chose not to testify. Therefore he was not sworn in.

10. For 2006, the PTABOA determined the land and improvements were 33% taxable. In 2006, the PTABOA also determined the personal property was 100% taxable.
11. For 2006, the Petitioner contends that the real property and personal property should be 100% tax-exempt.

Jurisdictional Framework

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1 (a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1 (b); Ind. Code § 6-1.1-15-4.

Administrative Review and Petitioner's Burden

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Basis of Exemption and Burden

16. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
17. 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 in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
18. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 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 Ct. 1990)).

19. 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 statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

Petitioner's Contentions

20. The Petitioner contends that the land, improvements and personal property at issue in this appeal should be 100% exempt from property taxation under Ind. Code § 6-1.1-10-16, because the property is primarily used for a charitable purpose. *Nagle testimony*.
21. The Petitioner's representative testified that the Petitioner is a not-for-profit corporation that is recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code. *Petitioner Exhibit 3; Nagle testimony*. In support of this contention, the Petitioner submitted its Return of Organization Exempt from Income Tax – Form 990. *Petitioner Exhibit 3*. The Petitioner's Articles of Incorporation and by-laws state the purpose of the corporation is to “engage exclusively in charitable and educational programs and activities by improving the health status of the community with special emphasis on those, who because of their poverty, location in the rural areas, or for other reasons have health needs which are not properly addressed.” *Petitioner Exhibits 1 and 2*. According to the Petitioner, because the owner is a not-for-profit corporation, who occupies and uses a majority of the building for exempt activities, the property qualifies for 100% tax exemption. *Nagle testimony*.

22. The Petitioner's representative argues that the only portion of the property at issue in this appeal is 5,508 square feet of the building that does not currently receive an exemption. *Nagle testimony*. According to Mr. Nagle, this portion of the building, which is approximately one third of the space, was leased to Natural Solutions, LLC, (Natural Solutions), which is a for-profit software support company. *Id.* The Petitioner received \$63,342 from Natural Solutions for use of the facility in 2006. *Petitioner Exhibit 4*.
23. In response to the Respondent's questions, the Petitioner's witness admitted that the mission and operation of Natural Solutions is not affiliated in any way with the operation of Indiana Health Centers. *Nagle testimony*. According to Mr. Nagle, Natural Solutions is strictly a tenant renting space from Indiana Health Centers. *Id.*

Respondent's Contentions

24. The Respondent argues that while 67% of the property is used by Indiana Health Centers for an exempt purpose, the remaining 33% of the property is leased and used by Natural Solutions, a for-profit software company, for a non-exempt purpose. *Bowes argument*. Therefore, the Petitioner is not entitled to any exemption beyond the amount already granted by the PTABOA. *Id.*

Analysis of the Issue

25. The Petitioner contends the real and personal property should be 100% exempt under Ind. Code § 6-1.1-10-16. The PTABOA granted the Petitioner a 67% exemption for the land and improvements, representing the portion of the property that is occupied and used by Indiana Health Centers. Consequently, the issue before the Board is whether the remaining 33% of the real property and 100% of the personal property is entitled to an exemption.

26. The Indiana General Assembly provided that “[a]ll 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.” Ind. Code § 6-1.1-10-16 (a). Personal property is exempt if it is owned and used in such a manner that it would be exempt if it was a building. Ind. Code § 6-1.1-10-16(e).
27. The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks. *See State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of the Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Thus, when seeking a charitable purpose exemption, the taxpayer must not only demonstrate that it owns, occupies and uses its property for a charitable purpose, but also that the charitable purpose is the property’s predominant use. *See State Board of Tax Commissioners v. Fort Wayne Sport Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970) (stating that “it is the ‘dominant use’ of the property which determines whether such property is tax exempt”).
28. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes, is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Ind. Code § 6-1.1-10-36.3 (a) states that “property is predominantly used or occupied for one (1) or more state purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3 (c) further provides that “[p]roperty is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during

the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3 (c)(3).

29. The Petitioner’s evidence that it operates as a not-for-profit organization alone does not support an exemption from taxation of the property. 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. *See Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to tax exemption).
30. Here, the Petitioner is required to show that the 33% of real property in question is used for an exempt purpose. According to the Petitioner’s witness, however, the Petitioner leased space to Natural Solutions - a computer software company. *Petitioner Exhibit 4; Nagle testimony*. Natural Solutions is a for-profit company, which has no affiliation with Indiana Health Centers. *Id.* Mr. Nagle testified it was strictly a business arrangement with Natural Solutions, whereby the rent received by Indiana Health Centers defrayed its operating costs. *Nagle testimony*. Thus, the Petitioner failed to show that the *use* of the specific property in question qualifies under any exemption statute.
31. Finally, the Petitioner did not prove its entitlement to an exemption for its personal property. The Petitioner did not present any evidence regarding the use of its personal property. In fact, the Petitioner did not identify or describe any of the items at issue. The Board therefore cannot find that the Petitioner is entitled to an exemption for its personal property.
32. The Petitioner failed to raise a prima facie case. Where the Petitioner fails to make a prima facie case, the Respondent’s burden to support its determination

with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

33. The Petitioner did not prove its entitlement to an exemption for the 33% of its real property leased to Natural Solutions. Nor did the Petitioner present any evidence to prove its personal property is entitled to an exemption. Therefore, the Board finds in favor of the Respondent and holds that the real property is 33% taxable and the personal property is 100% taxable for the 2006 assessment year.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
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 under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.