

STATE OF INDIANA
Indiana Board of Tax Review

LAFAYETTE NEIGHBORHOOD HOUSING SERVICES, INC.)	On Appeal from the Tippecanoe County PTABOA
Petitioner,)	
)	
v.)	Petition for Review of Exemption Form 132
TIPPECANOE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS)	Petition No. 79-001-95-2-8-00007
Respondent.)	Parcel No. 156-06200-0985

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the real property owned by Lafayette Neighborhood Housing, Inc. (LNHS), qualifies for a property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purpose.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to IC 6-1.1-11-3, the Petitioner filed an application for property tax exemption with the Tippecanoe County PTABOA on May 12, 1995. The PTABOA issued its determination to the taxpayer on July 13, 1995. The year in question is Tax Year 1995.

3. Pursuant to IC 6-1.1-11-7, the Petitioner filed a Form 132 petition seeking a review of the PTABOA action by the State. The Form 132 petition was filed with the County on August 11, 1995 and filed with the State on August 15, 1995.

4. Pursuant to IC 6-1.1-15-4, a hearing was held on June 18, 1996, before Hearing Officer C. J. Ives. Testimony and exhibits were received into evidence. Thomas B. Parent, attorney at law and President of LNHS, represented the Petitioner. Also appearing for the Petitioner were Patricia E. Stephenson, Executive Director, and Marie Morse, Program and Finance Director. Representing the PTABOA was Wilma Jonker, Deputy Tippecanoe County Assessor.

5. The property in question consists of an apartment building and land located at 1114 Ferry Street in Fairfield Township, Lafayette, Tippecanoe County, Indiana. The Tippecanoe County PTABOA denied any exemption for this property.

6. The subject Form 132 petition with attachments is labeled Board Ex. A. The Notice of Hearing on Petition is labeled Board Ex. B. A property record card for this parcel is labeled Board Ex. C. In addition, the following items were received into evidence:

Petitioner's Ex. A – State findings for Petition 89-712-5, Petitioner was Neighborhood Housing Services of South Bend, Inc.

Petitioner's Ex. B – Audited financial statements for LNHS for years ending December 31, 1993 and 1994.

Petitioner's Ex. C – Demographics for tenants of LNHS.

Petitioner's Ex. D – Post hearing brief submitted June 20, 1996.

7. The PTABOA presented no evidence.¹
8. The Hearing Officer did not view the property.
9. LNHS has been determined to be exempt from federal income tax under section 501(c) (3) of the Internal Revenue Code as an organization described in Section 509(a)(1) of the Internal Revenue Code. LNHS is also exempt from Indiana gross income tax. (See Exhibit 3 attached to Board Exhibit A).
10. The articles of incorporation of LNHS indicate that one of the purposes of the corporation is to provide decent, affordable housing for low to moderate income persons and that no part of net earnings of the corporation shall inure to the benefit of, or be distributed to, any person having an interest in the activities of the corporation. (See Exhibit 3 attached to Board Exhibit A).
11. The property in question is owned by LNHS and is in use as rental housing. Tenants in the property earn an average of less than 40% of the area median income. Rent charged is considerably lower than market rate. Petitioner's Exhibit C indicates that all units were currently rented to individuals and/or families whose income does not exceed 66% of the area median income and about ½ of the tenants qualify for some sort of rent subsidy.

¹ This conclusion is drawn from examination of written documents available to the IBTR in the hearing file as no tape recording of this proceeding can be found.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the PTABOA pursuant to Ind. Code § 6-1.1-15-3.

Burden in General

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119

(Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.
9. If the taxpayer fails to meet his burden of proof at the administrative level, the State does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley*, 704 N.E. 2d at 1116- 21.

Constitutional and Statutory Basis for Exemption

10. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
11. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting the exemption. In this appeal, Petitioner claims exemption under Ind. Code § 6-1.1-10-16 which provides that

all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes

12. 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.
13. 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*, 669 N.E. 2d 199 (Ind. Tax 1996).
14. Strict construction construes exemption from the concept of the taxpayer citizen. 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 (NAME) v. State Board of Tax Commissioners*, 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.
15. 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)).
16. 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).

17. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, 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 1247 (Ind. 1991)).

Charitable Purpose

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

19. “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”:

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)).

20. Plainly, “charity” is not confined to relief for the destitute. It may be limited to one sex, church, city, or confraternity. *City of Indianapolis v. The Grand Master, etc. of the Grand Lodge of Indiana*, 25 Ind. 518, 522-23 (1865).

21. 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.

Conclusions regarding LNHS qualifications for a property tax exemption

22. LNHS claims a charitable exemption pursuant to Ind. Code § 6-1.1-10-16. To qualify for the requested exemption the Petitioner must present probative evidence that establishes a prima facie case that the property in question is “owned, occupied, and used by a person for * * * charitable purposes.” See Section 16. (a) (c) and (e). Also See Conclusion of Law §7.
23. LNHS has presented evidence that it is a nonprofit organization recognized as exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code.
24. This showing of being organized as a nonprofit organization and being recognized as exempt from federal income tax has in the past been sufficient to satisfy the “charitable ownership” test.
25. The next showing to be made is that the property is occupied for charitable purposes. LNHS claims to occupy this property to provide low-income housing for people in need of help.
26. The State has previously recognized the providing of low-income housing as a charitable purpose as it relieves the poor and distressed by providing them one of life’s basic necessities and it relieves the government of some of its obligation to provide such housing to the needy. See *Piedmont-Nantucket Cove, LLC v. Marion County PTABOA*, Petition number 49-500-98-2-8-00006, Final

Determination issued 2/2/2000 and *Corporation for Community Housing v. Allen County PTABOA*, Petition number 02-072-99-2-8-00201, Final Determination issued 7/16/2001.

27. The third test is whether LNHS predominant use of the property in question should be classified as charitable.
28. Pursuant to Ind. Code § 6-1.1-10-36.3(a) “* * * property is predominantly used or occupied for one (1) or more stated 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”.
29. In determining whether property qualifies for tax exemption, predominant and primary use of property is controlling. See *NAME*, 671 N.E.2d at 221.
30. LNHS presented probative evidence that its predominant, primary and, in fact, its only use of the property is to provide low-income housing in Lafayette, Tippecanoe County, Indiana. See Findings of Fact § 10-11.
31. The burden then shifted to the PTABOA to rebut the LNHS evidence. Since the PTABOA failed to offer any evidence at the hearing such rebuttal did not occur.
32. Based on the above conclusions, it is clear that the predominant and only use of the LNHS property has been and is the providing of housing for qualified low-income tenants. This being so, the Petitioner qualifies for a charitable property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

What should be the amount of the LNHS exemption?

33. The current position of the State can be found in *Indiana Affordable Housing, Inc. v. Marion County Board of Tax Review (PTABOA)*, Petition number 49-700-00-2-8-00002, published March 12, 2002.
34. In *Affordable Housing* the Petitioner had claimed a 100% exemption for low-income housing and the PTABOA had offered 75% based on the fact that the Petitioner rented 25% of its apartments at market rate. The State, citing a Indiana Tax Court decision captioned *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36 (Ind. Tax 2000), applied Tax Court rational which found “the Moose used its property predominately, but not solely for charitable purposes” and in its conclusion “* * * **REVERSED** and **REMANDED** to the State with instructions to conduct further proceedings to determine exemption allowed * * *.” *Id* at 36.
35. The evidence presented by LNHS and not refuted by the PTABOA is that **all** apartments in question are rented at a reduced rate to low to moderate-income tenants.
36. Pursuant to Ind. Code § 6-1.1-10-16(c)(2)(B), the exemption for land in this type situation is limited to fifteen (15) acres. There appears to be no evidence that specifically shows the acreage amount of the land. If this amount is less than 15 acres then the land is 100% exempt. If the land exceeds 15 acres then the amount over that figure is taxable.
37. Accordingly, the State grants an exemption for Tax Year 1995 of One Hundred percent (100%) of improvements and a fifteen (15) acre exemption for land.

The above stated findings and conclusions 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 this ____ day of _____, 2002.

Chairperson, Indiana Board of Tax Review