

REPRESENTATIVE FOR PETITIONER: Thomas P. Norton, Attorney-at-Law.

REPRESENTATIVE FOR RESPONDENT: J. F. Rick Barter, Vanderburgh County Hearing Officer.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

LUCAS PLACE, LLC)

Petitioner)

v.)

VANDERBURGH COUNTY PROPERTY)
TAX ASSESSMENT BOARD OF)
APPEALS)

Respondent.)

Petition No. 82-028-00-2-8-00001
82-028-00-2-8-00002
82-028-00-2-8-00003

County: Vanderburgh

Township: Pigeon

Parcel No. 1143026043013
1143026043012
1143026043011

Assessment Year: 2000

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

October 23, 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 is:
Whether the ownership of the property fulfills the statutory requirements to obtain property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of charitable purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Thomas Norton, Attorney-at-Law, on behalf of Lucas Place, LLC (Lucas Place), filed Forms 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions. The determinations of the Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) were issued on October 18, 2002. The Form 132 petitions were filed on November 15, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on February 27, 2003, in Evansville, Indiana before Jennifer Bippus, 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:

Mr. Thomas P. Norton, Attorney-at-Law.

Mr. Thomas Coe, Executive Director for Lucas Place, LLC and ECHO Housing Corporation.

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Hearing Officer, Vanderburgh County Assessor's Office.

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

For the Petitioner:

Mr. Thomas P. Norton, Attorney-at-Law.

Mr. Thomas Coe, Executive Director for Lucas Place, LLC and ECHO Housing Corporation.

For the Respondent:

Mr. J.F. Rick Barter, Vanderburgh County Hearing Officer, Vanderburgh County Assessor's Office.

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – A copy of the Amended and Restated Operating Agreement of Lucas Place, LLC.

Petitioner's Exhibit B – A copy of the financial statements for Lucas Place, LLC for the year ending December 31, 2002.

Petitioner's Exhibit C – The 2002 Expense Analysis for Lucas Place, LLC.

Petitioner's Exhibit D – A copy of the 2002 Form 1065, U.S. Return of Partnership Income for Lucas Place, LLC.

Petitioner's Exhibit E – A copy of the 2002 Form IT-65, Indiana Partnership Return for Lucas Place, LLC.

Petitioner's Exhibit F – A copy of the management agreement between Lucas Place, LLC and ECHO Housing Corporation dated March 10, 1997.

For the Respondent:

Respondent's Exhibit A – The Hearing Memorandum from Vanderburgh County containing the PTABOA's position regarding the exemption request with the following attachments:

1. Property record cards for the subject properties.
2. The Exemption Memorandum from the Vanderburgh County PTABOA dated February 26, 2003.
3. The Notice of Disapproval of Exemption.
4. The Exemption Reconciliation for Lucas Place, LLC.
5. The Exemption Memorandum from the Vanderburgh County PTABOA dated 1998, 2000.
6. The Exemption Memorandum from the Vanderburgh County PTABOA dated 1998.
7. A copy of the minutes from the April 26, 2002, PTABOA meeting.
8. A copy of the minutes from the October 4, 2001, PTABOA meeting.
9. A copy of the minutes from the February 3, 2000, PTABOA meeting.
10. A copy of the subject Form 132 petition dated November 15, 2002.

11. A copy of the Findings of Fact and Conclusions of Law issued on June 26, 2001, by the Board in the matter of an appeal filed by Washington Court Development.

7. The following documents are officially recognized as part of the record of proceedings and labeled Board's exhibits:

Board's Exhibit A - The subject Form 132 petition with attachments.

Board's Exhibit B - Notice of Hearing dated January 15, 2003.

Board's Exhibit C - The Request for Additional Evidence.

8. As a result of the hearing, additional evidence was requested from the Petitioner. The evidence was timely received and entered into the record as follows:

Petitioner's Exhibit G – A copy of the 2000 Financial Statements for Lucas Place, LLC.

Petitioner's Exhibit H – A copy of the 2000 Form 1065, U.S. Return of Partnership Income, for Lucas Place, LLC.

Petitioner's Exhibit I – A copy of the 2000 Form IT-65, Indiana Partnership Return.

Petitioner's Exhibit J – A copy of the Consolidated Financial Return for ECHO Housing Corporation for the fiscal year June 1999 through June 2000.

Petitioner's Exhibit K – A copy of the Consolidated Financial Return for ECHO Housing Corporation for the fiscal year June 2000 through June 2001.

Petitioner's Exhibit L – A copy of the Extended Use Agreement.

9. The property is located at 414 Baker Avenue, Evansville, Pigeon Township, Vanderburgh County.

Jurisdictional Framework

10. This matter is governed by the provisions of Ind. Code § 6-1.1-15, 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.
11. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

State Review and Petitioner's Burden

12. The State does not undertake to reassess property, or 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 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, 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. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
17. 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 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 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

18. 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.

19. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
20. 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 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 predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

21. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
22. The courts of some states construe constitutional and statutory tax exemptions liberally, come 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).
23. 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.

24. 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)).
25. 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*, 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).
26. 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 1247 (Ind. 1991)).

Discussion of the Issue

ISSUE: *Whether the ownership of the property fulfills the statutory requirements to obtain property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of charitable purposes.*

27. Lucas Place is an Indiana limited liability company established and operated as a for-profit organization. The partners of Lucas Place are ECHO Development Corporation and Old National Bank¹. ECHO Development Corporation was created by ECHO

¹ When Lucas Place was created, the original members were ECHO Development Corporation and Permanent Federal Savings Bank (PFSB). Upon acquiring PFSB, Old National Bank assumed the position formerly held by PFSB as the investing member in Lucas Place.

Housing Corporation to act as the managing member of Lucas Place. Old National Bank is the investing member of Lucas Place. *Coe Testimony; Petitioner's Exhibit A.*

28. The Petitioner maintains that charitable purpose of ownership is unaffected by the tax credits held by one of the members of Lucas Place. The Petitioner contends that the benefit realized by Old National Bank (as a partner of Lucas Place) from the federal income tax credits is no different than the benefit realized by a financial institution, as the mortgagor, through a conventional property mortgage.
29. The Respondent contends that, due to the structure of the partnership, the property does not qualify for property tax exemption. The Respondent asserts that the financial benefit realized by the partners as a result of tax credits made available through the federal low income housing program eliminates the charitable aspect of ownership.
30. The applicable law governing this issue is:
Indiana 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.
 - (b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.
 - (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:
 - (1) a building that is exempt under subsection (a) or (b) is situated on it;
 - (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it; or
 - (3) the tract:
 - (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
 - (B) does not exceed five hundred (500) acres; and
 - (C) is not used by the nonprofit entity to make a profit.
31. Evidence and testimony considered particularly relevant to this determination include the following:
 - a) Lucas Place is an Indiana limited liability company established and operated as a for-profit organization. The partners of Lucas Place are

ECHO Development Corporation and Old National Bank. ECHO Development Corporation was created by ECHO Housing Corporation to act as the managing member of Lucas Place. Old National Bank is the investing member of Lucas Place. *Coe Testimony; Petitioner's Exhibit A.*

- b) Old National Bank, as the investing member of the partnership, provides the capital investment for Lucas Place in exchange for federal low income tax credits totaling \$1,142,060. *Coe Testimony; Petitioner's Exhibit A, page 2 of the First Amendment to the Amended and Restated Operating Agreement.*
- c) The partner “purchasing” the tax credits becomes an owner of the property. This arrangement is necessary in order to obtain the tax credits. The management agreement reflects that Old National Bank’s sole purpose in entering into the partnership is to obtain the tax credits in exchange for capital investment. At the end of ten years, after the tax credits are paid out, Old National Bank will sell its interest in the partnership to ECHO Housing Corporation for the sum of one dollar. *Coe Testimony.*

Analysis of Issue

- 32. To prevail in this appeal, the Petitioner must establish that its property is (1) owned; (2) occupied; and (3) used for charitable purposes. IC § 6-1.1-10-16(a).
- 33. The parties do not dispute that the property is used and occupied for charitable purposes. *Barter Testimony.* The Board will therefore examine only whether the property is owned for charitable purposes.
- 34. The Petitioner described the ownership arrangement of Lucas Place as follows:
“Lucas Place, LLC, is an Indiana limited liability [for profit] company composed of two (2) members. They are ECHO Development Corp., an Indiana corporation, and Old National Bank. ECHO Development Corp. is a wholly owned subsidiary of ECHO

Housing Corp., which is [a] not-for-profit corporation organized and operated exclusively for the purpose of sheltering homeless persons.” *Board’s Exhibit A, attachment to the Form 132 petition.*

35. The various layers of this ownership arrangement may be illustrated as follows:

ECHO Housing Corp.
(Parent company of ECHO Development Corp.)

ECHO Development Corp.
(Member of Lucas Place, LLC and a subsidiary of ECHO Housing Corp.)

Old National Bank
(Member of Lucas Place, LLC)

Lucas Place, LLC
(Petitioner)

36. Old National Bank is characterized as the “investor member” and owns 99.9% of the company. ECHO Development Corporation is characterized as the “managing member” and owns 0.1% of the company. *Petitioner’s Exhibit A, pages 1 and unnumbered page 61.*

37. The Restated and Amended Operating Agreement of Lucas Place identifies the purposes of the company:

“The purposes, nature, and general character of the business of the Company shall consist of:

- a. Acquiring, owning, redecorating, developing, rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of the Property or any substantial part therefore;
- b. During the Extended Use Period, operating the Development in compliance with the provisions of Section 42 of the [Internal Revenue] Code; and

- c. Carrying on any and all activities related to the foregoing in accordance with this Agreement.

The purposes of this Company or the nature or character of its business shall not be extended, by implication or otherwise, except by written consent of all Members.”

Petitioner’s Exhibit A, pages 12-13.

38. The financial statements elaborate on this purpose:
“ECHO Development Corporation has a 0.1% interest in a general partnership joint venture (Lucas Place, LLC) formed to utilize low-income tax credits, which is accounted for using the cost method.” *Petitioner’s Exhibit K, page 8.*
39. The record therefore contradicts the Petitioner’s assertion that the purpose of the ownership was charitable. Instead, Lucas Place was “formed to utilize low-income tax credits.” *Id.*
40. This conclusion is further supported by an analysis of the role of Old National Bank, the 99.9% owner of Lucas Place. Rather than being “without hope or expectation, if not without positive abnegation, of gain or profit by donor” (*Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810, 813-14 (Ind. Tax 1996)), the record indicates that Old National Bank was induced to invest in Lucas Place explicitly by the promise of tax credits totaling \$1,142,060. *Petitioner’s Exhibit A, page 2 of the First Amendment to the Amended and Restated Operating Agreement; Coe Testimony.*
41. For example, testimony indicated that Old National Bank’s sole purpose in entering into the joint venture was to obtain the tax credits in exchange for capital investment. *Coe Testimony.*
42. Testimony also indicated that, after all the tax credits are distributed, Old National Bank intends to sell its 99.9% ownership interest in the venture to ECHO Housing Corporation for the sum of one dollar. *Coe Testimony.*

43. Further, the capital contributions required of Old National Bank are reduced if the actual tax credits received are less than 95% of the projected tax credits. *Petitioner's Exhibit A, page 18.*
44. The record is therefore clear: Old National Bank's participation as 99.9% owner in Lucas Place was motivated by the acquisition of tax credits rather than charitable purposes.
45. The Petitioner contended that the role played by Old National Bank in the financing arrangement is not substantially different than the role Old National Bank would have played under conventional financing methods. The Petitioner argued that, because any benefit gained by Old National Bank due to this arrangement is the same benefit gained by any financial institution under a mortgage arrangement, Old National Bank's role in the arrangement does not affect the charitable purpose behind the ownership of the property.
46. However, if Old National Bank had provided a mortgage loan, it would have been a creditor and acquired no ownership interest in Lucas Place. Instead, Old National Bank became an investment member and owner of 99.9% of the company.
47. Because Old National Bank achieves financial gain as a result of its investment into Lucas Place, Old National Bank's ownership position in the venture (99.9%) cannot be viewed as charitable in nature. *Raintree*, 667 N.E. 2d 810.
48. As discussed, the other member of Lucas Place is ECHO Development Corporation.
49. The record indicates that this entity was also formed to avail itself of the tax credits: "The organization [ECHO Housing Corporation] owns 100% of nonmarketable common stock in ECHO Development Corporation which was formed to utilize low-income housing tax credits in a joint venture with a local bank." *Petitioner's Exhibit J, page 9.*

50. Summarizing, at the time Lucas Place was created, the stated purpose of both members of the business venture was to utilize the low-income housing tax credits. Both Old National Bank and ECHO Development Corporation received their respective shares of these tax credits. *Petitioner's Exhibit H, Schedules K-1.*
51. The Petitioner also asserted that Lucas Place receives no benefit from these tax credits because they are immediately passed through to the partners.
52. However, Indiana law recognizes that federal tax credits have value to companies such as the Petitioner, even if the credits are subsequently forwarded to the partners of the entity. *Pedcor Investments-1990-XIII, LP v. State Board of Tax Commissioners*, 715 N.E. 2d 432 (Ind. Tax 1999). As discussed, Lucas Place was specifically formed to utilize these available tax credits. *Petitioner's Exhibit K, page 8.*
53. The Petitioner places great emphasis on the charitable nature of activities provided by ECHO Housing Corporation. However, this entity is two layers removed from Lucas Place and specifically withdrew in 1999 as a member of the Lucas Place venture. *Petitioner's Exhibit A, page 1.* Further, these activities all address the charitable use of the property, not the purpose of ownership. As discussed, the charitable use of the property is not in dispute.
54. The Board finds that the Petitioner has not established that the purpose of the ownership of the property was of a charitable nature.
55. Summarizing, Lucas Place is a for-profit company. Nothing in its operating agreement indicates its ownership purpose is charitable in nature. According to financial statements, both Lucas Place and ECHO Development Corporation, the managing member of Lucas Place, were formed to utilize tax credits. Testimony indicated that Old National Bank, the investor member and majority owner, also became a member in Lucas Place to avail itself of more than one million dollars in tax credits. Further, the bank may reduce its capital contributions to Lucas Place if the actual tax credits received fail to meet the

amount of projected annual tax credits. At the time that all available tax credits have been received by Old National Bank, it intends to divest itself of involvement with Lucas Place by selling its interest for one dollar.

56. The record clearly demonstrates that the motivating force behind the Lucas Place venture was the business objective of receiving tax credits. Such an objective is inconsistent with the definition of charity and charitable ownership.
57. The Petitioner did not meet its burden of showing that the property specifically falls within the exemption statute. The charitable purpose of ownership requirement set forth in Ind. Code § 6-1.1-10-16 is not satisfied. Thus, the property is subject to 100% property taxation.

Summary of Final Determination

Determination of Issue: *Whether the ownership of the property fulfills the statutory requirements to obtain property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the claim of charitable purposes.*

58. The Petitioner did not meet its burden of showing that the property specifically falls within Ind. Code § 6-1.1-10-16. The property is therefore subject to 100% property taxation.

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

Chairman, 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.