

REPRESENTATIVE FOR PETITIONER: Jerry Donaldson, Executive Director

REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RENEW, INC.,	)	Petition Nos. 71-026-12-2-8-00001
	)	71-026-12-2-8-00002 71-026-12-2-8-00003
Petitioner,	)	71-026-12-2-8-00004 71-026-12-2-8-00005
	)	71-026-12-2-8-00006 71-026-12-2-8-00007
	)	71-026-12-2-8-00008 71-026-12-2-8-00009
	)	71-026-12-2-8-00010 71-026-12-2-8-00011
	)	71-026-12-2-8-00012 71-026-12-2-8-00013
	)	71-026-12-2-8-00014 71-026-12-2-8-00015
	)	71-026-12-2-8-00016
)	
	)	Parcel Nos. 18-8070-2681 18-2150-5575
	)	18-3021-0765 18-2152-5630 18-8084-3213
	)	18-4010-0356 18-8100-3813
	)	18-2118-436201 18-7015-0578
	)	18-1049-2084 18-3021-0767 18-4036-1290
	)	18-8100-3795 18-320-65944
	)	18-2014-0350 18-2063-2322
v.)	
	)	St. Joseph County
ST. JOSEPH COUNTY ASSESSOR,	)	Portage Township
)	
Respondent.	)	Assessment Year 2012

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Does the Petitioner qualify for the charitable purpose exemption under Ind. Code § 6-1.1-10-16 with respect to the real property that is the subject of this appeal?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner is a nonprofit corporation seeking charitable exemptions on 16 residential properties in South Bend Indiana. The addresses are:

1817 Douglas
1629 Johnson
209 Bronson
1506 OBrien
1603 Brookfield
801 S. Phillipa
2014 Olive
914 N. Elmer
622 Pennsylvania
417 Bridsell
209 Bronson
510 Kaley
2014 Olive¹
1342 Chalfant
714 N. Johnson
2513 Westmoor

2. The Petitioner filed Form 136 applications for exemptions for the 2012 tax year on May 5, 2012. The St. Joseph County Property Tax Assessment Board of Appeals denied the exemption applications, finding the properties 100% taxable and issuing Form 120 notices mailed on August 9, 2012. The Petitioner filed Form 132 petitions for review with the Board on September 7, 2012.

¹ Petitions 71-026-12-2-2-8-00007 and 71-026-12-2-8-00013 both have the street address of 2014 Olive, but have separate parcel numbers, 18-8100-3813 and 18-8100-3795. The record does not contain any documents that might explain or correct the duplicate addresses.

Hearing Facts and Other Matters of Record

3. The Board conducts an impartial review of appeals concerning assessed valuations, deductions, and exemptions for tangible property. Ind. Code § 6-1.5-4-1(a). Such appeals are conducted under Ind. Code § 6-1.1-15.

4. Commissioner Jonathan Elrod held the hearing in South Bend on September 17, 2014. He did not conduct on-site inspections of the properties.

5. Jerry Donaldson, executive director of Renew, Inc., was sworn as a witness and testified for the Petitioner. Rosemary Mandrici, St. Joseph County Assessor, was sworn as a witness and testified for the Respondent. Frank Agostino appeared as counsel for the Respondent.

6. The Petitioners presented the following exhibits:
 - Petitioners Exhibit 1 – Articles of Incorporation of Renew, Inc.
 - Petitioners Exhibit 2 – IRS correspondence granting tax exempt status

7. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Form 136 application for 71-08-03-434-003-000-026.

8. The following additional items are part of the record:
 - Board Exhibit A – Form 132 petitions
 - Board Exhibit B – Notices of Hearing on Petition
 - Board Exhibit C – Hearing sign-in sheet

Summary of the Petitioner’s Case

9. The Petitioner argues the subject properties are owned, occupied and used for charitable purposes and are exempt from property taxation under Ind. Code § 6-1.1-10-16.

10. The Petitioner is an Indiana not-for-profit corporation formed in 1972 for charitable purposes including the provision of low-cost housing to the poor. It was granted federal income tax exempt status in 1973. *Pet. Ex. A; B.*
11. The Petitioner encourages homeownership instead of renting as a way to alleviate poverty. The Petitioner assists persons who cannot get a mortgage, due to credit, disability, or other factors, to purchase a home. The Petitioner screens its participants for suitability for its program. Participants cannot already own a home. Participants must have income in excess of a certain amount. Once it is determined a participant is eligible, the Petitioner will purchase a home and sell the property to the participant through a land contract. The participant takes possession and makes payments to the Petitioner until the balance of the contract is paid off. When deciding on the house to be purchased, the participant's projected payments must be within guidelines relative to the participant's income. *Donaldson testimony.*
12. The Petitioner is entirely privately funded and does not receive any federal or state grants or subsidies. When the Petitioner purchases a property, the funds are loaned to the Petitioner by religious orders. The Petitioner executes a promissory note to the lender and repays principal and interest on the note. The payments from the land contracts are used to make the payments on the notes. *Donaldson testimony.*
13. Some participants default on their land contracts and the Petitioner re-takes possession of the property. These properties remain vacant until the Petitioner finds a suitable participant to purchase the property on contract. The new participant will execute a contract for the original amount or the remainder of the prior land contract. *Donaldson testimony.*
14. The Petitioner is seeking exemptions on 16 properties that were vacant on March 1, 2012. The Petitioner has not sought exemptions in regard to any properties occupied by participants. *Donaldson testimony.*

Summary of the Respondent's Case

15. The Respondent argues that exemptions are a privilege and the statute must be strictly construed. While the Petitioner is a charitable and seasoned organization, it has failed to present sufficient information regarding its use of the property. The record is incomplete. *Agostino argument.*
16. The Respondent believes there are too many open questions: is the purchase price more than the sale price? What are the standards for eligibility? What are the financial records? Based on the evidence provided, the Respondent contends the Petitioner has not shown the properties are used for charitable purposes rather than investment purposes. *Agostino argument.*

Analysis

17. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *See Indianapolis Osteopathic Hosp. v. Dep't. of Local Gov't. Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (*citing* I. C. § 6-1.1-2-1). A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.* All or part of a building that is owned, occupied, and predominantly used for educational, literary, scientific, religious, or charitable purposes is exempt from taxation. *See* I.C. §6-1.1-10-16(a); I.C. §6-1.1-10-36. That exemption extends to the land on which the building is situated and to personal property contained therein. I.C. §6-1.1-10-16(c); (e).
18. “The taxpayer must present probative evidence during the Indiana Board hearing which demonstrates that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009). “An exemption is strictly construed against the taxpayer and in favor of the State.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014. “The evaluation of whether

property is owned, occupied, and predominately used for a charitable purpose is a fact sensitive inquiry; there are no bright-line tests because every exemption case stands on its own facts.” *Hamilton County Assessor v. SPD Realty, LLC.*, 9 N.E.3d 773, 777 (Ind. Tax Ct. 2014). Thus, each and every exemption case “stand[s] on its own facts and, ultimately, how the parties present those facts.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1018.

19. For each assessment year, the exemption is based on the use of the property during “the year that ends on the assessment date of the property.” I.C. § 6-1.1-11-3(c)(5). A taxpayer “must demonstrate that its property was owned, occupied, and predominately used for [an exempt] purpose during the relevant tax year (i.e., ‘the year that ends on the assessment date of the property’).” *Bros. of Holy Cross, Inc. v. St. Joseph County Prop. Tax Assessment Board of Appeals*, 878 N.E.2d 548, 550 (Ind. Tax Ct. 2007). Furthermore, the Petitioner must prove that the building is predominately used for exempt purposes more than 50% of the time. *New Castle Lodge #147 v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 39 (Ind. Tax Ct. 2000), *affirmed by State Bd. of Tax Comm'rs v. New Castle Lodge # 147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257 (Ind. 2002).
20. The exemption statute also has a more specific provision relating to housing held in inventory by a nonprofit when the intention is to give or sell the property to a low income person:

A tract of land or a tract of land plus all or part of a structure on the land is exempt from property taxation if:

(1) the tract is acquired for the purpose of erecting, renovating, or improving a single family residential structure that is to be given away or sold:

(A) in a charitable manner;

(B) by a nonprofit organization; and

(C) to low income individuals who will:

(i) use the land as a family residence; and

(ii) not have an exemption for the land under this section;

(2) the tract does not exceed three (3) acres;

(3) the tract of land or the tract of land plus all or part of a structure on the land is not used for profit while exempt under this section; and

(4) not more than four (4) years after the property is acquired for the purpose described in subdivision (1), and for each year after the four (4)

year period, the owner demonstrates substantial progress and active pursuit towards the erection, renovation, or improvement of the intended structure.

I.C. §6-1.1-10-16(i).

21. As noted by the Respondent, the Petitioner's evidence before the Board is incomplete. The Petitioner had the burden to walk the Board through both the specifics of its program and the circumstances surrounding each property.
22. The Petitioner is not limited to federal definitions of "low-income," but the Petitioner must present to the Board evidence that the participants are in need of "relief from human want" under I.C. §6-1.1-10-16(a) or "low income" under I.C. §6-1.1-10-16(i). Similarly, the Petitioner did not provide specifics about the interest rates charged on the land contracts or paid on the promissory notes, which might shed light on whether the properties are sold in a "charitable manner." To the extent that Subsection 16(i) requires improvements, the Petitioner did not describe the maintenance it typically performs on properties it re-takes possession of before re-selling.
23. Most importantly, the Petitioner failed to present testimony regarding the period of time each of the properties had been vacant as of March 1, 2012, in order for the Board to determine whether the predominate use was charitable or the use met the limitations of Subsection 16(i). Without evidence regarding when each of the properties were placed in inventory, the Board cannot find the Petitioner is entitled to an exemption.

Summary of Final Determination

24. The evidence presented is insufficient to find that the Petitioner's real property is entitled to a charitable exemption.

Issued this day by the Indiana Board of Tax Review: October 2, 2014

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.