REPRESENTATIVE FOR PETITIONER:
Nancy Moore Tiller, Attorney

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Rossman & Associates, Inc.,	)	Petitions: 45-042-10-2-8-00001
	)	45-042-10-2-8-00002
Petitioner,	)	
	)	
v.	)	Parcels: 45-16-10-102-011.000-042
	)	45-16-10-102-010.000-042
Lake County Assessor,	)	
	)	
Respondent.	)	Assessment Year: 2010

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

January 29, 2013

FINAL DETERMINATION

The 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 Petitioner's real property should be exempt from taxation in 2010, pursuant to Indiana Code § 6-1.1-10-16, because it is owned, occupied, and used for charitable and educational purposes or

because the Petitioner's lessee, 1st Kids, is a quasi-governmental agency to which no taxes should apply.

PROCEDURAL HISTORY

2. On December 9, 2009, Robert Rossman, President of Rossman & Associates, Inc., filed the Petitioner's Applications for Property Tax Exemption (Form 136). On August 16, 2011, the Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its Notices of Action on Exemption Application (Form 120), denying the Petitioner's exemption applications. On September 14, 2011, Nancy M. Tiller, on behalf of Rossman & Associates, Inc., filed Form 132 Petitions, seeking an administrative review of the Petitioner's exemption requests.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Ellen Yuhan, the duly designated Administrative Law Judge (ALJ), held a hearing on October 31, 2012, in Crown Point, Indiana.

4. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Robert Rossman, President, Rossman & Associates, Inc.,
Clara Mann, Executive Director of 1st Kids,

For the Respondent:

Terryl E. Bish, Lake County Assessor's staff member.

5. The Petitioner's counsel requested that the attachments to the Petitions, including the Form 132, the Form 120, the Form 136, a floor plan, the lease between Rossman Properties, Inc., and Beyond Play, Inc., the Articles of Incorporation of Beyond Play, the Certificate of Amendment of Beyond Play, the By-Laws of Beyond Play, and Beyond

Play's IRS 501(c)(3) letter, Form 872-C, and Form 990 for 2008, be considered as evidence. The Petitioner also submitted:

Petitioner Exhibit 14 – Rental rates for 1st Kids.

6. The Respondent presented the following exhibits:

Respondent Exhibit A – Aerial photograph,
Respondent Exhibit B – Property record card for Parcel No. 45-16-10-102-010.000-042,
Respondent Exhibit C – Property record card for Parcel No. 45-16-10-102-011.000-042,
Respondent Exhibit D – Property record card for Parcel No. 45-16-10-102-019.000-042,
Respondent Exhibit E – Property record card for Parcel No. 45-16-10-102-025.000-042,
Respondent Exhibit F – Property record card for Parcel No. 45-16-10-102-028.000-042,
Respondent Exhibit G – Property record card for Parcel No. 45-16-10-102-029.000-042,
Respondent Exhibit H – Lease for Beyond Play and amended lease for 1st Kids,
Respondent Exhibit I – Lease agreement between Nancy Moore Tiller and Rossman & Associates, Inc.,
Respondent Exhibit J – Lease agreement between Lifestyle Chiropractic and Rossman & Associates, Inc.,
Respondent Exhibit K – Lease agreement between DVG, Inc., and Rossman & Associates, Inc.,
Respondent Exhibit L – Lease agreement between Krosaki USA, Inc., and Rossman & Associates, Inc.,
Respondent Exhibit M – Lease agreement between City of Crown Point and Rossman & Associates, Inc.

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

Board Exhibit A – Form 132 Petitions with attachments,
Board Exhibit B – Notice of Hearing-Reschedule, dated July 5, 2012,
Board Exhibit C – Hearing sign-in sheet.

8. The Petitioner and Respondent both submitted post-hearing briefs on December 10, 2012.

9. The subject property is an office leased by 1st Kids, formerly known as Beyond Play, in an office building owned by the Petitioner, located at 11045 Broadway, in Crown Point, Indiana.

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

11. For 2010, the PTABOA determined the Petitioner's property to be 100% taxable.

12. For 2010, the Petitioner contends the property should be 100% exempt.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board of Tax Review is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BASIS OF EXEMPTION AND BURDEN

14. 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.

15. 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 a property owner 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).

16. 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)).

17. 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

18. The Petitioner contends that its real property is eligible for 100% exemption pursuant to Indiana Code § 6-1.1-10-16, because the property was owned, occupied and used for charitable and educational purposes in 2010. Alternatively, the Petitioner contends that it should receive a "pass through" exemption because its lessee is a "quasi-governmental" entity.

19. The Petitioner presented the following evidence in regard to this issue:

A. The Petitioner contends that it should be granted a property tax exemption under Indiana Code § 6-1.1-10-16(a) for the portion of the subject property that it leases to 1st Kids, Inc. (1st Kids) for below market rent. *Petitioner's Brief.* In the alternative, the Petitioner argues, if it is not granted an exemption for its charitable use of the property, it should be granted a "pass through" exemption for 1st Kids, which qualifies as a quasi-governmental agency. *Id.*

B. The subject property is an office building located at 11045 Broadway, Suite F, owned by the Petitioner, Rossman & Associates. On December 10, 2003, Rossman & Associates entered into a lease agreement with Beyond Play, which later became known as 1st Kids. *Attachment to Board Exhibit A.* According to the Petitioner's witness, Ms. Mann, 1st Kids is a 501(c)(3) organization that provides services for developmentally challenged children up to three years of age. *Mann testimony.* Ms. Mann testified that 1st Kids contracted to provide the 1st Steps services for the Northwest region of Indiana, including Lake, Porter, LaPorte, Newton, and Jasper counties. *Id.* Approximately 2,000 children were served by 1st Kids in 2011. *Id.*

C. Ms. Mann testified that 1st Kids is funded exclusively through the State of Indiana – although the funds are a blend of federal and state dollars. *Mann testimony*. According to Ms. Mann, in 2011, the state cut all contracts by 10% and changed the funding to match the state's fiscal year. *Id.* In response to the state's cuts, Ms. Mann testified that she requested a 10% reduction in the rent rate on the subject property, or a $15,000 reduction in rent, which the Petitioner granted. *Id.* Since that time, Ms. Mann testified, she requested a further reduction of 15%, to which the Petitioner also agreed. *Id.*

D. Ms. Mann testified that 1st Kids initially leased the entire first floor and half of the second floor of the subject property; but now leases the entire building from the Petitioner. *Mann testimony*. According to Ms. Mann, the Petitioner modified the building by knocking out walls and putting in doors to accommodate the expansion, but did not charge 1st Kids for the modifications. *Id.*

E. Mr. Rossman contends that the rent paid by 1st Kids is below market and, in fact, is approximately half of what the other tenants pay. *Rossman testimony*. According to Mr. Rossman, 1st Kids leases 5,460 square feet at $12.09 per square foot, but after deducting taxes, insurance, utilities, and common area maintenance (CAM), the net rent per square foot is $6.11; whereas the average market rent is $14.00 per square foot. *Id.* Mr. Rossman testified that he would profit from an exemption because the

Petitioner would not have to pay property taxes on the property leased to 1st Kids.[1] *Id.*

F. Mr. Rossman further testified that, unlike the other tenants in the office complex, 1st Kids does not pay any additional charges except for their telephone and for janitorial services inside their offices. *Rossman testimony*. According to Mr. Rossman, other tenants have triple net leases and therefore they pay for real estate taxes, common area maintenance, insurance, and utilities. *Id*. Mr. Rossman testified that landlords favor triple net leases because there is less risk of unexpected increases in operating costs, such as in increase in utility rates or real estate taxes. *Id*.

G. The Petitioner's counsel argues that the Petitioner demonstrated its charitable purpose by providing an office at a reduced rent and enhancing and improving the structure for the benefit of 1st Kids at the Petitioner's own cost. *Petitioner's Brief*. According to Ms. Tiller, the Petitioner entered into an agreement that provides little benefit to itself in order to provide a greater benefit to disadvantaged children in northwest Indiana. *Id*.

H. The Petitioner's counsel argues that the Supreme Court decision in *Oaken Bucket* should not apply to the Petitioner's case because the Petitioner filed its Exemption Applications and its Petitions with the Board before the Supreme Court decided the *Oaken Bucket* case. *Tiller argument*. Moreover, Ms. Tiller argues, the Petitioner's case is dissimilar to the *Oaken Bucket* case. *Petitioner's Brief*. According to Ms. Tiller, the *Oaken Bucket* case involved a triple net lease and a disagreement as to whether *Oaken Bucket* charged a below market rent. *Id*. Here, however, Ms. Tiller argues, the Petitioner has done more than just charge below market rent; it entered into a limited gross lease putting itself at greater financial risk of paying more for 1st Kids' expenses. *Id*.

[1] "**Tille**r: And when you filed for property tax exemption on behalf of 1st Kids did you in any way think that you were going to profit from that? Did you have a profit motive? **Rossman:** I would say that I would profit by not having to pay the taxes if I was successful, yes."

I. In the alternative, the Petitioner's counsel argues that 1st Kids should be considered a quasi-governmental agency because it is completely funded by the State of Indiana. *Petitioner's Brief.* Ms. Tiller argues that, as a quasi-governmental agency, 1st Kids should be entitled to certain government immunities and/or exemptions. *Id.* Ms. Tiller admitted that "1st Kids has not petitioned to be recognized by the appropriate authorities as a governmental entity;" however she argues, "they are comprised of several similar functions as a unique 'quasi-government' or 'hybrid entity.'" *Id. at 10.* Thus, Ms. Tiller argues, 1st Kids should be qualified to receive property tax exemption or property tax immunity which should transfer to the Petitioner who is paying the taxes on the property. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent contends that the Petitioner's real property is not eligible for an exemption pursuant to Indiana Code § 6-1.1-10-16, because the property was not owned, occupied and used for a charitable or educational purpose in 2010. Nor was the property entitled to any "pass through" exemption because its lessee is a governmental contractor; not a governmental entity.

21. The Respondent presented the following evidence in regard to this issue:

A. The Respondent's counsel contends that the Petitioner is a landlord that owns rental property as a for-profit making venture, retaining the commonplace rights of a landlord in regards to 1st Kids rental space as well as the other rental space in the complex. *Respondent's Brief.* According to Ms. Meighen, the Petitioner has not shown that it does anything more than operate as a landlord. *Id.*

B. Ms. Meighen contends that the Board has long recognized that landlords are not entitled to an exemption for space that is leased as part of a business venture, without substantial evidence of their own exempt purpose. *Respondent's Brief, citing*

Grandview Care, Inc. v. Perry County Assessor, Ind. Bd. of Tax Rev., Petition Nos. 62-006-08-2-8-00001, *et seq*. (decided June 14, 2010) (501(c)(3) taxpayer providing affordable, decent, safe, and sanitary housing to certain low-income individuals was denied exempt status because its case was based solely on broad generalities and unsubstantiated conclusions); *Gulf Coast Housing Assistance Corp. v. Lake County Assessor*, Ind. Bd. of Tax Rev., Petition Nos. 45-001-06-2-8-00001, *et seq*. (decided April 27, 2010) (exemption denied because the taxpayer did not show that it did anything more than operate as a landlord, or that its activities were any different from the everyday purposes and activities of man in general); *Brookschool, LLC v. Hamilton County Property Tax Assessment Board of Appeals,* Ind. Bd. of Tax Rev., Petition No. 29-020-02-2-8-00001 (decided January 30, 2004) (portion of a shopping center leased to non-profit organization was not entitled to exemption because the owner owned the property for a for-profit business venture); and *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals,* Ind. Bd. of Tax Rev., Petition No. 82-029-00-2-8-00001 (decided March 6, 2002) (even though the taxpayer did not show a profit on a building leased to religious organization, any rent to the landlord was a gain and not considered owned for charitable or religious purpose).

C. Moreover, the Respondent's counsel contends that the Petitioner failed to sufficiently show that it charges 1st Kids less than market rent. *Respondent's Brief.* According to Ms. Meighen, from April 2009 through and including March 2010, the annual rent for 1st Kids was $79,925.07. *Id*. And from April 2010 through and including March 2011, the annual rent for 1st Kids was $87,732.24. *Id.* In addition to the rent paid by its tenants, Ms. Meighen argues, the Petitioner is increasing its equity position in the property. *Id.* Ms. Meighen argues that the base rent charged to 1st Kids is the highest of the base rates among the tenants. *Id.* Ms. Meighen admits that other tenants are required to pay an amount over and above their base rents for CAM, taxes, utilities, and insurance at the Petitioner's office complex. *Id.* But, she argues, even if the Petitioner provided below market rent, "that fact alone has little bearing on the

question of whether [the Petitioner] possesses its own exempt purpose necessary for the grant of [an] exemption." *Id. at 3.*

D. The Respondent's counsel argues that *Oaken Bucket* – which "completely undermines [the Petitioner's] claim for exemption here" – governs the Petitioner's appeal. *Respondent's Brief at 13.* According to Ms. Meighen, the Supreme Court follows a three-prong test to determine whether to give a decision the unusual course of only prospective application: (1) the decision must establish a new principle of law, either by over-ruling clear precedent on which litigants may have relied, or by deciding a case of first impression whose resolution was not clearly foreshadowed; (2) the Court considers the purpose and effect of the rule, and whether the retrospective operation will further or retard its operation; and (3) the Court weighs the inequity imposed by retrospective application. *Id., citing Ray-Hayes v. Heinamann*, 768 N.E.2d 899,900 (Ind. 2002). Ms. Meighen contends that the legal principle that the owner of leased property must possess an exempt purpose separate and distinct from the exempt purpose of the lessee in order to be entitled to a property tax exemption was a point of law over 100 years ago. *Id., citing Travelers' Insurance Co. v. Kent*, 151 Ind. 349, 50N.E. 562 (Ind. 1898); *see also Spohn v. Stark*, 197 Ind. 299, 150 N.E. 787,788 (1926) (finding property used for rental purposes and income production not exempt from taxation "merely because the lessee may devote the leasehold to a municipal, educational, literary, scientific, religious, or charitable purpose.") Thus, the Supreme Court's decision in *Oaken Bucket* did not establish a new rule of law. *Id.* And because *Oaken Bucket* did not establish a new rule of law, Ms. Meighen argues, the second and third factor in the *Ray-Hayes* analysis are not relevant. *Id*.

E. The Respondent's counsel further contends that 1st Kids is not a governmental entity. *Respondent's Brief.* According to Ms. Meighen, 1st Kids is a private organization, separate and apart from the government, receiving government funding. *Id*. It is not a political subdivision or taxing unit. *Id.* "Thus, it would be inappropriate for the Board to grant [an] exemption on this basis." *Id. at 15., citing Fourth Freedom*

Forum, Inc. v. Elkhart Coutny Property Tax Assessment Board of Appeals, Ind. Bd. of Tax Rev., Petition Nos. 20-005-04-2-8-00001, *et seq.* (decided Nov. 29, 2007).

F. Finally, Ms. Meighen argues that relieving the burden of government is important in the context of exemption law. *Respondent's Brief*. But, she contends, the Petitioner does not relieve the burden of government in any appreciable way. *Id.* The Petitioner charges a considerable amount of rent to 1st Kids. *Id*. And the Petitioner's argument that it could make more money on the 1st Kids' lease and incur a lower risk for taxes and utilities is not proof of charitable ownership, occupancy, and predominant use. *Id*.

ANALYSIS OF THE ISSUE

22. Indiana Code § 6-1.1-10-16(a) states that "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." Ind. Code § 6-1.1-10-16(a). Further, "a tract of land … is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it." Ind. Code § 6-1.1-10-16(c).

23. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff'd,* 765 N.E.2d 1257 (Ind. 2002). Despite this, "the term 'charitable purpose' is to be defined and understood in its broadest constitutional sense." *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the

general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance,* 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

24. An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words "owned, occupied and used" restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive. *See Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners,* 686 N.E.2d 954 ("Sangralea does not own the property as investment property or with a motive of profit. The use and occupation of the property by the Lessees is in furtherance of Sangralea's exempt purposes."). Once these three elements are met, the property can be exempt from property taxation. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005).

25. "The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose," however, "is a fact sensitive inquiry; there are no bright-line tests." *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor,* 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted). Thus, every exemption case "stand[s] on its own facts" and on how the parties present those facts. *See Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).

26. Here, the subject property is owned by Rossman & Associates, Inc., and is occupied and used by 1st Kids. Rossman & Associates owns multiple buildings in the complex. And although the ALJ mistakenly prevented Ms. Meighen's cross examination on the scope of Mr. Rossman's commercial property holdings and the Petitioner's business interests in the hearing, it is clear from his testimony that commercial leasing is the Petitioner's business. The Petitioner's lessee, 1st Kids, is an Indiana not-for-profit corporation

established in 2002 to satisfy the educational and medical needs of developmentally challenged children. The parties do not appear to dispute that 1st Kids' occupation and use of the property is for an exempt purpose. The question therefore is whether the Petitioner's ownership of the real property is also for an exempt purpose.

27. The Indiana Supreme Court addressed a similar situation in its decision in *Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC,* 938 N.E.2d 654 (Ind. 2010). In that case, the Supreme Court determined that a for-profit leasing company leasing space to a not-for-profit church, did not own the property for an exempt purpose even if it leased the space for below-market rent. *Id.* The Court held that "absent evidence that an owner of leased property possesses an exempt purpose separate and distinct from the exempt purpose of its lessee, the owner holds the property for its own benefit, not that of the public, and thus its property is not entitled to the statutory exemption." 938 N.E.2d at 659.

28. The Petitioner's counsel argued that the decision in *Oaken Bucket* should not apply to these appeals because the Petitioner filed its petitions before the Supreme Court decided the *Oaken Bucket* case. Ms. Tiller, however, presented no support for her argument that the decision should only apply prospectively. As the Respondent's counsel correctly noted, limiting a decision to prospective application is unusual. To the extent that the Board need address such an undeveloped argument, the Board finds that the Supreme Court did not establish a new principle of law in the *Oaken Bucket* case, and therefore the precedent established by the Supreme Court in *Oaken Bucket* applies to all pending cases. *See e.g. Metropolitan School District of Pike Township v. Department of Local Government Finance,* 962 N.E.2d 705 (Ind. Tax Ct. 2011) ("when a judicial opinion rendered in a civil case makes a pronouncement of the law, that pronouncement has not only prospective effect, but also retrospective effect. This is so because, in theory, the law has not been changed; the last judicial decision is said to have enunciated the law *as it has always existed"*) (emphasis in original).

29. Alternatively, the Petitioner's counsel contends that the facts at bar are distinguishable from the facts in the *Oaken Bucket* case. According to Mr. Rossman, the parties disputed whether the property owner leased the subject property at below market rent in the *Oaken Bucket* case, but here, the Petitioner argues, its lease-rate for 1st Kids is clearly "below market." However, the evidence shows that 1st Kids has the highest base rent of any of the tenants for which a lease was offered. Even if the lease rate paid by 1st Kids is below what other tenants are paying for office space at the property after the Petitioner's expenses for CAM, taxes, utilities and insurance are deducted, the space 1st Kids is renting is several times larger than the spaces rented by other tenants for whom leases were provided. And 1st Kids has leased the subject property for nine years. The Petitioner faces less risk from having a single, long-standing tenant occupy a space than from having to lease the same space to several tenants that may move out in short order – which could justify charging the lower lease rate to 1st Kids than to newer renters leasing smaller spaces. Thus, contrary to the Petitioner's argument, the evidence is not clear that the Petitioner's rent is "below market rates." Furthermore, Mr. Rossman admitted that the Petitioner clears at least $6.11 per square foot on the offices and, during the period at issue in this appeal, earned even more on the lease.[2] Therefore, the Petitioner is increasing its equity position in the property through the rent paid by 1st Kids. More importantly, the Supreme Court in *Oaken Bucket* specifically found that leasing property below market rent alone was not enough to justify an exemption. 938 N.E.2d at 658.

30. The Petitioner also contends that 1st Kids, unlike the lessee in *Oaken Bucket*, operates through a Limited Gross Lease, which provides that the Petitioner must pay for the taxes, CAM, utilities, and insurance on the space leased by 1st Kids. And, in fact, the church at issue in *Oaken Bucket* had a triple net lease – which means that the non-profit lessee was responsible for the taxes on the property. But that does not help the Petitioner case,

[2] Mr. Rossman testified that currently, the Petitioner earns $6.11 on the premises: "Gross square footage that we have currently this year's $12.09 per square foot. If you deduct your per square foot for taxes in this current year which is $2.89 per square foot and utilities at $1.54 per square foot, CAM which is a acronym for common area maintenance at $1.30 per square foot and insurance at .25 per square foot, you get a net per square foot or NOI at $6.11 per square foot currently today." But the Petitioner's Exhibit 14 shows that the Petitioner leased the premises to 1st Kids for $14.64 per square foot from March 31, 2009, to March 31, 2010, and for $16.07 per square foot from March 31, 2010, to March 31, 2011; clearing $8.34 per square foot and $9.77 per square foot after expenses for 2009 and 2010 respectively. *Petitioner Exhibit 14.*

because in *Oaken Bucket* the church would have been the beneficiary of any exemption that was granted. Here, to the contrary, the Petitioner is responsible for the property taxes on the subject property under the terms of its lease with 1st Kids. Therefore the only beneficiary of an exemption granted in this case would be the Petitioner. And allowing Rossman & Associates a greater profit on its lease to 1st Kids runs far afield of the purposes for which property tax exemptions were created. *See Miniature Enthusiasts*, 671 N.E.2d at 220 (An exemption is justified because it helps accomplish some public purpose).

31. In addition, Mr. Rossman testified, the Petitioner reduced 1st Kids contractual rent twice when the state reduced its funding. The Petitioner also modified the leased premises at no charge to 1st Kids when 1st Kids expanded its operations. But the Petitioner's modification of the premises at no cost to 1st Kids fails to support the Petitioner's request for an exemption. The evidence shows that performing construction work at its own cost was not unique to the 1st Kids lease arrangement with Rossman & Associates. In the First Amendment to the Krosaki Lease, the tenant sought to rent additional space. The Petitioner estimated improvements to the space to cost $5,200. However, the Petitioner only required the tenant to reimburse $2,500, with the Petitioner assuming responsibility for the remainder of the costs. Nor was the reduction of rent for 1st Kids unique to that property:

> **Ms. Meighen:** Do you ever give rent concessions to anyone other than First Kids?
>
> **Mr. Rossman:** I do but there's usually something attached to it. In other words I just don't give it and not get anything back. For instance I would give a rent deduction if you came, Marilyn, and said I'm going to renew my lease for another 5 years. I'd give you a rent reduction or do a rent improvement; replace the carpet, repaint, those kind of things ...

Thus, the evidence suggests that providing construction services or a rent reduction is a business decision to promote the expansion of a tenant's leasehold or to lengthen the term of a lease rather than a "charitable" act to support 1st Kids' mission.

32. The Board therefore finds that the Petitioner failed to establish that it owns the subject property for a charitable purpose. *See Oaken Bucket*, 938 N.E.2d at 658 - 659 ("At most what Oaken Bucket has proven is that it *leased* and primarily used its property for religious and charitable purposes").

33. The Petitioner also contends that 1st Kids is a "quasi-governmental" agency and, as such, should receive the same immunity or exemption from taxation as a governmental agency.[3] Under Indiana Code § 6-1.1-10-2, "property owned by this state, a state agency, or the bureau of motor vehicles commission is exempt from property taxation." Similarly, Indiana Code § 6-1.1-10-4 holds that property owned by a political subdivision is exempt from taxation and Indiana Code § 6-1.1-10-5 holds that property owned by a city or town used to provide a municipal service is exempt. 1st Kids, however, is not a state agency. It is not a municipality or a political subdivision. 1st Kids merely contracts with a state agency to perform certain services. While 1st Kids serves an important function, this does not entitle what is essentially an independent contractor to receive the same benefits that accrue to governmental agencies. *See Fourth Freedom Forum, Inc. v. Elkhart County Property Tax Assessment Board of Appeals*, Ind. Bd. of Tax Rev., Petition Nos. 20-005-04-2-8-00001 *et seq.* ("In that sense, the Forum is no different from other government contractors such as road-construction companies or security providers. Few would argue that those entities should receive exemptions.")

34. To the extent that the Petitioner could be seen as claiming that 1st Kids is exempt because it provides a governmental function, the Petitioner failed to cite any statute that would grant an exemption to a private entity assuming the function of operating and managing an early education program for developmentally disabled children. Nor was the Board able to find any such statute. The Legislature has made it clear through legislation when

[3] The Petitioner cites Indiana Code § 6-1.1-10-1(a) which states that "property of the United States and its agencies and instrumentalities is exempt from property taxation to the extent that this state is prohibited by law from taxing it. However, any interest in tangible property of the United States shall be assessed and taxed to the extent this state is not prohibited from taxing it by the Constitution of the United States." However, the Petitioner makes no claim that 1st Kids is an agency or instrumentality of the United States government. Ms. Mann merely testified that 1st Kids administers a program under federal government's "Early Intervention" act "which is part C of the individual disability education act."

private property should be exempt for serving a municipal purpose. For example, Indiana Code § 8-10-1-27 and Indiana Code § 8-15-2-12 both provide for property tax exemptions where a non-governmental entity has entered into a public-private agreement, including leases, concerning ports and toll roads. The Legislature has gone so far as to even exempt the property, revenues, expenditures and transactions of the National Football League (NFL) and National Collegiate Athletic Association (NCAA) relating to the Super Bowl and the Men's and Women's Final Four events from *all* taxation. *See* Ind. Code § 6-8-12-3(a) ("all property owned by an eligible entity, revenues of an eligible entity, and expenditures and transactions of an eligible entity: (1) in connection with an eligible event; and (2) resulting from holding an eligible event in Indiana or making preparatory advance visits to Indiana in connection with an eligible event; are exempt from taxation in Indiana for all purposes"). Given the specificity of these exemption provisions, if the legislature had intended to make the provision of early childhood education to developmentally disabled children by a private entity through a state or federal program exempt from property taxation, it would have promulgated a statute codifying it.

35. The Petitioner failed to present sufficient evidence proving that the subject property is owned for a charitable purpose. Nor has the Petitioner sufficiently shown that 1st Kids is a governmental agency that entitles it to a "pass through" exemption. Therefore, the Board finds that the Petitioner failed to prove that it is entitled to an exemption on the subject property.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board finds in favor of the Respondent and holds that the subject property was 100% taxable for the 2010 assessment year.

Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, 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.