

REPRESENTATIVE FOR PETITIONER:
Joshua C. Neal, Barrett & McNagny, LLP

REPRESENTATIVES FOR RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|---------------------------|---|------------------|-------------------------|
| SPD Realty, LLC |) | Petition No.: | 29-006-09-2-8-00002 |
| |) | | |
| Petitioner, |) | Parcel No.: | 29-14-12-014-002.00-006 |
| |) | | (1514120014002000) |
| v. |) | | |
| |) | | |
| Hamilton County Assessor, |) | Assessment Year: | 2009 |
| |) | | |
| Respondent. |) | | |
| |) | | |

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

March 11, 2011

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 Petitioner's real estate and personal property are exempt from taxation pursuant to Indiana Code § 6-1.1-10-16(a).

PROCEDURAL HISTORY

2. SPD Realty, LLC, filed a Form 136 Application for Property Tax Exemption with the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) on January 22, 2009. The Hamilton County PTABOA issued its determination denying the exemption on August 6, 2009.¹ On September 4, 2009, Mr. Joshua C. Neal, of Barrett & McNagny, LLP, filed a Form 132, Petition for Review of Exemption, on behalf of the Petitioner, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4, Senior Administrative Law Judge Carol Comer and Dalene McMillen, 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 September 23, 2010, in Noblesville, Indiana.
4. The following persons were sworn as witnesses at the hearing:

¹ Due to a computer error the Form 120 suggested that the PTABOA acted upon the assessment for the March 1, 2008, assessment year. *Folkerts testimony*. The parties, however, agreed the assessment at issue in this appeal is the March 1, 2009, assessment.

For the Petitioner:

J. Blair Peebles, Partner, SPD Realty, LLC, and Chief Operating Officer
of New Life Generation

Dale E. Zigler II, Director of Recovery, New Life Generation²

For the Respondent:³

Debbie Folkerts, Hamilton County Assessor

Terry McAbee, Hamilton County Deputy Assessor

5. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Articles of Incorporation of New Life Generation, Inc.,

Petitioner Exhibit 2 – Amended Articles of Incorporation of New Life
Generation, Inc.,

Petitioner Exhibit 3 – Code of By-Laws of New Life Generation, Inc.,

Petitioner Exhibit 4 – Conflict of Interest Policy of New Life Generation, Inc.,

Petitioner Exhibit 5 – Articles of Organization of SPD Realty, LLC,

Petitioner Exhibit 6 – Operating Agreement of SPD Realty, LLC,

Petitioner Exhibit 7 – Two letters from the Internal Revenue Service (IRS) to
New Life Generation, Inc.,

Petitioner Exhibit 8 – Brochure on New Life Generation, Inc.,

Petitioner Exhibit 9 – Lease agreement between SPD Realty, LLC, and New
Life Generation, Inc.,

Petitioner Exhibit 10 – Application for Property Tax Exemption – Form 136,

Petitioner Exhibit 11 – Notice of Action on Exemption Application – Form 120,

Petitioner Exhibit 12 – Petition to the Indiana Board of Tax Review for Review
of Exemption – Form 132.

6. The Respondent submitted the following exhibit:

Respondent Exhibit A – Map of the property's area,

Respondent Exhibit B – Property and leasing information on 9775 Crosspoint
Boulevard, Fishers,

Respondent Exhibit C – Property and leasing information on 9785 Crosspoint
Boulevard, Fishers,

² Mr. Zigler was sworn as a witness but he did not present any testimony at the hearing.

³ Ms. Robin Ward, Hamilton County Assessor-elect, was also in attendance but was not sworn in as a witness to give testimony.

- Respondent Exhibit D – Property and leasing information on 9757 Westpoint Drive, Fishers,
- Respondent Exhibit E – Property and leasing information on 9810 Westpoint Drive, Fishers,
- Respondent Exhibit F – Property and leasing information on 9840 Westpoint Drive, Fishers,
- Respondent Exhibit G – Property and leasing information on 9800 Westpoint Drive, Fishers,
- Respondent Exhibit H – Property and leasing information on 10475 Crosspoint Boulevard, Fishers,
- Respondent Exhibit I – Property and leasing information on 9742-9750 Lantern Road, Fishers,
- Respondent Exhibit J – Property and leasing information on 9780 Lantern Road, Fishers,
- Respondent Exhibit K – Property and leasing information on 9800 Crosspoint Boulevard, Fishers,
- Respondent Exhibit L – Property and leasing information on 10150 Lantern Road, Fishers,
- Respondent Exhibit M – Definition of the types of leases typically offered,
- Respondent Exhibit N – Hamilton County office rental rates,
- Respondent Exhibit O - *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954 (Ind. Tax Ct. 1997) and Indiana Board of Tax Review Final Determinations in *Brookschool, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-020-02-2-8-00001, dated January 30, 2004, *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals and Pigeon Township Assessor*, Petition No. 82-029-00-2-8-0001, dated March 6, 2002, and *New Paris Chamber of Commerce v. Elkhart County Property Tax Assessment Board of Appeals*, Petition No. 20-018-02-2-8-00001, dated July 16, 2003.

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, dated July 9, 2010,
- Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
- Board Exhibit D – Hearing sign-in sheet.

8. The Petitioner submitted its post-hearing brief on November 23, 2010, (the Petitioner brief). The Respondent likewise submitted a post-hearing brief on November 23, 2010, (the Respondent brief).
9. The property under appeal is a 9,500 sq.ft. commercial building located at 9755 Westpoint Drive, Fishers, in Fall Creek Township, Hamilton County and the personal property located therein.
10. The ALJ did not conduct an on-site inspection of the property.
11. For 2009, the PTABOA determined the Petitioner's real and personal property to be 100% taxable.
12. For 2009, the Petitioner contends the real and personal property should be 100% tax-exempt.

JURISDICTIONAL FRAMEWORK

13. The 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 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.

ADMINISTRATIVE REVIEW AND PETITIONER'S BURDEN

14. 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).

15. 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”).
16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS OF EXEMPTION AND BURDEN

17. 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.
18. 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 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).

19. 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)).
20. 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

21. The Petitioner's counsel contends that the Petitioner's real and personal property should be 100% exempt from property taxation under Indiana Code § 6-1.1-10-16. *Neal argument; Petitioner brief at 14*. According to the Petitioner, the property is owned, occupied and used for charitable and educational purposes. *Id.*
22. The Petitioner's witness, Mr. Peebles, testified that it was Rajiv Sood, M.D., J. Blair Peebles and Marcia DuCharme's sole intention to form SPD Realty to purchase a property to be used as a skin and tissue bank. *Peebles testimony*. SPD Realty's operating agreement states: "The purpose of the Company is to own, operate, maintain and lease real estate property, including certain commercial real estate property located at 9755 Westpoint Drive, Fishers, Indiana, and to engage in any businesses that may be lawfully conducted by a limited liability company organized pursuant to the Act, either alone, or in association with, or as agent or representative for, any other person." *Petitioner Exhibit 6*. SPD Realty purchased the subject property in October of 2008. *Peebles*

testimony; Petitioner brief at 5. Mr. Peebles testified that it is the only property owned by SPD Realty. *Peebles testimony.*

23. The Petitioner’s witness argues that SPD Realty leases 8,000 square feet of the building to New Life Generation, Inc. (New Life), an Indiana Non-Profit Corporation.⁴ *Peebles testimony; Petitioner brief at 5; Petitioner Exhibit 1.* In addition, approximately 450 square feet of the building is leased to Medigraft, LLC, which shares common ownership with New Life and assists New Life with its bone marrow recovery operations.⁵ *Peebles testimony; Petitioner brief at 5.* The Petitioner has a ten year lease with New Life that states the “[p]remises shall be occupied and used solely as a tissue bank and office functions associated with such use.” *Petitioner Exhibit 9 at 2.* According to Mr. Peebles, New Life pays \$21 per square foot each month in rent. *Peebles testimony; Petitioner brief at 6.* New Life also pays all costs and expenses related to the premises, except structural maintenance and building insurance. *Id.* New Life’s expenses include insurance, utilities, real estate taxes, personal property taxes, janitorial services and building maintenance. *Id.* Mr. Peebles testified that if the real estate taxes are reduced, New Life is the party that benefits. *Peebles testimony.*
24. Further, the Petitioner argues, the property is occupied and used for charitable and educational purposes. *Neal argument.* According to the Petitioner’s witness, New Life seeks to procure human tissue donors and it performs donor recoveries and provides skin tissue to burn centers and surgeons. *Peebles testimony; Petitioner brief at 2.* Mr. Peebles testified that New Life also educates the community regarding tissue donation and provides follow-up services to donors. *Id.* New Life conducts research and development to provide better materials and procedures in helping burn victims and people needing bone transplants. *Id.* To accomplish New Life’s mission, Mr. Peebles testified, New Life employs twelve full-time and thirteen part-time employees, who receive training from the

⁴ The lease agreement states that New Life agreed to lease approximately 5,000 square feet from SPD Realty. *Petitioner Exhibit 9.*

⁵ Rajiv Sood, M.D., J. Blair Peebles and Marcia DuCharme share ownership in New Life and Medigraft, LLC. *Peebles testimony.*

Food and Drug Administration (FDA) and American Association of Tissue Banks (AATB). *Peebles testimony; Petitioner brief at 3.*

25. In its brief, the Petitioner argued that a property is exempt from taxation when it is “predominately owned, used and occupied for charitable purposes.” *Petitioner brief at 7, citing Alte Salems Kirche, Inc v. State Board of Tax Commissioners, 733 N.E.2d 40, 43 (Ind. Tax 2000).* The Petitioner contends the subject property was owned in 2009 for a charitable purpose because of the Petitioner’s written consent to New Life’s operation under the lease. *Petitioner Exhibit 9.* Further, the Petitioner argues, the lease restricts the property’s use to a tissue bank and related functions. *Id.*
26. The Petitioner further argues that the Indiana Tax Court in *Sangralea Boys Fund, Inc.*, 686 N.E.2d 954, 958 (Ind. Tax Ct. 1997) and *Word of His Grace Fellowship, Inc.*, 711 N.E.2d 875, 877 (Ind. Tax 1999), as well as, the Indiana Board of Tax Review decision in *New Life Christian Center, Inc. v. Lake County Property Tax Assessment Board of Appeals*, Petition No. 45-004-00-2-8-000001, held there is no requirement that the same entity own, occupy and use the property for charitable and educational purposes. *Petitioner brief at 8-10.* According to the Petitioner, the Tax Court in *Sangralea Boys Fund, Inc.*, reasoned that the charitable exemption should apply because the plaintiff did “not own the property as investment property or with a motive of profit.” *Petitioner brief at 8, citing Sangralea Boys Fund, Inc. 686 N.E.2d at 958.*
27. The Petitioner argues that there is no dispute that the real estate has been used and occupied for a charitable purpose, as required by Indiana Code § 6-1.1-10-16. *Petitioner brief at 11.* According to the Petitioner, the evidence shows New Life is a not-for-profit entity that has used the property continuously in connection with collection, processing, and distributing donated human tissue and has conducted educational and informational programs related to tissue donation. *Id.* The Petitioner also argues that, although New Life is charged rent, it is for the sole purpose of offsetting the mortgage payments and other carrying costs. *Id.* According to Mr. Peebles, SPD Realty actually incurred a loss in 2009 because the rent charged to New Life was insufficient to cover the costs incurred

by the Petitioner and SPD Realty assisted New Life by paying the 2009 real estate taxes. *Id.*

28. The Petitioner also argues that the Indiana Board of Tax Review in *Mark & Deborah Shubert v. Elkhart County Assessor*, Petition No. 20-015-07-2-8-00037 (November 2008), held that a property was exempt because the property at issue was bought to be used by a dance school and the building was designed and constructed with the dance school's needs in mind. *Petitioner brief at 10*. The Petitioner therefore contends the subject property should be exempt because SPD Realty purchased and renovated the building to address the specific needs of New Life's tissue bank operation. *Petitioner brief*.
29. The Petitioner argues that the intent of the General Assembly in enacting charitable property tax exemptions was to make it easier for charitable entities to do business, so that they may benefit the public. *Petitioner brief at 13, citing State Board of Tax Commissioners v. Wright*, 139 Ind. App. 370, 215 N.E.2d 57, 60 (1966). Similarly, the Petitioner argues, in *Sangralea Boys Fund*, 686 N.E.2d at 958, the Tax Court held that the purpose of the charitable exemption is to "reward charities and to encourage beneficial public service." *Petitioner brief at 13*. The Petitioner argues that the benefits of the tissue bank that New Life and SPD Realty together offer the people of Hamilton County and the State of Indiana is exactly what the General Assembly had in mind when they enacted the charitable purpose tax exemption. *Id.*
30. Finally, the Petitioner argues that the Board's final determinations in *HCPI Indiana, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-018-04-2-8-000041, *Brookschool, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-020-02-2-8-00001 and *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals*, Petition No. 82-029-00-2-8-00001, cited by the Respondent in its Notice of Action on Exemption Application are irrelevant to the Petitioner's case. *Petitioner brief at 12*. According to the Petitioner, in each of the cases the real estate was owned either individually or by a for-profit entity and leased to a not-

for-profit entity. *Id.* According to the Petitioner, its case is distinguishable because “New Life was formed by the owners of SPD Realty solely for the purpose of operating a charitable endeavor, the owners of SPD are members of New Life’s board of directors, and the real estate was specifically acquired and retrofitted for use as a tissue bank.” *Id.* Further, the Petitioner argues, any reduction in property tax liability “will not inure solely to the benefit of the property owner, SPD,” but would pass through to benefit New Life. *Id.*

RESPONDENT’S CONTENTIONS

31. The Respondent argues that the Petitioner should be denied an exemption under Indiana Code § 6-1.1-10-16 and Indiana Code § 6-1.1-10-36.3 because SPD Realty has not shown it is engaged in any charitable or educational activities. *Meighen argument.* The Respondent contends that the Petitioner is a landlord leasing property to New Life and that SPD Realty and New Life are two separate and distinct entities. *Id.*; *Respondent brief.*

32. The Respondent’s counsel argues that the Indiana Tax Court and the Board have held that a property must be owned, occupied, and predominately used for an exempt purpose during the relevant tax year – which, Ms. Meighen argues, is the fiscal year ending on the March 1 assessment date. *Meighen argument; Respondent brief at 8, citing Brothers of the Holy Cross, Inc. v. St. Joseph County Property Assessment Board of Appeals, 878 N.E.2d 550 (Ind. Tax 2007) and Early Childhood Crime Prevention v. St. Joseph County Property Tax Assessment Board of Appeals, Petition No. 71-026-05-2-8-00033 at ¶ 18 (January 29, 2010), (predominant occupancy or use means that property must be occupied or used for a majority of the time “in the year that ends on the assessment date of the property”).* The Respondent argues that, assuming the Petitioner can “piggy-back” the activities of its lessee, New Life, to claim an exemption, the property was not put into use until October 20, 2008, which is approximately eight months into the relevant tax

year. *Respondent brief at 8-9.* Thus, the Respondent argues, the property fails to meet the predominant use requirement set forth by Indiana Code § 6-1.1-10-36.3. *Id.*

33. The Respondent also argues that SPD Realty is not entitled to an exemption merely because it leases to a not-for-profit organization. *Meighen argument; Respondent brief at 9.* According to Ms. Meighen, in *Travelers' Insurance Co. v. Kent*, 151 Ind. 349, 50 N.E. 562 (1898), the Court found that if the owner treated leased property as an investment like any other property owner, such property is taxable. *Id.* Similarly, Ms. Meighen contends that the facts found in *Spohn v. Stark*, 150 N.E.2d 787 (Ind. 1926), are similar to the Petitioner's case. *Id. at 10.* In *Spohn*, the Indiana Supreme Court found that property from which a landlord received rent was not exempt "merely because the lessee may devote the leasehold to a municipal, educational, literary, scientific, religious, or charitable purpose..." *Id.* Ms. Meighen argues that to be exempt the owner of a property must "devote" their property to an exempt purpose. *Id.* It is not educational or charitable simply to rent a property to a tenant who uses the property for an educational or charitable purpose. *Id. at 11.* According to Ms. Meighen, there is no constitutional authority to exempt leased property from property taxes. *Id.* In fact, she argues, the Supreme Court has held it is unconstitutional to provide an exemption on the basis of the tenant's activities. *Id., citing Spohn*, 150 N.E.2d at 788.
34. Ms. Meighen argues that SPD Realty is engaged in a business venture, whereby it owns, operates, maintains and leases real estate. *Meighen argument; Respondent Exhibit 12.* According to the Respondent's witness, SPD Realty leases a portion of its property to New Life at above market rent, by way of a triple net lease.⁶ *McAbee testimony; Respondent Exhibits A - N.* As part of the "landlord-friendly" lease, New Life is obligated to pay all expenses except for structural maintenance and building insurance. *Meighen argument; Respondent brief at 3.* Regardless of whether SPD is making a profit

⁶ The Respondent contends that market rent in the area of the subject property ranges from \$14.50 to \$19.50 per square foot, with triple net leases ranging from \$16.50 to \$19.50 per square foot. *McAbee testimony; Respondent Exhibits A-L.* SPD Realty charges New Life \$21 per square foot under a triple net lease. *Respondent brief at 3.*

on the lease, Ms. Meighen argues, New Life's rent increases SPD Realty's equity position in the property each year the lease is in effect. *Id.*

35. Ms. Meighen argues that receiving benefits or gain from the property is at odds with exempt purpose. *Respondent brief at 12, citing Brooks School, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, Petition No. 29-020-02-2-8-00001 (January 20, 2004) and *Troy Tornatta v. Vanderburgh County Property Tax Assessment Board of Appeals*, Petition No. 82-029-00-2-8-00001 (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). *Id.*; *Respondent Exhibit O*. According to Ms. Meighen, the Tax Court held that ownership, occupancy, and use requirements set forth in Indiana Code § 6-1.1-10-16, "prevent an entity from leasing property to another, for either party's profit, and claiming an exemption." *Respondent brief at 11, citing Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, 957-58 (Ind. Tax Ct. 1997). Because SPD Realty's objective is to own and rent an income producing property, the Respondent argues, the property is not owned for an exempt purpose. *Respondent brief at 12.*
36. Finally, the Respondent's counsel argues that the Petitioner is asking the Board to ignore the distinct corporate entities of SPD Realty and New Life and view them as one so that the "deeds" of New Life can be attributed to the Petitioner for tax exemption purposes. *Meighen argument; Respondent brief at 13*. Ms. Meighen argues that in a legal sense, SPD Realty is attempting to "pierce the corporate veil." *Id.* However, Ms. Meighen argues that generally the only reason courts "pierce the corporate veil" is to protect third parties from fraud or injustice or to hold one corporation liable for another corporation's debt. *Id. at 14, citing Oliver v. Pinnacle Homes, Inc.* 769 N.E.2d 1188 (Ind. Ct. App. 2002); *Four Seasons Manufacturing, Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494, 504 (Ind. Ct. App. 2007); *Gurnik v. Lee*, 587 N.E.2d 706, 710 (Ind. Ct. App. 1992); and *Aronson v. Price*, 644 N.E.2d 864, 867 (Ind. 1994). The Respondent argues there is no fraud here and it is not unjust to require the owner of an income producing property to

pay real estate taxes. *Id.* at 15. Even if there was a reason to “pierce the corporate veil,” Ms. Meighen argues, there is limited evidence in the record regarding commonality between SPD Realty and New Life. *Id.* According to Ms. Meighen, the only commonality is shared officers or members – which, she argues, is insufficient to ignore SPD Realty’s corporate form. *Id.*

ANALYSIS OF THE ISSUE

37. 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). Finally, “[p]ersonal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16(e).
38. 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).

39. 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. *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954, (“Sangrlea 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 Sangrlea’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).
40. Here, the subject property is owned by SPD Realty and occupied and used by New Life and Medigraft, LLC. New Life is an Indiana not-for-profit corporation established in 2008 to collect, process, and distribute donated skin and human tissue and to conduct educational and informational programs related to tissue donation. Medigraft, which shares common ownership with New Life, assists New Life with its bone marrow recovery operations. The parties do not appear to dispute that New Life or Medigraft’s use or operation of the property is for an exempt purpose. The question therefore is whether SPD Realty’s ownership of the real estate is also for an exempt purpose.
41. The Indiana Supreme Court recently issued a 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.

42. “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.” *Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Board of Appeals*, 909 N.E.2d 1129 (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).
43. SPD Realty is a for-profit company that owns the subject property and leases it to New Life and Medigraft. While facially like the *Oaken Bucket* case, the facts here are distinguishable. In *Oaken Bucket*, there is no evidence that there was any relationship between Oaken Bucket and the church leasing the property from Oaken Bucket. Here, the Petitioner’s witness testified that three members of New Life and Medigraft formed SPD Realty for the sole purpose of acquiring the subject property. Further, the Petitioner in *Oaken Bucket* was a commercial leasing company. Here, there is no evidence that SPD Realty owns multiple properties that it leases to various commercial entities. To the contrary, the undisputed testimony shows that SPD Realty does not own any property other than the subject property. Thus, SPD Realty’s sole business is to own the subject property and lease the property for use as a skin and tissue bank.
44. While the evidence showed that SPD Realty charged New Life “above market” rent and the lease is a basic landlord/tenant lease, the Petitioner’s evidence, which was not disputed by the Respondent, showed that the amount of the rent is comparable to SPD Realty’s mortgage payments and carrying costs. According to the Petitioner’s witness, SPD Realty made no profit on the building and, in fact, the owners of SPD Realty paid the real estate taxes contrary to the lease provisions because New Life did not have the funds to do so. Further, the evidence shows that SPD Realty altered the premises

specifically for use as a tissue bank and the lease agreement between SPD Realty and New Life specifies the property is to be used only as a skin and tissue bank.

45. While it is true that, even if SPD Realty does not profit from the lease, the Petitioner still builds equity in the property and at the end of the mortgage term SPD Realty will have complete ownership of the building. The Board, however, finds this insufficient to overcome the evidence that SPD Realty's only property is the property at issue in this appeal and SPD Realty's only purpose in owning the property is to lease the property to New Life for the purposes of its use as a tissue bank.⁷ The language of Indiana Code § 6-1.1-10-16 does not differentiate between entities that are not-for-profit and those that are for-profit. *College Corner, L.P.*, 840 N.E.2d at 911. Thus, the Board finds that the weight of the evidence supports an exemption for the real estate and personal property.⁸

⁷ Ms. Meighen argues that a property must be owned, occupied and predominately used for an exempt purpose during the relevant tax year, which, she argues, is the fiscal year ending on the March 1 assessment date. *Meighen argument; Respondent brief*. Ms. Meighen argues that assuming SPD Realty can "piggy-back" the activities of its tenant New Life to claim the exemption, the property was not put into use until October 20, 2008 – which is approximately eight months into the relevant tax year. *Id.* Indiana Code § 6-1.1-10-36.3(a) states "For purposes of this section, 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." Ind. Code § 6-1.1-10-36.3(a). The Board does not interpret the language of Indiana Code § 6-1.1-10-36.3 to require that the property requesting an exemption be used and occupied more than six months of the preceding fiscal year ending on the March 1 assessment date to be exempt. If the Board interpreted the requirements of the statute in the way the Respondent urges, few non-profit entities – regardless of their charitable, religious or educational intent – would be entitled to an exemption until their second year of operation. The Legislature could not have intended that result. Thus, the Board finds that the property meets the predominant use test if it is occupied and used more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property.

⁸This is consistent with the Board's decision in *Avon Real Estate, LLC v. Hendricks County Property Tax Assessment Board of Appeals*, Indiana Board of Tax Review, Petition No. 32-022-07-2-8-00001 (decided January 6, 2009). In that case, eight members of a congregation formed Avon Real Estate, LLC, specifically to purchase a property for their temple to hold religious services because the temple itself could not finance the purchase of a property. The Petitioner did not own or lease any other property. Thus, the Board found the property to be exempt despite the fact that the Petitioner was organized as a 'for-profit' entity.

SUMMARY OF FINAL DETERMINATION

46. The Board finds that the weight of the evidence supports a 100% exemption for the real estate and a 100% exemption for the personal property for the March 1, 2009, assessment.

The Final Determination of the above captioned matter is issued 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 pursuant to 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 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/bills/2007/SE0287.1.html>.