

**STATE OF INDIANA
Board of Tax Review**

SHELTERING PALMS FOUNDATION, INC. Petitioner,)	On Appeal from the Madison County Property Tax Assessment Board Of Appeals
v.))
MADISON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS Respondent.)	Petition for Review of Exemption Form 132 Petition No. 48-003-00-2-8-00001 Parcel Nos. 18377AZ & 18377CZ)

Findings of Fact and Conclusions of Law

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

Issue

Whether the land, improvements, and personal property owned by Sheltering Palms Foundation, Inc. (Sheltering Palms), known as Cross Lakes Apartments (Cross Lakes) and located at 1800 N. Scatterfield Road, Anderson, Anderson Township, Madison County, Indiana, qualify for a property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purpose. The Madison County Property Tax Board of Appeals (PTABOA) denied any exemption for Cross Lakes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-11-3, the Petitioner filed an application for property tax exemption with the Madison County PTABOA on May 15, 2000. The PTABOA issued its determination to the Petitioner on January 23, 2001. The year in question is Tax Year 2000.
3. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132 petition seeking a review of the PTABOA action by the State. The Form 132 petition was filed with the County on February 20, 2001 and filed with the State on February 23, 2001.
4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 22, 2001 before Senior Administrative Law Judge (ALJ) Tim Rider. Testimony and exhibits were received into evidence. James T. Crawford, Jr., attorney at law, currently with Krieg De Vault LLP, represented the Petitioner. The PTABOA failed to appear.
5. At the hearing, the subject Form 132 petition with attachments was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following items were received into evidence:

Petitioner's Ex. 1 – Current power of attorney for James T. Crawford, Jr.

Petitioner's Ex. 2 – Financial statements for Sheltering Palms for year ending
December 31, 1999.

Petitioner's Ex. 3 – IRS Form 990 Return of Organization Exempt From Income
Tax pertaining to Sheltering Palms for Tax Year 1999.

Petitioner's Ex. 4 – Financial statements for Cross Lakes years 1999 & 2000.

Petitioner's Ex. 5 – State Form 5749R, required Information for property tax exemption pertaining to Cross Lakes.

Petitioner's Ex. 6 – Information obtained from the Internet on 2/16/2001. Website address is www.huduser.org. Illustrates Madison County median income effective 3-9-2000.

Petitioner's Ex. 7 – Bill Waltz memorandum of September 2, 1997.

Petitioner's Ex. 8 – Filed on February 11, 2002, at the request of the ALJ.

Information as the amount of land contained in Parcel No. 18377AZ was not contained in the evidence presented at hearing. This exhibit included the Madison County Assessment Card, which detailed the total acreage.

6. The ALJ did not view the property.
7. The facts of this case are as presented in Board Ex. A and as presented at hearing by the Petitioner. The PTABOA did not list any reason for denial of exemption on the Form 120 (Notice of Action on Exemption Application).
8. Sheltering Palms is a Texas nonprofit corporation, whose principal business office is 875 Avenue of the Americas, Suite 1808, New York, NY 10001.
9. Sheltering Palms has been determined to be exempt from federal income tax under section 501(a) of the Internal Revenue Code as a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code.
10. Sheltering Palms was formed to provide low and moderate-income housing and to provide shelters for abused children as described in its Articles of Incorporation. Sheltering Palms is the sole owner of Cross Lakes Apartments.
11. On July 14, 1998, the Petitioner executed a promissory note to the City of Anderson, Indiana (the Issuer) for issuance of Multi-Family Housing Revenue Bonds Series 1998A (the Bonds) in the principal amount of \$8,500,000. The Bonds are tax-exempt under Section 148 of the Internal Revenue Code of 1986.

12. In conjunction with the Bonds, the City of Anderson assigned the promissory note to Norwest Bank, N.A. (the Trustee) as security for payment of the Bonds. The Petitioner granted a security interest in the real estate and buildings and the personal property at Cross Lakes to the Issuer. Sheltering Palms also granted the Issuer an assignment of rents and leases at Cross Lakes to further secure payment of the Bonds.
13. Sheltering Palms' audited financial statements (for Cross Lakes) show a net operating loss as well as a negative distribution to owner for years 1999 and 2000. (See Petitioner's Ex. 4). Further, Petitioner's IRS Form 990 (Return of Organization Exempt From Income Tax) denotes under Part V (List of Officers, Directors, Trustees and Key Employees) that no person listed received any type compensation in Tax Year 1999. (See Petitioner's Ex. 2).
14. Cross Lakes Apartments contains 212 residential units. Pursuant to Section 3 of IRS Revenue Procedure 96-32, the Petitioner must rent at least 75% of the units to residents who also qualify as "low-income" and may rent up to 25% of the units at market rate to persons who have incomes in excess of the low-income limit. Failure to comply with the terms of this Procedure could cause the revocation of the Petitioner's Federal 501(c)(3) status by the Internal Revenue Service.
15. The Department of Housing and Urban Development (HUD), in Income Limits for Low and Very Low-Income Families Under the Housing Act of 1937, identified the low-income threshold to be eighty (80) percent of the area median income.
16. In several attachments to Board Ex. A, the Petitioner presents unchallenged evidence that forty-seven (47) units are rented at market rate (22.17% of total units); one hundred ten (110) units are rented to persons whose income is no more than sixty (60) percent of area median income; and fifty-five (55) units are rented to persons whose income falls between sixty (60) percent and eighty (80) percent of area income. The result is that one hundred sixty five (165) of the two

hundred twelve (212) units are rented or held for rent to persons whose income is no more than eighty (80) percent of area median income (77.83% of total units).

17. In regard to land, parcel 18 37-7AZ consists of 12.153 acres (See Petitioner Ex. 8) and parcel 18 37-7CZ consists of 27.97 acres (See Board Ex. A, Tab 2B). Therefore, the Cross Lakes Apartments complex consists of a total of 40.123 acres.

Conclusions of Law

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

Burden in General

2. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facia case. In order to establish a prima facia case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not

contradicted will remain sufficient.” *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998); *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.

6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting the exemption. In this appeal, Petitioner claims exemption under Ind. Code § 6-1.1-10-16 which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes. Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt from property taxation if it were a building. Ind. Code § 6-1.1-10-16(e).

7. In Indiana, 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 predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. See Ind. Code § 6-1.1-2-1.

9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).

10. 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.

11. 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)).

12. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

13. As a condition precedent to being granted an exemption under the charitable or educational purpose clause of the statute, the taxpayer must demonstrate that it provides “a present benefit to the general public . . . sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d 1247 (Ind. 1991)).

Charitable Purpose

14. Indiana courts broadly construe the term “charitable” as the relief of human want and suffering in a manner different from the everyday purposes and activities of man in general. *NAME*, 671 N.E. 2d at 221 (quoting *Indianapolis Elks Bldg. Corp. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 540, 251 N.E. 2d 673, 683 (Ind. App. 1969)).

15. “Charity” is not defined by statute, and the Tax Court looked to *Black’s Law Dictionary* to find the plain, ordinary, and usual meaning of “charity”; namely:

a gift for, or institution engaged in, public benevolent purposes. [It is a]n attempt in good faith, spiritually, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by donor or by instrumentality of charity.

Raintree Friends, 667 N.E. 2d at 813 - 14 (quoting *Black’s Law Dictionary*, 213 (5th ed. 1979)).

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

17. It is equally clear that “charity” must confer benefit upon the public at large or relieve the government of some of an obligation that it would otherwise be required to fill. *NAME*, 671 N.E. 2d at 221; *Foursquare Tabernacle*, 550 N.E. 2d at 854; *St. Mary’s Medical Center*, 534 N.E. 2d at 279. Relieving the government from an obligation that it would otherwise be required to fill can, in some circumstances, be seen as a benefit to the public at large.

Does Sheltering Palms qualify for property tax exemption?

18. Sheltering Palms claims a charitable exemption pursuant to Ind. Code § 6-1.1-10-16. To qualify for the requested exemption the Petitioner must present probative evidence that establishes a prima facie case that the property in question is “owned, occupied, and used by a person for * * * charitable purposes.” See Section 16. (a) (c) and (e).
19. Sheltering Palms has presented evidence that it is a nonprofit organization recognized as exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code. This serves as evidence that the property is “owned” by an entity for charitable purposes.
20. The next showing to be made is that the property is “occupied” for charitable purposes. The evidence supports Sheltering Palms’ claim that it occupies this property for the purpose of providing low-income housing for people in need of help.
21. The State has previously recognized that providing low-income housing may qualify as a charitable purpose. Low-income housing can, in some circumstances, be viewed as one of life’s basic necessities for the poor and distressed when it would not otherwise be available. See *Piedmont-Nantucket Cove, LLC v. Marion County PTABOA*, Petition number 49-500-98-2-8-00006,

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

22. Whether the property is “used” for a charitable purpose is determined by application of Ind. Code § 6-1.1-10-36.3(a) which states “* * * 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”.
23. Additionally, Indiana Courts have made application of Ind. Code § 6-1.1-10-36.3(a) controlling in determining whether property qualifies for tax exemption. See *NAME*, 671 N.E.2d at 218 and *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36 (Ind. Tax 2000).
24. Sheltering Palms presented probative evidence that its predominant and primary use of the property is to provide low-income housing in Anderson, Madison County, Indiana. See Findings of Fact § 10-17.
25. The burden then shifted to the PTABOA to rebut Sheltering Palms’ evidence. Since the PTABOA failed to appear at the hearing such rebuttal did not occur.
26. Based on the evidence, it is concluded that the predominant use of Sheltering Palms’ property at Cross Lakes has been and is the providing of housing for qualified low-income tenants in a manner that qualifies for a charitable property tax exemption pursuant to Ind. Code § 6-1.1-10-16.

What should be the amount of Sheltering Palms' exemption?

27. The current position of the State can be found in *Indiana Affordable Housing, Inc. v. Marion County Board of Tax Review (PTABOA)*, Petition number 49-700-00-2-8-00002, published March 12, 2002. In *Affordable Housing*, the State applied the IC 6-1.1-10-36.3, regarding proportional exemptions from property tax. In that matter, the Petitioner had claimed 100% exemption for low-income housing and the PTABOA had offered 75% based on the fact that the Petitioner rented 25% of its apartments at market rate. The State upheld the PTABOA decision, applying IC 6-1.1-10-36.3 to support the application of a proportional exemption from property tax.
28. *Moose Lodge*, in awarding an exemption based on the percentage the property was used for charitable purposes, also supports the application of a partial exemption for properties that have both charitable and non-charitable uses.
29. In applying this test to this Petition, the amount of the exemption granted should equal the percentage of units the property owner has committed to rent to low-income , i.e. seventy five (75) percent. The Petitioner is bound by an IRS requirement that it rent at least seventy five (75) percent of available apartments to qualified low-income and may rent the remaining twenty five (25) percent at market rate to any tenant
30. Although the evidence demonstrates that only 22% of the units were rented at market value as of December 31, 2000, there were several vacant apartments in the facility. Petitioner could rent some additional units at market rates and still be in compliance with the contractual and regulatory requirements affecting the property. Accordingly, the State grants an exemption for Tax Year 2000 of seventy five percent (75%) of improvements and personal property.

31. The exemption for land would normally be the same 75% as denoted above. However, pursuant to Ind. Code § 6-1.1-10-16(c)(2)(B)¹, the applicable statute on these facts, the exemption for land is limited to fifteen (15) acres.

The above stated findings and conclusions are issued in conjunction with and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review

¹ Now Ind. Code 6-1.1-10-16(d)(2)(C)