

REPRESENTATIVES FOR PETITIONER:

William D. Taylor, Owner
Pamela K. Taylor, Owner

REPRESENTATIVES FOR RESPONDENT:

Debbie Folkerts, Hamilton County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

T & T ENTERPRISES LLC)	
)	Petition for Review of Exemption, Form 132
Petitioner)	
)	Petition No: 29-013-03-2-8-00001
v.)	
)	County: Hamilton
HAMILTON COUNTY)	Township: Noblesville
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS)	Parcel No: 1111180000005002
)	
Respondent)	Assessment Year: 2003

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

February 6, 2004

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 was:

Whether 84.2% of the real property owned by T & T Enterprises LLC and leased by the not-for-profit Healthy Families of Hamilton County, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purpose.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Pamela Taylor, owner of T & T Enterprises LLC filed a Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 was filed on August 18, 2003. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued the Form 120 on August 8, 2003, denying the requested exemption.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was conducted on November 13, 2003 in Noblesville, Indiana before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were present at the hearing:

For the Petitioner:

William D. Taylor, Owner

Pamela K. Taylor, Owner

For the Respondent:

Debbie Folkerts, Hamilton County Assessor

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

For the Petitioner:

William Taylor

Pamela Taylor

For the Respondent:

Debbie Folkerts

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of the lease agreement between T & T Enterprises LLC and Healthy Families of Hamilton County, Inc.(Healthy Families), dated July 9, 2002.

Petitioner's Exhibit 2 – A copy of Donald and Jennie Walker's 2000 pay 2001 and 2001 pay 2002 real property maintenance cards.

Petitioner's Exhibit 3 – A copy of T & T Enterprises LLC income and expense statement for property leased to Healthy Families of Hamilton County, Inc.

For the Respondent:

None

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

Board Exhibit A – Form 132 petition, dated August 18, 2003.

Board Exhibit B – Notice of Hearing on Petition (Form 117), dated September 23, 2003.

8. The parties to the appeal agreed to waive the discovery provisions listed in Ind. Code § 6-1.1-15-4, which requires them to file statements of testimonial evidence and lists of witnesses and exhibits prior to the Board's hearing.
9. The subject property is located at 15510 Herriman Blvd., Noblesville, Noblesville Township, Hamilton County, Indiana.
10. The Hamilton County PTABOA denied exemption and determined the property to be 100% taxable for March 1, 2003.

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Ind. Code § 6-1.5-5-5.

State Review and Petitioner's Burden

13. The Board does not undertake to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax 1998).
14. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890

(Ind. Tax 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

15. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
16. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
17. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case.’ See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E.2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Constitutional and Statutory Basis for Exemption

18. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND. CONST. Art. 10, § 1.

19. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
20. 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) (non-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E. 2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

Basis of Exemption and Burden

21. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
22. 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 – 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. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E.2d 218 (Ind. Tax 1996).
23. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit will inure to the public by reason of the exemption. *See Foursquare Tabernacle*

Church of God in Christ v. State Board of Tax Commissioners, 550 N.E.2d 850, 854 (Ind. Tax 1990).

24. 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).

Discussion of Issue

Whether 84.2% of the real property owned by T & T Enterprises LLC and leased by the not-for-profit Healthy Families of Hamilton County, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purpose.

25. The Petitioner contends 84.2% of the real property should be exempt from property taxation. The Petitioner has a lease agreement with Healthy Families, a not-for-profit organization.
26. The Respondent contends that the subject property should be 100% taxable because the owner leases the property for a profitable gain, therefore the property fails to meet the criteria of owned, occupied and used for charitable purpose.
27. The applicable rules governing this issue are:

Ind. Code § 6-1.1-10-16(a)

All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.

Ind. Code § 6-1.1-11-7(a)

The county property tax assessment board of appeals, after careful examination, shall approve or disapprove each exemption application and shall note its action on the application.

Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners, 686 N.E. 2d 954 (Ind. Tax 1997)

“[A] piece of property must be owned for charitable purposes; a piece of property must be occupied for charitable purposes; a piece of property must be used for charitable purposes. Once these three elements have been met, regardless of by whom, the property can be exempt from taxation.”

28. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioner stated that they were not in the real estate business. The subject property just happens to be beside another building they own. They purchased the building because they wanted to choose their neighbors. They didn't buy the building to make a profit. *W. Taylor testimony.*
 - b. The Petitioner testified they have a three-year lease agreement with Healthy Families, a not-for-profit organization, to lease 3090 square feet of office space. *Petitioner's Ex. 1 and W. & P. Taylor testimony.*
 - c. The Petitioner testified that the County Auditor's office verified that if T & T Enterprises rented to a not-for-profit organization that the subject property would be exempted from property taxation. *P. Taylor testimony*
 - d. The Petitioner stated that when Healthy Families rented office space from Don Walker that Mr. Walker's property was exempt from property taxation. *Petitioner's Ex. 2 and P. Taylor testimony*
 - e. The Petitioner testified Healthy Families pays \$2,575 per month or \$30,900 per year rent for the 3090 square foot area. The lease payment covers the mortgage payment, property insurance, and maintenance of the building and grounds only. *Petitioner's Ex. 1 & Petitioner's Ex. 3 and P. Taylor testimony.*
 - f. The Respondent stated as of January 1, 2002, exemption applications are filed in the County Assessor's office and that upon reviewing all exemption applications the PTABOA denied the subject property as it did not meet the criteria set forth

by *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997) which states that property must be owned for a charitable purpose, used for a charitable purpose, and occupied for a charitable purpose. *Folkerts testimony*.

- g. The Respondent contends while unity of ownership with occupancy and use are not required, these limits prevent an entity from leasing property to another for either party's profit and then claiming exemption. *Board Ex. A and Folkerts testimony*.

Analysis of the Issue

- 29. The Petitioner claims exemption under Ind. Code § 6-1.1-10-16 for charitable purposes. Pursuant to this section, property is exempt from taxation "if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes."
- 30. The Petitioner claims by leasing to Healthy Families, a not-for-profit organization, the intention of the owner is clear, that the 3090 square feet office space shall be used and occupied by tenant solely for charitable purposes. *Petitioner's Ex. 1 and W. & P. Taylor testimony*.
- 31. The Tax Court has held that Ind. Code § 6-1.1-10-16 does not require unity of ownership, occupation, and use of property, but that the statute required ownership, occupancy, and use in furtherance of charitable purpose. *Sangralea*, 686 N.E. 2d at 959.
- 32. The parties agree that 84.2% of the subject property is occupied and used for a charitable purpose.
- 33. The issue is whether the Petitioner owns the property for a charitable purpose.

34. To determine whether the Petitioner qualifies for exemption, the Board must determine the Petitioner's purpose for owning the property. Is the property owned as an investment or with a motive for profit? Does the Petitioner benefit from either the property tax exemption or operation of the property?
35. In this case, Healthy Families is being charged a monthly rent of \$2,575, or \$30,900 annually. The Petitioner shows costs related to the property to be \$29,583. The Petitioner did not present financial statements or a detailed list of expenses. The Petitioner stated that the rent charged is based on the mortgage. The Petitioner did not know what the average rents were for the area, but believes the rent charged to Healthy Families is below market value. The Petitioner stated that the subject property was purchased so the Petitioner could choose their neighbors.
36. Based on the testimony and evidence presented, it appears the Petitioner's purpose for owning the property is to be able to choose their neighbors. The Petitioner does benefit by charging rents that cover the mortgage and expenses of the building. The Petitioner is building equity in the property. (When the mortgage is paid off the value of the property becomes an asset to the owner, not any charitable organization.) Charging rents that are below market rent does not make the Petitioner charitable.
37. The Petitioner has failed to show the subject property is owned for charitable purpose. Even though the parties agree that the property is used and occupied for a charitable purpose, the statute requires that property be owned for a charitable purpose as well.
38. Finally, the Petitioner contends that prior to March 1, 2003, Healthy Families rented office space from Don Walker, a for-profit entity, and that Mr. Walker received a property tax exemption. The Petitioner claims that it verified with the Auditor's office that if the subject property was rented by a not-for-profit entity that it would be entitled to property tax exemption. *Petitioner's Ex. 2 and P. Taylor testimony.*

39. Whether Don Walker's properly qualified for an exemption can only be determined after a hearing and full consideration of all facts relevant to that application. The propriety of Mr. Walker's qualification is not before the Board, and for these reasons, Mr. Walker's exemption cannot be considered determinative to this decision.
40. The burden for exemption rests with the Petitioner to prove that the subject property falls within the statutory requirements set forth by the legislature. The Petitioner did not, by a preponderance of the evidence, prove that the subject property was owned for a charitable purpose. Accordingly, the PTABOA's determination to deny the exemption application is upheld.

Summary of Final Determination

Whether 84.2% of the real property owned by T & T Enterprises LLC and leased by the not-for-profit Healthy Families of Hamilton County, Inc. qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under the classification of charitable purpose.

41. The Petitioner did not prevail by a preponderance of the evidence on this issue. The PTABOA's determination to deny the exemption application is upheld.

The above stated findings of fact and conclusions of law 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 _____, 2004.

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.