

REPRESENTATIVE FOR PETITIONER:

Robert Hicks  
HALL, RENDER, KILLIAN, HEATH & LYMAN, P.S.C.  
Indianapolis, IN

REPRESENTATIVES FOR RESPONDENT:

Gail Sims, Jefferson County Assessor, Jefferson County PTABOA

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

TAU CHAPTER HOUSE	)	Petition No.: 39-012-02-2-8-00003
CORPORATION,	)	
	)	
Petitioner	)	County: Jefferson
	)	
v.	)	Township: Hanover
	)	
	)	Parcel Nos.: 0120021401
	)	0120016501
JEFFERSON COUNTY	)	
PROPERTY TAX ASSESSMENT	)	
BOARD OF APPEALS,	)	
	)	
Respondent	)	Assessment Year: 2002
	)	

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

**October 6, 2003**

**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

### Issues

1. The issues presented for consideration by the Board was:  
*Whether 100% of the subject property should be exempt from property taxation.*

### Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Robert Hicks, HALL, RENDER, KILLIAN, HEATH & LYMAN, P.S.C., 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 December 18, 2002. The determination of the Jefferson County PTABOA was issued on November 19, 2002.

### Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on July 10, 2003 in Madison, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

Robert Hicks, Attorney

Timothy McGeath, President of Tau Chapter House Corporation

Katherine Lowe Schneider, Hanover College Associate Dean of Students  
and Greek Life

Charles Edward Gabe (via phone), Editor and Director of Communication  
for the International Phi Delta Kappa.

For the Respondent:

Gail Sims, Jefferson County Assessor  
Elbert Hinds, President, Jefferson County PTABOA  
George Thomas, Jefferson County PTABOA  
James Martin, Jefferson County PTABOA  
Delores Barnes, Jefferson County PTABOA

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

For the Petitioner:

Timothy McGeath, President of Tau Chapter House Corporation  
Katherine Lowe Schneider, Associate Dean of Students and Greek Life  
Charles Edward Gabe (via phone), Editor and Director of Communication  
for the International Phi Delta Kappa.

For the Respondent:

Gail Sims, Jefferson County Assessor  
Elbert Hinds, President, Jefferson County PTABOA  
George Thomas, Jefferson County PTABOA  
James Martin, Jefferson County PTABOA  
Delores Barnes, Jefferson County PTABOA

6. The following exhibits were presented:

For the Petitioner:

**Petitioner's Exhibit A** – A copy of the intended witness and exhibit list dated June 25, 2003.

**Petitioner's Exhibit B** – A copy of the Application for Property Tax Exemption, Form 136, along with the Articles of Incorporation, Bylaws, Balance Sheets, and Summary of Income and Expense for Tau Chapter House Corporation.

**Petitioner's Exhibit C** – A copy of Application for Recognition of

Exemption Under Section 501(a), 501(c)(2)

**Petitioner's Exhibit D** - A copy of a letter from the Internal Revenue Service approving Tau Chapter House Corporation as a 501(a) entity.

**Petitioner's Exhibit E** – A copy of the lease agreement between Tau Chapter House Corporation and Hanover College.

**Petitioner's Exhibit F** – A copy of the Agreement Between Hanover College and Tau Chapter House Corporation.

In addition, the Petitioner presented in a timely manner the following additional evidence:

**Petitioner's Exhibit G** – Copies of Indiana property tax exemption cases the Petitioner believes to be relevant to the subject case.

For the Respondent:

**Respondent's Exhibit A** – A copy of the exchange of witness and exhibit list, dated June 18, 2003. Sent via e-mail.

**Respondent's Exhibit B** – A report prepared by Gail Sims for the hearing July 10, 2003.

**Respondent's Exhibit C** – A copy of Indiana Code § 6-1.1-10-24 referring to College fraternities and sororities.

**Respondent's Exhibit D** – A copy of Form 132 filed on behalf of Tau Chapter House Corporation.

**Respondent's Exhibit E** – A copy of Form 136 filed on behalf of Tau Chapter House Corporation.

**Respondent's Exhibit F** – A copy of a letter dated June 23, 2003 from Phi Gamma Delta to Tau Chapter House Corporation located at Hanover College.

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

**Board Ex. A** - Copy of the Form 132.

**Board Ex. B** - Notice of Hearing dated February 27, 2003.

**Board Ex. C** - Copy of Request for Continuance from the Petitioner dated March 20, 2003.

**Board Ex. D** - Copy of letter granting the continuance dated March 24, 2003.

**Board Ex. E** - Notice of Hearing dated May 21, 2003.

**Board Ex. F** - Copy of Request for Additional Evidence dated July 10, 2003.

8. The County accepted the Petition for both parcel #0120021401 for vacant land, and #0120016501 for the improvement. Only parcel #0120021401 is listed on the Petition 132, but both parties agreed on the record, at the hearing, that the Petition was filed for both parcels. There was an omission of one parcel number on the part of the Petitioner in filing the Form 132.

#### **Jurisdictional Framework**

9. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

#### **State Review and Petitioner's Burden**

10. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
11. 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 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

12. 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.]
13. 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.]
14. 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 State The State will not change the determination of the County Property Tax (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 State 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**

15. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
16. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.

17. 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**

18. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
19. 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).
20. 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.
21. 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)).

22. 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).
23. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), 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 (Ind. Tax 1991)).

### **Discussion of Issue**

#### *Whether 100% of the subject property should be exempt from property taxation.*

24. The Petitioner contends that all of the subject property should be 100% exempt from property taxation, as it is leased to Hanover College for an interim period and is used to house students of Hanover College.
25. The Respondent contends that the property is not being used for the intended purpose of housing a fraternity. The Respondent further contends that the lease agreement between the fraternity and Hanover College puts the fraternity in the position of being a landlord and making money.
26. The applicable rule(s) governing this Issue 1 is:
- Indiana Code § 6-1.1-10-16 Buildings and land used for educational, literary, scientific, religious, or charitable purposes**  
(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.

#### **Indiana Code § 6-1.1-10-24 College fraternities or sororities**



- (1) a tract of land not exceeding one (1) acre;
- (2) the improvements situated on the tract of land; and
- (3) all personal property.

(b) This exemption does not apply unless:

- (1) the fraternity and sorority is connected with, and under the supervision of a college, university, or other educational institution; and
- (2) the property is used exclusively by the fraternity and sorority to carry out its purpose.

27. Evidence and testimony considered particularly relevant to this determination include the following:

A. The Tau Chapter House Corporation is the owner of a fraternity house situated on the campus of Hanover College. *Timothy McGeath*.

B. In the agreement between Hanover College and Tau Chapter House, the following guidelines are listed:

1. The agreement states it is the responsibility of the Fraternity to keep the interior of the building in a reasonably attractive and functional condition conducive to the public and students.
2. The Fraternity shall be responsible for the conduct of the residents and guests in the fraternity house in accordance with the rules and policies of the College.
3. College officials shall have the right to enter the premises at any and all times for the purposes of monitoring and enforcing the rules and policies of the College.
4. The College will supply and maintain all door locks and will be granted access to the fraternity house as it deems necessary.
5. It is agreed that, should the number of residents in the house ever be less than sixty-five percent (65%) of the full occupancy rate of the house, the College reserves the right to assign non-fraternity students to the unit or reassign the Fraternity members to the institutional residence halls.
6. It is agreed that the structure will not be occupied during vacation periods.

7. It is agreed the College will reserve the right to approve any changes to the structure of the building or to the grounds before they are undertaken in order to ensure they are in keeping with the character of the campus. The College will reserve the right to approve the cutting of any trees on the site.
8. The College has an opportunity to use or buy the property if the fraternity is no longer in existence.

*Petitioner's Ex. F, Timothy McGeath..*

- C. The College and Tau Chapter House Corporation have an intent on the Chapter being reinstated and this has led to the extended lease agreement between the College and Tau Chapter. *Timothy McGeath.*
- D. Tau Chapter took the full four years to re-establish in order for all of the original members to be graduated or gone from the College at the time of re-establishment. *Timothy McGeath.*
- E. The students occupying the fraternity house sleep, eat and study as regular dormitory students. The housing is used just like any other dormitory on campus at this time. *Katherine Schneider.*
- F. Tau Chapter has been approved for re-instatement as a fraternity and should be up and running again by the Fall of 2004. *Charles Gabe.*
- G. The use of the facility by the College for housing women students was temporary, with the fraternity returning always in mind. The current use of the building to house students by the College is consistent with the fraternity's use of the building. *Charles Gabe.*

#### Analysis of the ISSUE

28. The Petitioner stated that the subject property should be 100% exempt. The Petitioner based his opinion on the fact that the building will be owned, used and occupied under educational purposes. The subject building is a fraternity house used as a dormitory to house students attending Hanover College. The Petitioner cites educational housing purposes as the reason for the exemption.

29. In *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997), the Tax Court held that tax exemptions “[a]re strictly construed against the person claiming the exemption.” The Tax Court has also held that the burden is upon the person claiming the exemption to show that the property falls specifically within the statute under which exemption is being sought. (*Indiana Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987)).
30. In *Sangrlea*, the Tax Court also held that the statute (Indiana 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. *Sangrlea*, 686 N.E. 2d at 959.
31. Based on *Sangrlea*, there are three (3) requirements in determining entitlement to an exemption: (1) Whether the property is used for a tax-exempt purpose; (2) Whether the property is occupied for a tax-exempt purpose; and (3) Whether the property is owned for a tax-exempt purpose.
32. The parties agree that the subject property is owned for an exempt purpose, namely, a fraternity house under Indiana Code § 6-1.1-10-24, and also for educational activities as required by Indiana Code § 6-1.1-10-16.
33. The second and third requirements, whether the property is used for an exempt purpose, and whether the property is occupied for an exempt purpose, are in dispute.
34. While Indiana Code § 6-1.1-10-24 states “the property is owned exclusively by the fraternity or sorority to carry out its purpose,” Indiana Code § 6-1.1-10-16 states “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.” A property can be deemed exempt from taxation even if only one of the statutes is met.
35. In 2000, Tau Chapter was disbanded for inappropriate behavior and decided to lease the

subject property to Hanover College to use as a student dormitory until such time that Tau Chapter is allowed to be reinstated and occupy the facility. Hanover College is an educational facility that is tax-exempt and falls under the requirements of Indiana Code § 6-1.1-10-16. The subject property is owned by the fraternity organization Tau Chapter House Corporation, used by Hanover College as the lessee, and is occupied for educational purposes by Hanover College as the lessee.

36. Tau Chapter argues that unity of ownership, occupation, and use of the property by a single entity is not required by the language of the Indiana Codes.
37. Once again, according to *Sangrilea*, “a piece of property must be owned, occupied and used for charitable purposes (under the same statute, educational purposes apply). Once these three elements have been met, regardless of by whom, the property can be exempt from taxation.”
38. Because a property’s exempt status is tied to its occupancy, it is clear that Tau Chapter is entitled to an exemption. Tau Chapter owned the property and ensured it was used as a fraternity organization for educational purposes. Tau Chapter does not own the property as investment property or with motive for profit. The use and occupation of the property by the Lessee is in furtherance of Tau Chapter’s exempt purposes.
39. Tau Chapter contracted with the Lessee to operate the property in a manner consistent with Tau Chapter’s educational purposes. The Lessee and Tau Chapter have simply come to an agreement as to the method of producing an educational benefit from the property, namely, the use and occupancy as a dormitory for college students.
40. No profit is made on the venture and an educational purpose is accomplished. Therefore, the property is owned, occupied, and used for educational purposes as stated in Indiana Code § 6-1.1-10-16.
41. The Petitioner has met the burden of proof by showing that the subject property is owned, occupied, and used for educational purposes.

## Summary of Final Determination

42. The Petitioner prevailed by a preponderance of the evidence on this issue. The subject property is 100% exempt.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Chairman, 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.**