

REPRESENTATIVES FOR PETITIONER:

Brent A. Auberry, Baker & Daniels, LLP
Donald Morgan, Baker & Daniels, LLP
Michael P. Allen, Baker & Daniels, LLP

REPRESENTATIVES FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tipton County Memorial Hospital	)	Petition Nos.:	80-001-08-2-8-00001
Foundation, Inc. and Tipton County	)		80-001-09-2-8-00001
Health Care Foundation, Inc.)		
)		
Petitioner,	)	Parcel No.:	80-11-14-200-009.000-002
)		
v.)		
	)	County:	Tipton
Tipton County Assessor,	)	Township:	Cicero
)		
Respondent.)		
	)	Assessment Years:	2008 and 2009

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

December 13, 2010

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 property is exempt from taxation in 2008 and 2009 pursuant to Indiana Code § 6-1.1-10-16 because it is predominantly used for charitable purposes.

Procedural History

2. On March 17, 2008, Michael Harlowe, President and Chief Executive Officer of Tipton County Memorial Hospital Foundation, Inc., filed a Form 136, Application for Property Tax Exemption for 2008 on behalf of the Petitioner, seeking an exemption for the Autumnwood Village Senior Living Community (Autumnwood Village or the Village). On January 30, 2009, the Tipton County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 120, Notice of Action on Exemption Application, finding the Petitioner's real property to be 100% taxable. On February 27, 2009, Brent A. Auberry of Baker & Daniels LLP, as representative of the Tipton County Memorial Hospital Foundation, Inc., filed a Form 132, Petition for Review of Exemption, claiming the Petitioner's real property should be 100% exempt for 2008 under Indiana Code § 6-1.1-10-16.
3. On May 15, 2009, Vernon J. Schmaltz, Vice President of Finance and Chief Financial Officer of Tipton Memorial Hospital, on behalf of the Tipton County Health Care Foundation, Inc.,¹ filed a Form 136, Application for Property Tax Exemption on behalf of Tipton County Health Care Foundation, Inc., seeking an exemption for the Autumnwood Village for the March 1, 2009, tax assessment. On March 15, 2010, the PTABOA issued

¹ On December 30, 2008, the Tipton County Memorial Hospital Foundation, Inc. filed Articles of Amendment and Restatement with the Indiana Secretary of State, whereby the name of the corporation changed to the Tipton County Health Care Foundation, Inc. *Petitioner Exhibit 1; Lee testimony*. Therefore in these findings the property under appeal will be referred to as the Tipton County Health Care Foundation, Inc.

a Form 120 finding the Petitioner's real property to be 100% taxable. On April 13, 2010, Mr. Auberry filed a Form 132 claiming the Petitioner's real property should be 100% exempt for 2009 under Indiana Code § 6-1.1-10-16.

Hearing Facts and Other Matters of Record

4. Pursuant to Indiana Code § 6-1.1-15-4, 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 July 15, 2010, in Tipton, Indiana.
5. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Vernon J. Schmaltz, Vice President of Finance and CFO, Tipton Memorial Hospital,
Penny A. Lee, Director of Development, Tipton Memorial Hospital,
Sherri C. Dawson, Executive Director, Autumnwood Village Senior Living Community,

For the Respondent:²

Linda L. Altherr, Tipton County Assessor
Edward O. Quear, PTABOA Vice President
Gene Shadday, PTABOA Member
Ronald Fetters, PTABOA Member
Virginia M. Baker, PTABOA President

6. The Petitioner submitted the following exhibits:³

² Ms. Baker, Mr. Quear, Mr. Shadday and Mr. Fetters did not present any testimony at the hearing.

³ Exhibits 11B, 11C, 11D, 13A, 13B, 13C, 16, 18 and 37A contain information deemed confidential pursuant to Indiana Code § 6-1.1-35-9. The Respondent's counsel objected to Petitioner's Exhibits 4A, 4C, 5A, 5B, 5C, 5D, 6A, 6B, 7A, 7B, 7C, 8A, 8B, 8C, 9A, 9B, 10A, 10B, 10C, 10D, 11A, 11B, 11D, 12A and 12B. *Meighen argument.* Ms. Meighen argued that the Tipton Hospital Board of Trustee minutes and the Foundation's fundraising information and funds are irrelevant because they do not relate to the property under appeal. *Id.* The Respondent's objections, however, go to the weight of the evidence rather than its admissibility. The Board therefore admits the exhibits over the Respondent's objections. *See* 52 IAC 2-7-2(c).

- Petitioner Exhibit 1 – Certificate of Incorporation of Tipton County Health Care Foundation, Inc., dated May 15, 2009, Certificate of Incorporation for Tipton County Memorial Hospital Foundation, Inc., dated August 26, 1987, Articles of Incorporation for Tipton County Memorial Hospital Foundation, Inc., dated August 26, 1987, Articles of Amendment of the Articles of Incorporation of Tipton County Memorial Hospital Foundation, Inc., dated June 20, 2005, and Amended and Restated Articles of Incorporation of Tipton County Health Care Foundation, Inc., dated December 18, 2008,
- Petitioner Exhibit 2 – Tipton County Memorial Hospital Foundation, Inc.’s Bylaws, dated December 7, 1987, and Tipton County Health Care Foundation, Inc.’s Amended and Restated Bylaws, dated December 18, 2008,
- Petitioner Exhibit 3 – Internal Revenue Service website “Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,*” for Tipton, Indiana, dated July 2, 2010,
- Petitioner Exhibit 4 – Tipton Hospital Minutes of the Board of Trustees,
- Petitioner Exhibit 5 – Tipton Hospital Foundation Golf Classic flyers,
- Petitioner Exhibit 6 – Tipton Hospital Foundation Barn Dance flyers,
- Petitioner Exhibit 7 – Tipton Hospital Foundation Porker Run flyers,
- Petitioner Exhibit 8 – Tipton Hospital Foundation Pacesetter Campaign flyers,
- Petitioner Exhibit 9 – Tipton Hospital Foundation “Caring Hearts Coat Drive” flyer and overview,
- Petitioner Exhibit 10 – Tipton Hospital Foundation “Project Connect” newsletters and graduates report,
- Petitioner Exhibit 11A – Tipton Hospital Foundation website on charitable funds and activities, dated June 21, 2010,
- Petitioner Exhibit 11B – Tipton Hospital Foundation Summary of Hilton Hobbs Hospital and Healthcare Endowment **(redacted and confidential copy)**,
- Petitioner Exhibit 11C – Tipton Hospital Foundation Overview of Funds, dated April 2009 **(confidential)**,
- Petitioner Exhibit 11D – Tipton Hospital Foundation Overview of Funds, dated April 2010 **(confidential)**,
- Petitioner Exhibit 12A – A copy of the Tipton Hospital Foundation donation thank you letter for the Tipton Hospital Scholarship Fund,
- Petitioner Exhibit 12B – A copy of the Tipton Hospital Foundation donation thank you letter for the Hilton Hobbs Hospital and Healthcare Endowment,

- Petitioner Exhibit 13A – Tipton Hospital Foundation financial spreadsheet, dated December 31, 2007, **(confidential)**,
- Petitioner Exhibit 13B – Tipton Hospital Foundation financial spreadsheet, dated December 31, 2008, **(confidential)**,
- Petitioner Exhibit 13C – Tipton Hospital Foundation financial spreadsheet, dated December 31, 2009, **(confidential)**,
- Petitioner Exhibit 14 – Property record card for the subject property,
- Petitioner Exhibit 15A – Autumnwood Village floor plan maps,
- Petitioner Exhibit 15B – Aerial map of Autumnwood Village, Miller’s Merry Manor and Tipton Memorial Hospital,
- Petitioner Exhibit 16 – Management and Consulting Agreement between Tipton County Memorial Hospital and Miller’s Health Systems, Inc., dated September 1, 2005, **(confidential)**,
- Petitioner Exhibit 17 – Autumnwood Village Apartment Contract Agreement,
- Petitioner Exhibit 18 – Triple Net Lease Agreement between Tipton County Memorial Hospital Foundation, Inc., and Miller’s Health Systems, Inc., dated January 1, 2008, **(confidential)**,
- Petitioner Exhibit 19 – Autumnwood Village Assisted Living Facility Resident Agreement,
- Petitioner Exhibit 20A – Autumnwood Village Priority Application for Residency,
- Petitioner Exhibit 20B – Autumnwood Village Preadmission Evaluation for Assisted Living,
- Petitioner Exhibit 20C – Autumnwood Village Resident Admission Evaluation,
- Petitioner Exhibit 20D – Autumnwood Village New Resident Orientation Checklist,
- Petitioner Exhibit 20E – Autumnwood Village New Resident Admission Form,
- Petitioner Exhibit 20F – Autumnwood Village Resident Information Form,
- Petitioner Exhibit 20G – Autumnwood Village Resident Apartment Inspection Form,
- Petitioner Exhibit 20H – Autumnwood Village Resident Profile and Medication Forms,
- Petitioner Exhibit 20I – Autumnwood Village Readmission Recommendation Form,
- Petitioner Exhibit 20J – Autumnwood Village Pendant Acceptance Form,
- Petitioner Exhibit 20K – Autumnwood Village Assisted Living Apartments “Things to Bring” Form,
- Petitioner Exhibit 20L – Autumnwood Village Injury Release Form,
- Petitioner Exhibit 21 – Autumnwood Village Resident Handbook,
- Petitioner Exhibit 22 – Autumnwood Village Residents Rights,

- Petitioner Exhibit 23 – Interior and exterior photographs of Autumnwood Village,
- Petitioner Exhibit 24 – Miller’s Merry Manor “Living Well Fitness Club” brochure,
- Petitioner Exhibit 25 – Autumnwood Village’s activities calendars,
- Petitioner Exhibit 26 – Tipton Hospital, Inc., Certificate of Incorporation and Articles of Incorporation, dated June 9, 2008,
- Petitioner Exhibit 27 – Tipton Hospital, Inc., Amended and Restated Bylaws,
- Petitioner Exhibit 28 – Miller’s Senior Living Community sample menus,
- Petitioner Exhibit 29 – Autumnwood Village’s potential resident information packet,
- Petitioner Exhibit 30 – Autumnwood Village’s “Assisted Living Apartments” brochure,
- Petitioner Exhibit 31 – Autumnwood Village newspaper advertisement, dated June 17, 2010,
- Petitioner Exhibit 32 – Miller’s Health Systems Inc., website information relating to the company’s history, locations and assisted living facilities, services and amenities,
- Petitioner Exhibit 33 – Miller’s Health Systems, Inc., “Assisted Living Internal Marketing Policies & Procedures” manual,
- Petitioner Exhibit 34 – Application for Property Tax Exemption – Form 136, dated March 17, 2008, for Tipton County Memorial Hospital Foundation,
- Petitioner Exhibit 35 - Exemption denial letter from Linda Altherr, Tipton County Assessor, and Notice of Action on Exemption Application – Form 120, dated January 30, 2009, for Tipton County Memorial Hospital Foundation,
- Petitioner Exhibit 36 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, dated February 27, 2009, for Tipton County Memorial Hospital Foundation, Inc.,
- Petitioner Exhibit 37 – Application for Property Tax Exemption – Form 136, dated May 15, 2009, for Tipton County Health Care Foundation, Inc.,
- Petitioner Exhibit 37A – Tipton County Memorial Hospital “Notes to Combined Financial Statements” for December 31, 2007, and 2008, (**confidential**),
- Petitioner Exhibit 38 – Notice of Action on Exemption Application – Form 120, dated March 15, 2010, for Tipton County Health Care Foundation, Inc., and property record card for the subject property,
- Petitioner Exhibit 39 – Petition to the Indiana Board of Tax Review for Review of Exemption – Form 132, dated April 13,

2010, for Tipton County Health Care Foundation, Inc.,
Petitioner Exhibit 40 – Petitioner’s “Memorandum in Support of Requests for Exemption”.

7. The Respondent submitted the following exhibit:

Respondent Exhibit A – Indiana Secretary of State website page dated June 20, 2010, showing Miller’s Health Systems, Inc. is a “For-Profit Domestic Corporation.”

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

Board Exhibit A – Form 132 petitions with attachments,
Board Exhibit B – Notices of Hearing on Petitions,
Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
Board Exhibit D – Hearing sign-in sheets.

9. The property under appeal is a forty unit, assisted living facility on a 1.94 acre parcel of land located at 1102 South Main Street, Tipton, in Cicero Township, Tipton County.

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

11. For 2008 and 2009, the PTABOA determined the Petitioner’s real property was 100% taxable.

12. For 2008 and 2009, the Petitioner contends that its real 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 contends that its real property should be exempt under Indiana Code § 6-1.1-10-16 because the property is owned, occupied and used for charitable purposes.
22. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner's witness, Vernon Schmaltz, testified that in 1998 the Tipton County Memorial Hospital Board of Trustees constructed Autumnwood Village as an assisted living facility. *Schmaltz testimony; Petitioner Exhibit 14*. According to Mr. Schmaltz, the Tipton County Memorial Hospital Board of Trustees transferred the property to the Tipton County Hospital Foundation, Inc., on December 20, 2007. *Id.; Petitioner Exhibits 4B and 14*. The Foundation operated under the name of Tipton Memorial Hospital Foundation, Inc., from August 26, 1987, to December 30, 2008, when it changed its name to Tipton County Health Care Foundation, Inc. (hereinafter referred to as the Foundation). *Schmaltz testimony; Petitioner Exhibit 1 at 20*.
 - B. The Petitioner's witness, Penny Lee, testified that the Foundation is an Indiana not-for-profit corporation affiliated with Tipton Hospital.⁴ *Lee testimony; Petitioner Exhibits 1, 34 and 37*. According to Ms. Lee, the Foundation promotes and supports "the health and well-being" of individuals in Tipton County. *Lee testimony*. In addition, Ms. Lee testified, the mission of the Foundation is to operate exclusively for charitable, educational or scientific purposes within the meaning of

⁴ Mr. Schmaltz testified Tipton County Memorial Hospital changed its name to Tipton Hospital, Inc., on June 9, 2008. *Schmaltz testimony*. Tipton Hospital is a non-profit corporation whose mission is "[t]o maintain a hospital for the care of persons suffering from illnesses, injuries or disabilities that require the patients receive hospital care. The Corporation will be operated for the benefit of and to promote the health of a broad cross-section of the community; to recruit physicians to meet the needs of the community; to provide services for sick and disabled persons, including the needy and poor of every race, creed, nationality and color; to prevent, provide care for and treat human ailments and diseases of all kinds and descriptions, all in support and furtherance of Section 501 (c)(3) status of the Member and in compliance with the Member's mission and values." *Id.; Petitioner Exhibit 27*.

Section 501(c)(3) of the Internal Revenue Code.⁵ *Lee testimony; Petitioner Exhibit 1.*

C. Ms. Lee testified that the Foundation conducts several fundraising activities each year, such as a golf classic, barn dance, Porker Run, employee Pacesetter Campaign, Caring Hearts Coat Drive and Project Connect. *Lee testimony; Petitioner Exhibits 5A-5D, 6A-6B, 7A-7C, 8A-8C, 9A-9B and 10A-10D.* The Foundation also accepts cash donations, honorarium and memorial gifts to its scholarship fund and Hilton Hobbs Hospital and Healthcare Endowment. *Lee testimony; Petitioner Exhibits 11A-11B and 12A-12B.* According to Ms. Lee, the Foundation's proceeds were used to fund such items as updating the Tipton Hospital Chapel, purchasing a video colposcope, building a walking trail by the hospital, purchasing a Wii game system for therapy services, installing a bench in the Memorial Garden, performing ambulance assessments, and for Project Connect and student scholarships. *Lee testimony.* Upon cross examination, however, Ms. Lee admitted that the money raised by the Foundation from its fundraising activities or donations are invested and managed by the Tipton County Foundation. *Lee testimony.* According to Ms. Lee, none of the proceeds raised by the Foundation go directly to Autumnwood Village or its residents. *Id.*

D. Mr. Schmaltz, the CFO of Tipton Memorial Hospital, testified that Autumnwood Village is a forty unit assisted living facility owned by the Foundation to promote a continuum of care within Tipton County for elderly persons.⁶ *Schmaltz testimony; Petitioner Exhibit 15A.* The Executive Director at Autumnwood Village, Ms. Dawson, testified that, although the units are marketed to persons 55 years of age or

⁵ Ms. Lee testified the Foundation is governed by the same Board of Trustees as the Tipton Hospital. *Lee testimony; Petitioner Exhibits 4A and 4C.* According to Ms. Lee, the expenses of the Foundation were paid by Tipton Hospital, thereby allowing 100% of the Foundation's contributions and donations to go toward the Foundation's charitable mission. *Lee testimony.*

⁶ Ms. Dawson testified that the Tipton Hospital, Miller's Merry Manor nursing home and the "County Home" are all located close to Autumnwood Village. *Dawson testimony; Petitioner Exhibit 15B.* According to Ms. Dawson, the close proximity of all these facilities promotes the continuum of care available to the elderly. *Dawson testimony.*

older, the average age of Autumnwood’s residents was 85 or 86.⁷ *Dawson testimony; Petitioner Exhibits 29 – 31 and 33.* According to Ms. Dawson, Autumnwood Village employs approximately twenty staff members that assist residents with their daily activities. *Dawson testimony.* Those employees include an on-call nurse who performs health and wellness screenings and functional assessments on residents, personal attendants that do night and day wellness checks on residents and assist with showering and medications, an activities director, and maintenance, janitorial, food service and housekeeping staff. *Dawson testimony; Petitioner Exhibits 19 and 20A – 20.*

E. Ms. Dawson testified that Autumnwood Village residents have access to a private dining room for personal celebrations and social activities with family members or guests. *Dawson testimony; Petitioner Exhibit 23B.* The residents may also participate in arts, crafts, exercise, bingo, tea parties, sing alongs, and bible study and church services and the beauty salon offers a variety of services such as pedicures and hair cuts and styling. *Dawson testimony; Petitioner Exhibits 23C, 23D, 23O, 23P and 25A – 25S.* Autumnwood Village offers a wheelchair accessible laundry room with automatic soap and softener dispensers, low folding tables, carts and a non-slip floor. *Dawson testimony; Petitioner Exhibits 23E – 23G.* In addition, the facility has a resident’s dining room offering breakfast, lunch and dinner menus, a lobby area with a television used for movie night, a seating area for visiting with guests, and a nurse’s station. *Dawson testimony; Petitioner Exhibits 23Q – 23T and 28A- 28B.* Further, the Village has available for rent two guest rooms for visiting family members. *Dawson testimony.* Autumnwood Village also provides transportation for its residents to doctor’s appointment, shopping and Village sponsored outings such as trips to the zoo, Tipton Park, Beef ‘n Boards and Cracker Barrel.⁸ *Dawson testimony; Petitioner Exhibits 23Y- 23AA.*

⁷ Prior to January 1, 2008, Autumnwood Village was marketed to persons 62 years or older. *Dawson testimony.*

⁸ Transportation is also provided to Miller’s Merry Manor’s “Living Well Fitness Club” where residents of Autumnwood Village can take advantage of the exercise equipment, a therapy pool and aquatic programs free of charge. *Petitioner Exhibit 24; Dawson testimony.*

F. Moreover, Ms. Dawson testified, the Autumnwood Village apartments have one touch telephones with larger buttons and the bathrooms are equipped with larger showers, grab bars and shower chairs. *Dawson testimony; Petitioner Exhibits 23I – 23K*. In addition, the facility has wider doorways and hallways to allow wheelchair and walker access. *Dawson testimony; Petitioner Exhibits 23H, 23L and 23M*. Autumnwood Village also provides seating inside the elevator, weather alert radios, resident emergency alert pendants, an emergency alert telephone system and levered door handles for easy opening and closing. *Dawson testimony; Petitioner Exhibits 23N and 23U -23X*. Further, each resident’s medications are stored in a locked box in their apartment and a personal attendant comes to the apartment, unlocks the box and takes out the medication for the resident, to ensure residents are taking their medication and to prevent them from taking too much. *Dawson testimony*. Autumnwood Village apartments are also fireproof rated which allows residents to stay in their apartment in the event of a fire until the fire department arrives. *Dawson testimony*.

G. Ms. Dawson testified that Autumnwood Village residents paid \$2,450 per month plus a refundable security deposit of one month’s rent from November 1, 2008, through October 31, 2009, for a one-bedroom unit. *Dawson testimony; Petitioner Exhibit 19*. As of November 1, 2009, the monthly rent of a one-bedroom unit increased to \$2,525 and the rent of a two-bedroom apartment increased to \$3,025. *Dawson testimony*. A “Basic Service Package” is included in the rent, which is three meals a day, linen and towel service once a week, weekly housekeeping services, activities programs, local scheduled transportation, an emergency call system, health and wellness screenings, water, gas and electric utilities and basic cable television.⁹

⁹ Ms. Dawson further testified that additional fees were assessed to residents for additional services. *Dawson testimony; Petitioner Exhibit 19 at “Exhibit A”*. Those services include three levels of service packages for residents with additional needs, a second person fee, a pet deposit, extra housekeeping, maintenance, laundry service, beauty shop services, lost pendant replacement, extra food items, and for room service trays. *Id.* Autumnwood Village also offers a “Respite Daily Rate” to persons who use an apartment and the basic service package on a temporary basis. *Id.*

Dawson testimony; Petitioner Exhibits 17 and 19 at “Exhibit B.” The resident’s lease of an Autumnwood Village unit is automatically renewed on a month to month basis. *Dawson testimony; Petitioner Exhibits 17 and 19.* And Autumnwood Village residents “must have the financial resources to pay the assessed fees.” *Petitioner Exhibit 33 pg. 1.*

- H. Mr. Schmaltz testified that, on January 1, 2008, the Petitioner entered into a triple net lease with Miller’s Health Systems, Inc., (Miller’s) to lease 1.94 acres of land and the assisted living community, which presently operates as Autumnwood Village.¹⁰ *Schmaltz testimony; Petitioner Exhibit 18.* Miller’s “Triple Net Lease Agreement” is for a minimum of five years, with the option to renew the lease for two additional five year terms. *Petitioner Exhibit 18 at pg. 12.* The Lease also gives Miller’s a “First Right of Discussion” to negotiate for the purchase of the property should the Foundation wish to sell or dispose of the property. *Petitioner Exhibit 18 at pg. 13.*
- I. Mr. Schmaltz testified that the lease between the Petitioner and Miller’s requires the property to be used solely as an assisted living facility. *Schmaltz testimony; Petitioner Exhibit 18 at 10.* If Miller’s chooses to change the use of the facility it must have prior written consent from the Foundation. *Id.* In response to cross examination, Mr. Schmaltz testified the triple net lease states that the Petitioner will deliver exclusive possession of the premises upon the commencement date of the lease. *Schmaltz testimony; Petitioner Exhibit 19 at pg. 3.* In addition, Miller’s may peaceably hold and enjoy possession of the premises without interruption from the Petitioner. *Id.* In addition, Miller’s, as the lessee, is responsible for all real estate taxes, assessments or ad valorem taxes assessed against the premises. *Schmaltz testimony; Petitioner Exhibit 19 at pg. 5.* Finally, Mr. Schmaltz testified that the lease holds that “nothing in this lease shall be deemed or be construed to render or

¹⁰ From September 1, 2005, through January 1, 2008, Tipton County Memorial Hospital contracted with Miller’s to provide consulting services to the hospital regarding the operation of Autumnwood Village. *Petitioner Exhibit 16; Schmaltz testimony.*

constitute landlord and tenant actually or constructively and in any or for any purpose, as being partners, joint venturers, or associates, or as having any relationship whatsoever other than that of landlord and tenant under this lease...”
Schmaltz testimony; Petitioner Exhibit 19 at pg. 18.

- J. The Petitioner’s counsel argues that Indiana case law recognizes that “providing for the needs of senior citizens” is a charitable activity. *Auberry argument; Petitioner Exhibit 40*. According to Mr. Auberry, the Indiana Tax Court found that a property’s exempt status is tied to its use not its owner. *Id.* “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” *Id.*, citing *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E. 2d 177, 182 (Ind. Tax Ct. 2005). Further, Mr. Auberry argues, the Tax Court has found that senior citizen’s needs are not exclusively financial or health-related. *Auberry argument; Petitioner Exhibit 40*. Seniors need a sense of community and involvement, a sense of security and safety, social interaction, supportive services that enable them to live more independently for a longer period of time, and the ability to function at active levels. *Id.*, citing *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003). Based on these cases, Mr. Auberry argues, the Petitioner’s property is owned, operated and used for a charitable purpose. *Id.*
- K. Mr. Auberry further argues that Indiana case law also recognizes that an Indiana not-for-profit which owns an assisted living facility that is operated by a for-profit entity is tax-exempt. *Auberry argument; Petitioner Exhibit 40*, citing *Grandview Care*, 826 N.E.2d 177. Similarly, Mr. Auberry cited to *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 906-07 (Ind. Tax Ct. 2006), wherein the Indiana Tax Court explained “it grants charitable purposes exemption to *any* entity which otherwise qualifies. It does not differentiate between entities that are not-for-profit and entities that operate for profit.” *College Corner*,

840 N.E.2d at 911. Thus, Mr. Auberry argues, the Board must focus on the charitable use of the property. *Id.*

L. Finally, Mr. Schmaltz testified, Autumnwood Village has been granted a charitable exemption in prior years. *Schmaltz testimony.* According to Mr. Auberry, the charitable exemption should continue in 2008 and 2009, because there has been no change in the use of the property. *Auberry argument.* Therefore, the Petitioner's counsel concludes, the Autumnwood Village assisted living facility, leased and operated by Miller's, should be granted 100% exemption. *Id.*

Respondent's Contentions

23. The Respondent contends the Petitioner is not entitled to an exemption on its real property because the Petitioner's property is leased to a for-profit commercial business enterprise.

24. The Respondent presented the following evidence in support of its contention:

A. The Respondent's counsel argues that the focus of this case is that the Foundation is leasing the property under appeal to Miller's, a for-profit business enterprise, which is marketing the property to the elderly. *Meighen argument; Respondent Exhibit A.* According to Ms. Meighen, Indiana Code § 6-1.1-10-37, states that when exempt property is leased to an entity whose property is not exempt that property becomes

taxable as if it is owned by the lessee or the tenant.¹¹ *Id.* In support of her contentions, Ms. Meighen argues that the Indiana Supreme Court recognized the use of a building for mercantile purposes is not a charitable use. *Meighen argument, citing City of Indianapolis v. The Grandmaster of the Grand Lodge of Indiana*, 25 Indiana 518 (1865).¹²

- B. The Respondent’s counsel argues that while *Raintree Friends and Methodist Home of the Aged* seem to be finding that providing the elderly with safe housing and taking care of their medical needs is charitable, the cases differ from the Petitioner’s circumstances because Miller’s is a for-profit business that occupies and uses the property to earn a profit. *Meighen argument.* According to Ms. Meighen, when the Indiana Court of Appeals looked for guidance on this issue in *Methodist Home for the Aged*, the court referred to *Bozeman Deaconess Foundation v. Ford*, 439 P.2d 917 (Mont. 1968) *citing from Fredericka Home for the Aged v. San Diego County*, 35 Cal. 2d 789, 221 P. 2d 68, which states “So the charge of fees by such an institution as a home for the aged will not necessarily prevent its classification as

¹¹ The Petitioner’s counsel argued that the PTABOA only denied the Petitioner’s exemption because the Petitioner failed to show the property was owned, predominately used and occupied under Indiana Code § 6-1.1-10-16 for an exempt purpose. *Auberry argument.* Mr. Auberry therefore objected to the Respondent’s counsel asking the Board to consider Indiana Code § 6-1.1-10-37, because no issue was raised in the Board hearing regarding the applicability of that statute and it would go “beyond the scope of the argument.” *Id.* Once a taxpayer has properly invoked the Board’s jurisdiction, however, its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4(m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.) And the Board owes the PTABOA determination no deference. Thus, while the Petitioner may feel it was deprived of a complete explanation of the PTABOA’s denial of its request for exemption, it does not hinder the Petitioner’s ability to present its case to the Board. More importantly, to the extent Mr. Auberry wished to fully explore the Respondent’s case or bases for its denial, the Petitioner had ample opportunity to serve discovery on the Respondent pursuant to 52 IAC 2-8-2. The Petitioner’s objection is over-ruled and the Board will consider the Respondent’s counsels arguments regarding the applicability of Indiana Code § 6-1.1-10-37.

¹² In answering the question “whether a building actually used in part for other purposes, and yielding an income in consequence, which income was wholly devoted to benevolent purposes by the institution, was within the act?” the Supreme Court held that “it cannot be held that the use of the building by lessees for theaters, concerts and mercantile purposes, is a use by a charitable institution, within the meaning of the statute, and it follows that the first and second paragraphs of the answer were good on demurrer, being argumentative denials of the essential fact alleged in the first paragraph of the complaint, that the building was used by the plaintiff for charitable purposes.” 25 Ind. at 522.

charitable if such sums ‘go to pay the expenses of operation and not to the profit of the founders or shareholders’.” *Id.*

- C. Similarly, the Respondent’s counsel argues, while *Raintree Friends Housing, Inc.*, 667 N.E. 2d 816 (Ind. Tax 1996) stated “charity is broadly defined as a gift for or institution engaged in public benevolent purposes,” Judge Fisher made clear in that decision that charity is where “there is no hope or expectation of gain or profit.” *Meighen argument.* Thus, Ms. Meighen contends, the Tax Court specifically found that the very definition of the word charity meant a benevolent gift with no hope or expectation of profit. *Id.* Ms. Meighen argues that, although the operation of Autumnwood Village may be seen as the fulfillment of a charitable purpose, in reality it operates under a typical lease between the Foundation as landlord and Miller’s as a private for-profit business. *Meighen argument.*
- D. Moreover, the Respondent’s counsel argues, the Indiana Tax Court has supported a charitable exemption when a non-profit that owns a property leases that property to another non-profit with the same goals and objectives. *Meighen argument, citing Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954 (Ind. Tax Ct. 1997). However, the Tax Court in *Sangralea Boys Fund, Inc.* noted that under Indiana Code § 6-1.1-10-37 “exempt property, when leased to an entity whose property is not exempt, becomes taxable as if owned by the lessee.” *Meighen argument.* Thus, Ms. Meighen argues, because the Foundation leased its property to Miller’s the property is taxable as if the property was owned by Miller’s. *Id.*
- E. Finally, Ms. Meighen argues that the *Grandview Care* case does not apply in the Petitioner’s case. *Meighen argument, citing Grandview Care*, 826 N.E.2d 177. According to Ms. Meighen, the *Grandview Care* case involved a nursing home and assisted living facility that was owned, operated and used by Grandview Care. *Id.* However, Grandview Care subcontracted the day to day management responsibilities to a for-profit organization and paid them a monthly fee. *Meighen argument.* That is not the case here. *Id.*

Analysis of the Issue

25. 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).

26. 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).

27. The Indiana Court of Appeals first addressed the issue of care for the aged as a charitable purpose in the *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E.2d 84 (Ind. Ct. App. 1968). In that case, the Court recognized that the senior population had special needs, “namely relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, attention to problems of health, etc.” 241 N.E.2d at 86. In finding a non-profit retirement home exempt, the Court held that “it is now common knowledge that the aged

require care and attention entirely independent of financial needs, and that present day humanitarian principles demand that those in their declining years have the opportunity to live with as much independence as their strength will permit, in as pleasant and happy surroundings as their finances will reasonably justify.” *Id.* at 89.

28. The Indiana Court of Appeals decision in *Methodist Home* has been followed numerous times by the Indiana Tax Court. See *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2d 810 (Ind. Tax Ct. 1996); *Wittenburg Lutheran Village Endowment Corporation v. Lake County Property Tax Assessment Board of Appeals*, 782 N.E.2d 483 (Ind. Tax Ct. 2003); and *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177 (Ind. Tax Ct. 2005).
29. In *Raintree Friends*, the facility at issue was funded almost exclusively by tenant rents and fees, although the property received non-financial support and services from local Quaker congregations. 667 N.E.2d at 812. In supporting its determination that the property owner was subject to gross income, sales and food and beverage taxes, the Department of Revenue argued that the properties were “not operating for a charitable purpose because the services they offer are no different than those offered by traditional apartment complexes.” *Id.* The Court in granting an exemption held:

The Housing Corporations provide beneficial and worthwhile services to the aged population. Indeed, the mission statement of each Retirement Home articulates that its goal is to assist residents in living as independently as possible for as long as possible. The Retirement Homes provide a benefit to society by catering to the specific needs of their aged residents and by providing community, security, and assisted living for those in need.

Id. at 815. The Court further found that “The fact that the Retirement Homes charge a fee for the services they provide is not a bar to their charitable status, as charities often need to charge reasonable and sufficient fees to cover the cost of their operation.” *Id.*

30. Similarly, in *Wittenburg Lutheran Village*, the property was an integrated retirement community including a nursing home, an assisted living facility and eighteen four-unit residential apartment buildings known as the “Villas.” 782 N.E.2d at 483. The Lake County Property Tax Assessment Board of Appeals argued that because the Villas did not cater to the ill or infirm, the facility was “nothing more than a traditional apartment complex.” *Id.* at 487. The Court found that:

In addition to providing the amenities found in traditional apartment living, the Villas offer many unique and special services to its residents. For instance, each apartment is equipped with safety features (such as bathroom grab bars) and is wheelchair accessible. All units are built on a crawl-space foundation, providing less stress on elderly bones and joints than slab foundations. Chaplaincy and worship services are available to all Villa residents. Villa residents may participate in a wide range of free planned group activities and have free access to exercise equipment within the Village. They may use the Village mini-bus for regularly scheduled shopping, planned group outings, and health-related appointments at nearby medical facilities. In addition, Villa residents may volunteer in the assisted living facility or the nursing home.

Id. at 485. Thus, the Tax Court concluded that “contrary to the PTABOA’s rational, the needs of senior citizens are not exclusively financial, nor are they merely health-related.” *Id.* at 488. Seniors “need a sense of community and involvement.” *Id.* They need social interaction and supportive services “that enable them to live more independently for a longer period of time.” *Id.* They need a sense of security and they need to “function at active levels.” *Id.* Because the Villas met these needs, the Court found the property to be “owned occupied and used for a charitable purpose.”

31. Most recently, in *Grandview Care*, the Tax Court found that “Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose.” 826 N.E.2d at 182. In the *Grandview Care* case, Grandview Care was an Indiana not-for-profit organization that owned BridgePointe Health Campus. *Id.* at 179. Unlike the *Raintree Friends*, *Methodist Home* or the *Wittenburg Lutheran* cases, the nursing home and assisted living corporation at issue in *Grandview Care* was not affiliated with any religious denomination or church. *Id.* at 182. Further, BridgePointe was managed by a

for-profit organization, Trilogy Health Services, which was paid \$17,000 per month. *Id.* at 179. The Knox County PTABOA denied the property owner's application for exemption because Grandview contracted with Trilogy and therefore, the PTABOA held, the facility was being operated for profit. *Id.* The Tax Court granted the exemption finding that "the fact that residents of such facilities are charged for their stay does not necessarily negate the charitable purpose of the institution, particularly 'when it does not appear that the fees are more than sufficient to pay the expenses of maintenance or that the proprietors of the institution derive any profit therefrom.'" *Id.* at 184 (citing *Methodist Home*, 241 N.E.2d at 88-89). The Court held that Trilogy was an "operating expense" and that there was no evidence that Grandview was deriving a profit from the operation of facility or that the fees charged by Grandview were more than necessary to pay its expenses. *Id.* at 185.

32. Here, the Petitioner claims it is entitled to 100% exemption in 2008 and 2009. According to the Petitioner, Autumnwood Village is owned by the Foundation, a 501(c)(3) organization of the Internal Revenue Code that raises funds and operates to promote and support the health and well-being of individuals in Tipton County. *Petitioner Exhibit 1; Lee testimony*. While the Petitioner is a non-profit organization, its charitable purpose must be proven before its tax exempt status is assured. *See Raintree Friends Housing, Inc.*, 667 N.E.2d 810, 813 (non-profit status does not automatically entitle a taxpayer to tax exemption). As the law clearly states, it is the ownership, occupation and use of a property that determines its exempt purpose. Ind. Code § 6-1.1-10-16 (a).
33. On January 1, 2008, the Foundation entered into a triple net lease with Miller's Health Systems, Inc., a for-profit domestic corporation, to operate and use Autumnwood Village as an assisted living facility. *Petitioner Exhibit 18; Respondent Exhibit A; Schmaltz testimony*. Indiana Code § 6-1.1-10-37 provides that "[i]f real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and appurtenances to the leasehold estate shall be assessed and taxed as if they were property owned by the lessee or his

assignee.” Thus, the issue of this appeal is whether Miller’s operation and use of the assisted living facility is predominately a charitable use.

34. The Petitioner presented evidence that it delivered exclusive possession of the property under appeal to Miller’s. *Petitioner Exhibit 19*. The lease also indicated that Miller’s may peaceably hold and enjoy possession of the property without interruption from the landlord. *Id.* Further, the lease stated “nothing in this lease shall be deemed or be construed to render or constitute landlord and tenant actually or constructively and in any or for any purpose, as being partners, joint venturers, or associates, or as having any relationship whatever other than of landlord and tenant under this lease.” *Id.*
35. While the Petitioner argues that Miller’s “operation” of the property is no different than the for-profit management company’s operation of the assisted living facility in the *Grandview Care* case, the Board disagrees. In *Grandview Care*, Trilogy Health Services was paid \$17,000 per month to manage the facilities at issue in that case. The Court found that payment to be an “operating expense.” Arguably any funds remaining after payment of those operating expenses went to further the mission and programs of the non-profit owner. To the contrary, here Miller’s pays a lease fee of \$10,000 a month to the Foundation. However, any funds left over after payment of Miller’s operating expenses is profit to Miller’s – a for-profit entity – not funds to support the Foundation’s charitable works. Thus, Miller’s operation and use of the property is to make a profit rather than for any charitable purpose.
36. The Petitioner argues that Miller’s for-profit status does not matter because it is operating a nursing home – which is recognized as a charitable activity in cases like *Methodist Home and Grandview Care*. According to the Petitioner, the Tax Court held that the fact an entity “is organized as a for-profit corporation is of no consequence.” *See College Corner, L.P. v. Dept of Local Govt Fin.*, 840 N.E.2d 905, 911 (Ind. Tax Ct. 2006). The Board notes, however, that being “organized” as a for-profit corporation when the organization is involved in a charitable endeavor is far different than an organization seeking to make a profit from that same endeavor.

37. In the *College Corner* case, College Corner, L.P. was organized to revitalize the College Corner area of Indianapolis’ historic Old Northside. 840 N.E.2d at 906. College Corner, L.P., was organized with a general partner, the Old Northside Foundation, Inc. – a 501(c)(3) organization, and a limited partner, National City Community Development Corporation – a for-profit corporation. *Id.* National City contributed \$248,000 in equity to College Corner, L.P., to help it secure mortgages on seventeen parcels in the College Corner area. *Id.* at 907. After each property was redeveloped and sold National City received a fixed 7% return on its investment. *Id.* The Tax Court found that “the fact that [National City] is organized as a for-profit corporation is of no consequence” and held that the “actual profit earned by [National City] is likewise inconsequential” because National City’s purpose is “to promote the revitalization of low and moderate income neighborhoods throughout the local communities” and in partnering with the Old Northside Foundation to help restore College Corner, National City was “acting pursuant to the directives of the federal Community Reinvestment Act, which encourages financial institutions to help meet the credit needs of the communities in which they are chartered.” *Id.* at 911.
38. The Board finds *College Corner* distinguishable from the facts before it. Miller’s did not “partner” with the Foundation in order to help the Foundation provide assisted living services to the community; it leased the facility from the Foundation in order to continue and expand the business in which it is incorporated to operate and the business from which it derives its profit – assisted living facilities. Nor was Miller’s acting under a federal directive to help serve a community like the bank in *College Corner*. Finally, Miller’s involvement in the assisted living facility goes far beyond providing financing so that the Foundation could function in its charitable capacity. It is not a limited partner of the Foundation. To the contrary, Miller’s has complete control over the operations of the assisted living facility. Most importantly, Miller’s is in the business of operating and profiting from providing services to the elderly. It does not operate the facility for any

charitable purpose, but in the normal course of its business and with the intent to profit from that business.

39. While Miller’s operation of Autumnwood Village may “look” like the for-profit management company in *Grandview Care* or like the for-profit limited partner in *College Corner* on its surface, the circumstances in those cases are quite distinguishable. Ultimately, it is like the difference between a Good Will store and a Walmart. Both stores sell clothing and housewares, but the profits from the Good Will store go to support the programs and charitable works of the Good Will organization. Whereas the profits from the Walmart go to its owners and shareholders. The stores may look alike and may serve the same commercial functions, but their purposes and intents are far different.
40. The Tax Court has found that “the intent of the legislature is not to force a single... charitable entity to achieve a unity of ownership, occupation, and use, but to ensure that the particular arrangement involved is not driven by a profit motive.” *Grandview Care, Inc.*, 826 N.E.2d 177. Here, the Petitioner’s argument focuses on the characteristics of the Foundation and the services provided to the residents of Autumnwood Village rather than the operation and use of the property by Miller’s. The Petitioner presented no explanation or evidence to show that the activities conducted by Miller’s were not without hope or expectation of earning or gaining a profit. The Board is not aware of, nor has the Petitioner presented, any statute or case law holding that a lease arrangement that is driven by a profit motive is an exempt purpose. The Board therefore finds that the Petitioner failed to raise a prima facie case that its property was predominately used for charitable purposes in 2008 and 2009.¹³

¹³ Mr. Schmaltz testified that Autumnwood Village was granted a charitable exemption in prior years. *Schmaltz testimony*. According to Mr. Auberry, the charitable exemption should continue in 2008 and 2009, because there had been no change in the use of the property. *Auberry argument*. In Indiana, however, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s exemption in one tax year is not probative of its exemption in a different tax year. Further, as the Board noted above, the operation and use of the property did change in 2008. Prior to entering into a lease with the Foundation, Miller’s acted as a management company and was paid a fixed fee to run the facility. After it began leasing the property from the Foundation, Miller’s paid a fixed lease fee to the Foundation and began running the facility in order to make a profit.

41. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Summary of Final Determination

42. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent and holds the Petitioner's real property is 100% taxable for the March 1, 2008, and March 1, 2009, assessment years.

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

ISSUED:

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>.