

STATE OF INDIANA
Indiana Board of Tax Review

WITTENBERG LUTHERAN VILLAGE)	On Appeal from the Lake County
ENDOWMENT CORPORATION)	Property Tax Assessment Board
Petitioner,)	of Appeals
)	
)	
v.)	
)	Petition for Review of Exemption
)	Form 132
LAKE COUNTY PROPERTY TAX)	Petition Nos. 45-042-99-2-8-00001&2
ASSESSMENT BOARD OF APPEALS)	Parcel Nos. 230903960015 &
Respondent.)	230903960019

Findings of Fact and Conclusions of Law

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the land and improvements owned by Wittenberg Lutheran Village Endowment Corporation (“Endowment Corporation”), qualifies for property tax exemption pursuant to Indiana Code (IC) 6-1.1-10-16 for religious and/or charitable purposes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to IC 6-1.1-11-3, the Endowment Corporation (at that time known as Lutheran Home of NW Indiana Endowment) filed applications for property tax exemption with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on March 27, 1996. The PTABOA apparently granted exemptions for both parcels in question. Said exemptions were ongoing until Tax year 1999.

3. On December 5, 2000, the PTABOA issued a NOTICE OF DISAPPROVAL OF EXEMPTION which took the following action: "For 1999 Exempt Status will now be TAXABLE 11/22/00 Status of Exemption has been removed by the Board per I.C. 6-1.1-10-16."

4. Pursuant to IC 6-1.1-11-7, the Endowment Corporation filed Form 132 petitions seeking a review of the PTABOA action by the Appeals Division. The Form 132 petitions were filed January 5, 2001.

5. Pursuant to IC 6-1.1-15-4, a hearing was held on June 5, 2001 before Administrative Law Judge (ALJ) Tim Rider. Testimony and exhibits were received into evidence. Robert A. Anderson, attorney at law, represented the Petitioner. Petitioner's officers testifying were Kenneth W. Huff, Sharon De St. Jean, and Reverend William J. Hughes. Sharon Fleming, Lake County Nonprofit Deputy, represented the PTABOA. Martha Wheeler, assessor, appeared from Center Township.

6. At the hearing, the subject Form 132 petitions and attachments were made part of the record and labeled Board Ex. A. The Notices of Hearing on Petition were labeled Board Ex. B. In addition, the following items were received into evidence:

Petitioner's Ex. 1 & 2 – Form 132 petitions already labeled as Board Exhibit A.
Petitioner's Ex. 3 – Wittenberg Lutheran Village Organizational Chart.
Petitioner's Ex. 4 – Articles of Incorporation of Lutheran Home and Services for the Aged.
Petitioner's Ex. 5 – Bylaws of Lutheran Home and Services for the Aged.
Petitioner's Ex. 6 – 501(c)(3) determination letter of parent corporation.
Petitioner's Ex. 7 – Lutheran Home Services and Mission Outreach Articles of Incorporation.
Petitioner's Ex. 8 – Wittenberg Lutheran Village Endowment Corporation Certified Articles of Incorporation.
Petitioner's Ex. 9 – Wittenberg Lutheran Village Corporation Bylaws.
Petitioner's Ex. 10 – Audited Financial Statements.
Petitioner's Ex. 11 – Additional Financial Information – Unaudited.
Petitioner's Ex. 12 – Sample Villa Agreement.
Petitioner's Ex. 13 – Site layout.
Petitioner's Ex. 14 – Application 136 for parcel 230903960015.
Petitioner's Ex. 15 – Application 136 for parcel 230903960019.
Petitioner's Ex. 16 – Marketing Material.

Respondent's Ex. 1 – Written statement, Martha Wheeler, Center Township Assessor, Lake County.

Respondent's Ex. 2 – Section of "Villa agreement" titled "Loss of Tax Exemption."

7. The ALJ did not view the property.
8. The material facts of this case are not in dispute.
9. The Lutheran Home of Northwest Indiana Endowment Corporation was incorporated as an Indiana not-for-profit corporation on December 26, 1978, having as its members numerous Lutheran congregations located in northern Indiana and adjacent counties.

10. On or about March 24, 2000, The Lutheran Home of Northwest Indiana Endowment Corporation changed its name to Wittenberg Lutheran Village Endowment Corporation.
11. Endowment Corporation is organized exclusively for religious, charitable and benevolent purposes to provide physical, social and spiritual care for the aged in conformity with the doctrine and practice of the Lutheran Church.
12. On April 11, 2000, Endowment Corporation filed Amended and Restated Articles of Incorporation with the Indiana Secretary of State's office providing for one corporate member, Lutheran Home Services and Mission Outreach, Inc., an Indiana nonprofit corporation.
13. Lutheran Home Services and Mission Outreach, Inc. was incorporated on February 21, 2000 exclusively for religious, charitable and benevolent purposes to provide physical, social and spiritual care for the aged in conformity with the doctrine and practice of the Lutheran Church.
14. The sole member of Lutheran Home Services and Mission Outreach, Inc is Lutheran Home and Services for the Aged, Inc., an Illinois not-for-profit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986.
15. Lutheran Home Services and Mission Outreach, Inc. currently has approximately 160 Lutheran church congregations as its membership. While the majority of congregations are The Lutheran Church-Missouri Synod, there are congregations of The Evangelical Lutheran Church in America affiliation as well.
16. The Endowment Corporation owns the parcel with key number 230903960015 which is the subject of Petition Number 45-042-99-2-8-00001 ("Parcel 15") and the parcel with key number 230903960019 which is the subject of Petition Number 45-042-99-2-8-00002 ("Parcel 19") (collectively, the "Parcels").

17. The parcels at issue in this case are part of an integrated retirement Village located in Crown Point, Center Township, Lake County, Indiana and known as Wittenberg Lutheran Village (the "Village").
18. The Village consists of a nursing home known as Wittenberg Manor, an assisted living facility known as Wittenberg Suites, a chapel known as the Crown of Life Chapel and eighteen four-plexes known as the Villas.
19. At issue in this appeal are the Villa properties.
20. The Villas provide housing for people who are at least 60 years old or who are married to residents at least 60 years old.
21. Since the Village is 100% owned and operated by not-for-profit corporations, no revenues inure to the private benefit of any individual. Rather, revenues are reinvested in the Village and are used to support the assisted living and nursing home components at the Village.
22. The Villas are two bedroom residential units following a single story floor plan, with a full kitchen and a specially equipped bathroom. The units are designed with the needs of seniors in mind. However, the Villa Agreement provides that residents may be removed from the Villa if the resident's physical or mental condition become such that the resident requires care that the Petitioner does not provide. (**See** Petitioner's Exhibit 12, paragraph 7(b)).
23. Wittenberg Lutheran Village provides for lawn mowing, snow removal and trash pick-up as well as maintenance inside the units.
24. Residents are provided with a range of planned group activities, religious and devotional services and events, and have free access to a variety of exercise equipment.

25. The Village has a Medical Director who will see residents of the Villas for scheduled appointments. Independent Certified Physical Therapists, with regular on-site office hours, are also available as well as Dentists and Podiatrists.
26. Residents may use the Wittenberg Lutheran Village mini-bus for regularly-scheduled transportation for shopping and planned group outings as well as for health-related appointments to the Crown Point Clinic and St. Anthony Medical Center.
27. Pursuant to the Villa Agreement, a resident may purchase a right of occupancy in a Villa for a 3, 5, 7 or 15 year term. At the end of the occupancy term, residents may either leave the unit or enter into a new Villa Agreement

28. Paragraph 8(g) of the Villa Agreement states:

The parties understand that this AGREEMENT is not a lease and does not create any interest in the real estate or the property owned by the HOME, and the right of occupancy does not inure to the benefit of the heirs, assignees, or representatives of the RESIDENT. The RESIDENT may not assign the Villa to another unless the HOME gives prior written consent.

29. Fee simple title never transfers to the resident but is always maintained by the Village.
30. Pursuant to the Villa Agreement, residents pay a Villa Resident's Fee and a Monthly Service Fee.
31. The Villa Resident's Fee is prepaid through an Advance Deposit and the monthly Residence Fee is drawn against that deposit. In the sample Villa Agreement (Petitioner's Exhibit 12), the Advance Deposit on a 15-year term of occupancy is \$76,600, against a \$425 per month Residence Fee. The Monthly Service Fee is

\$200. Should the resident fail to pay his or her Service Fee, the money is withdrawn from the Advance Deposit. Furthermore, delinquent payment of the monthly Service Fee results in interest charges and provides grounds for the resident's removal from the unit. (See Petitioner's Exhibit 12, paragraph 4b).

32. If a resident has exhausted his or her resources, Section 16 of the Villa Agreement provides the following:

It is the declared policy of the HOME that the RESIDENT will not be terminated solely by reason of the financial inability of the RESIDENT to pay the monthly fee, if the RESIDENT has applied for and established facts which justify special financial consideration and dispensation, and if such application can be granted without impairing the ability of HOME to operate on a sound financial basis and maintain the HOME for other residents. Further, the RESIDENT agrees not to impair his or her ability to meet financial obligations hereunder by transferring assets after securing occupancy, without the consent of the home other than to meet ordinary and customary living expenses.

33. The Villa Agreement also provides that any loss of tax –exempt status will be passed on to the residents:

17. **LOSS OF TAX EXEMPTION:** Monthly service fee projections are based on the assumption that the **HOME** will continue to enjoy its tax exempt status. Loss of said status could result in a substantial rise in monthly cost of service to the **RESIDENT**. In event of the loss of tax exemption the **RESIDENT** agrees to pay his or her prorated share of taxes.

Conclusions of Law

1. The Appeals Division of the Board is the proper body to hear an appeal of the action of the PTABOA pursuant to IC 6-1.1-15-3.

A. Burden In General

2. The courts have long recognized that in the administrative review process, the Board is clothed with quasi-judicial power and the actions of the Board are judicial in nature. *Biggs v. State Board of Commissioners of Lake County*, 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the Board has the ability to decide the administrative appeal based upon the evidence presented.
3. In reviewing the actions of the PTABOA, the Board is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816,820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the Board can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119

(Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the Board would be forced to make a case for the taxpayer. Requiring the Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
8. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

B. Constitutional and Statutory Basis for Exemption

9. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
10. Article 10, Section 1, of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption. In this appeal, exemption was claimed under IC 6-1.1-10-16, which provides that all or part of a building is exempt from property taxes if it is owned, occupied, and used for charitable or religious purposes.

C. Basis of Exemption and Burden

11. In Indiana, the general rule is that all property in the State is subject to property taxation. IC 6-1.1-2-1.
12. 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).
13. Strict construction construes exemption from the concept of the taxpayer citizen. 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*, 671 N.E. 2d 218 (Ind. Tax 1996)(NAME). 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.
14. 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)).
15. 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).

D. Conclusions Regarding the Exemption Claim

16. Indiana Code Section 6-1.1-10-16(a) 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.”
17. In *State Board of Tax Commissioners v. Methodist Home for the Aged of the Ind. Conference of the Methodist Church, Inc.*, 241 N.E.2d 84 (Ind. App. 1968), (a case heavily relied upon recently by the Tax Court in *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2nd 810 (Tax Ct. 1996) which is discussed below), the Indiana Court of Appeals considered the tax exemption for a retirement home consisting of a 3 story building with a central structure and a west wing containing separate dwelling units for single persons and married couples, administrative offices, and central dining, recreational, craft and medical facilities, capable of housing about 180 residents. In addition, the project contained 15 cottages occupied by personnel or elderly residents of the project.
18. The Court of Appeals held, based on Article 10, Section 1 of the Constitution of Indiana, that the word “charitable” has broad constitutional significance in Indiana. *Id.* at 87.
19. Further, the Court held:

The concept of charity is not confined to the relief of the needy and destitute, for “aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of the financial wants.” So the charge of fees by such an institution as a home for the aged will not necessarily prevent its classification as charitable if such sums “go to pay the expenses of operation and not to the profit of the founders or shareholders,” for all persons

may “under certain conditions be objects of charity.” *Id.* at 88.
(Citing *Fredericka Home for the Aged v. San Diego County*, 221
P.2d 68 (Cal. 1950)).

20. The *Methodist Home* Court concluded “the acquiescence of the General Assembly for the last 45 years in the broad construction of the exemption statute with respect to retirement homes is evidence that the General Assembly intends that the word “charitable” in the exemption statute should be construed to include non-profit retirement homes such as the appellee’s in the instant case.” *Id.* at 89.
21. In *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*, 667 N.E.2nd 810 (Tax Ct. 1996), the Tax Court held, based upon the Court of Appeals’ holding in *Methodist Home*, that two facilities described by the court as “assisted living or congregate support communities” were exempt from gross income tax, sales tax and County food and beverage taxes.
22. In *Raintree*, The Tax Court concluded that the Indiana Supreme Court has (in the context of property tax) broadly defined the term “charity.” It also held that “in applying the Supreme Court’s broad construction of charity, the Indiana Court of Appeals held that a retirement home for the aged was exempt from property tax.” *Id.* at 814 (citing *Methodist Home*).
23. Without disputing that the term charity should be defined broadly, the holdings in *Raintree* and in *Methodist Homes* are distinguishable from the facts in the instant matter. The operation of the Petitioner’s Villas do not meet even that generous test.
24. *Methodist* and *Raintree* involve facilities that could best be compared to Petitioner’s assisted living facility or nursing home, not to the Villas. The level of care and deference to the infirmities of age were more pronounced in the facilities described in those cases. The Villas simply do not cater to the ill or infirm. Residents unable to care for themselves or provide for their own care are

also subject to removal from the Villa, with a preference but not a guarantee of entry into the assisted living facility or the nursing home. Indeed the Villa promotes an active lifestyle by the many services and activities offered to residents.

25. Furthermore, *Methodist* and *Raintree* contained evidence that, in fact, the facilities made some provisions for needy residents. The Villa Agreement contains several provisions that assure that the Villas will remain financially sound, including requiring the payment of the full term of occupancy in advance, through the Advance Deposit and by broadly worded rights for Petitioner to remove a resident for failure to pay the Monthly Service charges. Furthermore, the financial risks of the loss of any tax exemption are clearly placed on the residents. Other provisions of the Villa Agreement provide that Petitioner is protected from financial risk and receives financial benefit from the Agreement, including a non-refundable deposit, interest on late payment of Service Fees, indemnity agreements, and many other provisions that are standard in for-profit lease, occupancy or sale agreements.
26. Caring for the aged is a charitable purpose, and it seems clear that the owner of the Villas property is organized to perform both charitable and religious purposes. It is noted, however, that the Petitioner did not claim the property should be exempt based on religious use, but rather charitable use. In examining the use of the subject property, the Board is unable to identify the charitable purpose that is forwarded by the manner in which the Villas are used and occupied.
27. The property is used as a normal residence, pure and simple. The occupants may avail themselves of certain amenities that make their lives more pleasant, but the Board cannot find a meaningful difference between the benefit the Villa residents receive and the benefit that any other neighborhood association or private community may provide its residents who have selected to live there based on the comforts afforded them by the organizational structure.

28. Residents of the Villas are by definition not in need. They are necessarily financially sound and physically well or else they would not be allowed to enter the agreements with the Petitioner, and could be asked to leave should that physical or financial status change.
29. Nothing distinguishes residents of the Villas from every other homeowner or tenant over the age of 60 years. The Board does not believe that if a homeowner or landlord were to sell or convey his residence or property to a charitable organization under an agreement that allows continued occupancy, that the property should become exempt, when nothing else has changed; the use and status of the property remain the same. Under this logic, nearly all property on which persons over 60 reside could be made to qualify for an exemption with relative ease.
30. The courts in *Raintree* and *Methodist Home* may have intended for such arrangements to be considered charitable, but the Board cannot reach that conclusion. Although the Board is very mindful of its constitutional obligation to broadly define the acceptable parameters of the concept of 'charity', it remains the Board's opinion that to grant an exemption to the owner of the Villas based on the facts of this matter would represent an unjustified expansion of what should be considered a charitable use.
31. The Board finds that the facts of this matter put the proper determination within an area of legal uncertainty that cannot be easily discerned under the existing case law. In this circumstance the Board believes that it is bound to strictly construe the statutory favor that exemption provides, in favor of the taxpayers who must pick up the financial burden, if no societal burden is relieved, or charitable purpose served, by the use of the Villas property.
32. The Endowment Corporation has not carried its burden of proving that the PTABOA's decision to revoke the property tax exemption for the two Parcels in question was incorrect.

34. Therefore, the property tax exemption is denied.

Issued this 16th day of January, 2002, by the Indiana Board of Tax Review.