

REPRESENTATIVE FOR PETITIONER:

Keith D. Dennis, Vice President of Finance and Administration, Family & Children’s  
Center

REPRESENTATIVE FOR RESPONDENT:

W. L. McLaughlin, Attorney, Elkhart County Property Tax Board of Appeals

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

FAMILY & CHILDREN’S	)	Petition No.: 20-012-03-2-8-00001
CENTER PROPERTIES	)	
MANAGEMENT, INC.	)	Parcel: Personal Property
	)	
Petitioner,	)	
	)	County: Elkhart
v.	)	
	)	Township: Concord
ELKHART COUNTY PROPERTY	)	
TAX ASSESSMENT BOARD OF	)	Assessment Year: 2003
APPEALS,	)	
	)	
Respondent.	)	

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

**September 23, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ISSUE

1. The issue presented for consideration by the Board was:  
*Whether the personal property owned by Family & Children's Center Properties Management, Inc., qualifies for a charitable exemption pursuant to Ind. Code § 6-1.1-10-16.*

### PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-11-7, Family & Children's Center Properties Management, Inc. (FCCPM), filed a Form 132 Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the above petition. The Form 132 petition was filed on January 7, 2004. The determination of the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 17, 2003.

### HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code §§ 6-1.1-15-4 and 6-1.5-5-2, a hearing was held on June 29, 2004, in Goshen, Indiana before Patti Kindler, the duly designated Administrative Law Judge (the "ALJ") authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn in and presented testimony at the hearing:  
For the Petitioner:  
Keith D. Dennis, Vice President of Finance and Administration, Family & Children's Center  
For the Respondent:  
Cathy Searcy, Secretary, Elkhart County PTABOA
5. The following exhibits were presented for the Petitioner:  
Petitioner's Exhibit 1 – Copy of a letter from the IRS regarding FCCPM's 501(c)(3) and 509(a)(3) exempt status.

The ALJ requested the following items as additional evidence from the Petitioner at the appeal hearing: IRS 501(c)(3) status for Holy Cross Counseling Group; The Articles of Incorporation; Bylaws; and, the subject lease agreement between Holy Cross Counseling Group and FCCPM applicable to the personal property. The deadline for the submission of said evidence was July 12, 2004. Petitioner submitted the additional evidence, and it was entered into the record as timely received on July 3, 2004.

Petitioner's Exhibit 2 – Cover letter with Petitioner's explanation of the enclosed evidence.

Petitioner's Exhibit 3 – Copy of letter from IRS regarding Family & Children's Services of St. Joseph County's 501(c)(3) status, dated 1/4/99.

Petitioner's Exhibit 4 – Certification of Assumed Business Name from Family & Children's Services of St. Joseph County to Holy Cross Counseling Group, dated 8/9/02.

Petitioner's Exhibit 5 – Inter-Corporate Agreement between FCCPM and Holy Cross Counseling Group for lease of space and office equipment, effective 1/1/04.

Petitioner's Exhibit 6 – Articles of Amendment to Articles of Incorporation for Family & Children's Services of St. Joseph County.

Petitioner's Exhibit 7 – Certificate of Incorporation in Indiana, dated 12/4/86.

Petitioner's Exhibit 8 – Articles of Incorporation for Family & Children's Services of St. Joseph County.

Petitioner's Exhibit 9 – Restated Code of By-Laws for Family & Children's Services of St. Joseph County.

Petitioner's Exhibit 10 – Letter from Jim Champer, CPA, regarding the exempt status of FCCPM with attached IRS returns.

Petitioner's Exhibit 11 – Copy of Section 509 of the IRS code for private foundations.

Petitioner's Exhibit 12 – Copy of Indiana Code § 6-1.1-10-16.

6. The following exhibits were presented for the Respondent:
  - Respondent's Exhibit 1 – Copy of a letter to FCCPM from the Elkhart County PTABOA requesting additional information to determine eligibility of their exemption, dated 11/18/03.
  - Respondent's Exhibit 2 – Notice of Action on Exemption Application, signed as mailed 12/17/03.
  - Respondent's Exhibit 3 – Original Form 136 Application For Exemption, stamp dated as received May 1, 2003.
  - Respondent's Exhibit 4 – Articles of Amendment and Articles of Incorporation for FCCPM with attached financial statements for fiscal years 2000 to 2002.
  
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The Form 132 Petition
  - Board Exhibit B – Notice of Hearing dated 3/30/04
  - Board Exhibit C – Request for Additional Evidence form
  
8. The subject property represents leased personal property consisting of equipment and furniture. The subject personal property is owned by Family & Children's Center Properties Management, Inc. (FCCPM) and leased to Family & Children's Services of St. Joseph County, Inc., doing business as Holy Cross Counseling Group (Holy Cross). The subject personal property is located at 500 North Nappanee Street, Suite 4A, Elkhart, IN 46514.
  
9. For 2003, the PTABOA determined the property to be 100% taxable. The assessed value of the personal property is \$1,260.

## JURISDICTIONAL FRAMEWORK

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. See *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. 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. Wash. Twp. 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”).
13. 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

## CONSTITUTIONAL AND STATUTORY BASIS FOR EXEMPTION

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. INDIANA CONSTITUTION, Article 10, §1.
15. Article 10 §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, the 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 Dep't of Revenue*, 667 N.E. 2d 810, 813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to tax exemption). In determining whether property qualifies for an exemption, the predominant and primary use of the property is controlling. *State Bd. Of Tax Comm'rs v. Fort Wayne Sport Club*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970); Ind. Code § 6-1.1-10-36.3.

## BASIS OF EXEMPTION AND BURDEN

17. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1.
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 – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. Of Tax Comm'rs*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

19. The transfer of this obligation to non-exempt properties should never be seen as an inconsequential shift. This is why worthwhile activities or noble purpose alone is not enough for tax exemption. Exemption is granted when there is an expectation that a benefit that will inure to the public by reason of the exemption. *See Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm'rs*, 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 statute under which the exemption is being claimed. *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax 1987).

## DISCUSSION

### *Whether the personal property qualifies for a charitable exemption pursuant to Ind. Code § 6-1.1-10-16.*

21. The Petitioner contends the subject personal property should be 100% exempt because both the owner/lessor (FCCPM) and the lessee (Holy Cross) are nonprofit charitable organizations.
22. The Respondent contends that it was unable to find a statute or rule that shows the leasing of equipment as an exempt activity.
23. The applicable statutes governing this issue is:  
**Ind. Code § 6-1.1-10-16(a), (b), and (e) - Exemption of building, land, and personal property used for various 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.
  - (b) A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.

\* \* \*

(e) Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.

24. The Petitioner presented the following evidence and testimony in regard to this issue:

- A. FCCPM is a nonprofit organization exempt under 501(c)(3) of the Internal Revenue Code (IRC) as an organization that supports another 501(c)(3) organization as defined by IRC Section 509(a)(3). (Dennis testimony; Petitioner's Exhibit 1 & 10). FCCPM supports the following organizations: Family & Children's Center, Family & Children's Center Foundation, FCC Counseling & Development Services, Family & Children's Services of St. Joseph County, Boys & Girls Clubs of St. Joseph County, The Children's Campus, and Consumer Credit Counseling Service of Northern Indiana. (Petitioner's Exhibit 10).
- B. Family & Children's Services of St. Joseph County, Inc., doing business under the assumed name of Holy Cross Counseling Group (Holy Cross), is also a 501(c)(3) exempt organization. (Petitioner's Exhibit 3 & 4).
- C. FCCPM owns the assets of all of the affiliates of Family & Children's Center. Holy Cross is an affiliate of Family & Children's Center. The affiliates are stand alone corporations with an interlocked Board of Directors. All of the affiliates have agreements with FCCPM for services and property to assist them in their charitable business. (Dennis testimony; Petitioner's Exhibit 5).
- D. The connection between FCCPM and Holy Cross is a lease agreement, whereby FCCPM provides space, equipment, and furniture to Holy Cross. (Petitioner's Exhibit 5).
- E. FCCPM is leasing the office-building suite located at 500 North Nappanee Street from a private non-exempt individual. (Dennis testimony). FCCPM, in turn, subleases the office space, as well as office equipment (the personal property at issue) to Holy Cross. (Dennis testimony).
- F. According to FCCPM's Articles of Incorporation, one purpose of the corporation is to operate exclusively for charitable, literary, and educational purposes, and for the prevention of cruelty to children. Another purpose is to utilize its resources to serve, supplement and support Family and Children's Center. (Respondent's Exhibit 4).

- G. The subject personal property is used for the charitable purpose of providing services to the local communities. (Dennis testimony).
  - H. The Petitioner opines that FCCPM did not reply to the PTABOA's request for additional evidence because said request was overlooked or misplaced. (Dennis testimony).
25. The Respondent presented the following evidence and testimony in regard to this issue:
- A. Upon review of the subject Form 136 Application for Property Tax Exemption, the Elkhart County PTABOA requested additional information from FCCPM on November 18, 2003, but the information was never received so the appeal was denied. (Searcy testimony; Respondent's Exhibit 1 & 2).
  - B. The PTABOA's concern was whether FCCPM qualified under the Indiana Code for exempt status. The Petitioner did not show evidence of any rule or authority that allows property tax exemption for setting up a nonprofit leasing corporation to lease to another nonprofit organization. The Respondent is unaware of any statute that allows a leasing operation, in and of itself, exempt status. (McLaughlin statement).
  - C. The Respondent stated that Family & Children's Center is clearly an exempt organization. (McLaughlin statement).

#### ANALYSIS

26. FCCPM requested a 100% charitable exemption for the subject personal property pursuant to Ind. Code § 6-1.1-10-16. When a charitable exemption is requested, the Petitioner must show that the property is *owned*, *occupied* and *used* for a charitable purpose.
27. FCCPM's tax-exempt status under the codes of the Internal Revenue Service, does not automatically qualify the entity for exemption from property tax. In Indiana, the use of a 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 the property

is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E.2d 810,813 (Ind. Tax Ct. 1996) (not-for-profit corporation status does not automatically entitle a taxpayer to property tax exemption).

28. A piece of property must be owned for charitable purposes, occupied for charitable purposes, and used for charitable purposes. Once these three elements are met, regardless of by whom, the property can be exempt from taxation. Unity of ownership, occupation, and use of the property is not required. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E.2d 954 (Ind. Tax 1997).
29. The subject personal property is owned by FCCPM; occupied and used by Holy Cross. FCCPM must show that it owns the subject personal property for charitable purposes. Holy Cross must occupy and use the subject personal property for charitable purposes.
30. The Articles of Incorporation submitted by the Petitioner show that both FCCPM and Holy Cross were created to operate exclusively for charitable, literary, educational purposes, and for the prevention of cruelty to children. Another purpose is to utilize their resources to serve, supplement and support Family and Children's Center and to provide effective services to its patients and clients, providing education, prevention and treatment services which compliment those provided by Family and Children's Center. (Petitioner's Exhibit 8 & Respondent's Exhibit 4).
31. The Respondent stated that Family & Children's Center is clearly exempt. The Respondent's concern is the leasing operation.
32. The Petitioner maintains that FCCPM is furthering its charitable purpose by providing space, equipment, and furniture to Holy Cross and the other affiliate organizations who supplement and support Family & Children's Center. FCCPM provides Holy Cross with the space, equipment, and furniture necessary to conduct day-to-day business. (Petitioner's Exhibit 5). Without the leased property from FCCPM, Holy Cross would not be able to conduct its day-to-day business and support Family & Children's Center.

33. As stated above, both FCCPM and Holy Cross were organized to utilize their resources to serve, supplement and support Family and Children's Center. The Respondent stated that Family & Children's Center is clearly exempt, but the concern is about the leasing operation.
34. Charging a fee for 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. *Raintree Friends Housing, Inc.* citing *State Board of Tax Commissioners v. Methodist Home for the Aged*, 241 N.E.2d 84, 88 (Ind. App. Ct. 1968). The fact that FCCPM charges for the space, equipment, and furniture that it leases to Holy Cross does not disqualify FCCPM from a charitable exemption.
35. FCCPM owns the subject personal property for the purpose of providing service and equipment to Holy Cross, an affiliate of Family & Children's Center. Holy Cross occupies and uses the subject personal property to serve and support Family & Children's Center. The subject personal property is owned, occupied, and used to support Family & Children's Center, which the Respondent stated was clearly exempt.
36. The Board finds that the requirements of Ind. Code § 6-1.1-10-16 were met as the property is owned, occupied, and used for charitable purposes. Accordingly, the subject personal property is exempt from property taxation for the 2003 tax year.

#### **SUMMARY OF FINAL DETERMINATION**

*Whether the personal property qualifies for a charitable exemption pursuant to Ind. Code § 6-1.1-10-16.*

37. The subject personal property owned by FCCPM qualifies as 100% exempt pursuant to Ind. Code § 6-1.1-10-16.

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

**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.