

REPRESENTATIVE FOR PETITIONER: Courtney Lynch, Quarles & Brady, LLP

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Hellenic Senior Living of	)	Petitions:	22-008-20-2-8-00824-20
New Albany, LLC	)		22-008-20-2-8-00832-20
	)		
Petitioner,	)		
	)		
v.	)	Parcels:	22-05-04-301-644.000-008
	)		22-05-04-300-047.001-008
	)		
	)	County:	Floyd
Floyd County Assessor,	)		
	)	Assessment Year:	2020
Respondent.	)		

March 24, 2022

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

**INTRODUCTION**

1. Hellenic Senior Living of New Albany, LLC, (“Hellenic”) applied for an 85% exemption for charitable use for a low-income senior living facility. But Hellenic failed to show that its primary shareholder, a “private investor”, owned the property for a charitable purpose. Thus, we find the subject property to be 100% taxable.

**PROCEDURAL HISTORY**

2. Hellenic applied for a property tax exemption for a property located at 2632 Grant Line Road in New Albany. The Floyd County Property Tax Assessment Board of Appeals

(“PTABOA”) denied Hellenic’s application for an 85% exemption finding the property to be 100% taxable. Hellenic timely appealed to the Board.

3. The Board set these appeals for telephonic hearing for May 18, 2021. The Assessor failed to appear and the Board subsequently issued a final determination for Hellenic on June 17, 2021. On June 24, the Assessor then filed a request for rehearing, which the Board granted. On September 2, 2021, our Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on the appeals. Neither she nor the Board inspected the property.
4. Todd Jensen, Director of Development for AHEPA Affordable Housing Management, Inc., and Floyd County Assessor James Sinks were sworn and testified under oath.

5. The parties submitted the following exhibits:

Petitioner’s Exhibit 1:	Form 136 Exemption Application and attachments
Petitioner’s Exhibit 2:	PTABOA Denial of Exemption
Petitioner’s Exhibit 3:	Form 132 Petition to IBTR
Petitioner’s Exhibit 4:	AHEPA Articles of Incorporation
Petitioner’s Exhibit 5:	AHEPA Bylaws
Petitioner’s Exhibit 6:	IRS 501 (c)(3) letter
Petitioner’s Exhibit 7:	Hellenic Entity Structure
Petitioner’s Exhibit 8:	Prior Exemption Approval
Petitioner’s Exhibit 9:	Managing Member Articles of Restatement
Petitioner’s Exhibit 10:	Managing Member Amended Restated By-Laws
Petitioner’s Exhibit 11:	Community Service Information
Petitioner’s Exhibit 12:	Lease Agreement
Petitioner’s Exhibit 13:	Draft 2020 Audited Financial Statements
Petitioner’s Exhibit 14:	March 2021 Rent Roll and Rent Limits Update
Respondent’s Exhibit A:	2019 Fair Market Rent Documentation
Respondent’s Exhibit B:	Screenshot of Area Rental Rates

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders, and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## OBJECTIONS

7. The Assessor objected to Petitioner's Exhibit 8, the approval for the prior year's 85% exemption for Hellenic's property, on the grounds that it was not relevant to the 2020 assessment year, and Hellenic had failed to lay a foundation for the evidence. While each year stands alone, we find the Petitioner laid sufficient foundation that the exhibit meets the low standard for relevancy. Thus, we overrule the objection and admit the exhibit.
8. Hellenic objected to Assessor's Exhibit B, information on rental rates in the area, on the grounds that it was not relevant because it lacked sufficient detail and that the Assessor did not lay sufficient foundation. We find the exhibit meets the low standard for relevance, and the Assessor provided sufficient foundation for the exhibit. We overrule Hellenic's objections and admit Assessor's Exhibit B.

## FINDINGS OF FACT

9. The subject property is a 125-unit assisted living facility in New Albany. The facility is used to provide housing and other services to residents 62 or older that fall at or below 60% of Area Median Income ("AMI"). It has both studio and efficiency apartments. Residents of each type of unit all pay the same rent based on Department of Housing and Urban Development ("HUD") tables. Residents also pay additional fees for meals, telephone, cable, and other services. Most residents have these services paid for through Medicaid. Tenants can be evicted for nonpayment of rent. *Jensen testimony; Pet'r. Exs. 1, 11, 12, 14.*
10. The facility is owned by Hellenic Senior Living of New Albany, LLC, a non-profit organization. Hellenic, in turn, is owned by two separate entities. The first, Affordable Housing Partners, Inc. ("AHP") is a "Limited Partner" with a 99.99% share. It is a for-profit "private investor" that initially financed the subject property's development in exchange for tax credits. The second owner, AHEPA Affordable Housing Management, Inc., is the "General Partner" with a .01% share. AHEPA is responsible for the day-to-day operations of the facility. It is a non-profit organization that "focuses on providing

affordable housing for low-income seniors and managing those properties.” *Jensen testimony; Pet’r. Ex. 4, 5, 6, 9, 10, & 13.*

#### ANALYSIS

11. While all tangible property is generally subject to taxation, the legislature may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes. Ind. Const., Art. 10 § 1. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Because exemptions relieve properties from bearing their share of the cost of government services, they are strictly construed against taxpayers and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
12. A taxpayer bears the burden of proving that its property qualifies for exemption. *Id.* Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Indianapolis Osteopathic Hospital, Inc.* 818 N.E.2d at 1014; *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct 2005).
13. To qualify for a charitable purpose exemption, the property at issue must be “owned, occupied, and used for...charitable purposes.” Indiana Code § 6-1.1-10-16. That exemption extends to the land on which the building is situated. I.C. § 6-1.1-10-16(c). A charitable purpose exists if there is: (1) evidence of the relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general, and (2) 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) (*citing Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (Ind. Ct. of App. 1969)). A property need not be owned, occupied, and used by the same entity to be exempt. *See Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13, 14 (Ind. Tax Ct. 2009); *See also Sangranea Boys, Fund, Inc. v. State Bd. of Tax Comm’rs*, 686 N.E.2d

954, 959 (Ind. Tax Ct. 1997). In cases where the owner and the occupant or user are different entities, each entity must possess its own distinct exempt purpose. *Oaken Bucket*, 938 N.E.2d at 659.

14. Hellenic asserts that it is entitled to an 85% exemption from property taxes because the subject property was owned, occupied, and used for charitable purposes.<sup>1</sup> But it failed to establish a key element of that claim, namely that the subject property was owned for charitable purposes. Although Hellenic owned the subject property, Hellenic itself was owned by AHEPA and AHP, with shares of .01% and 99.99% respectively. Thus, we must determine whether those entities possessed a charitable purpose. Hellenic focused its argument almost exclusively on the purposes of AHEPA, apparently arguing that because AHEPA was the General Partner, its ownership purposes were sufficient for both entities. But we cannot ignore that AHEPA and AHP are separate corporate identities, nor can we impute the purposes of one to the other. *St. Mary's Bldg. Corp. v. Redman*, 135 N.E.3d 681, 87-88 (Ind. Tax Ct. 2019). Thus, even were we to find that AHEPA had a charitable purpose, that purpose does not extend to AHP. The record shows that AHP is a “private investor” that financed the development of the subject property in exchange for a return on its investment in the form of tax credits. This is not a charitable purpose. Because the 99.99% owner of Hellenic has not been shown to have a charitable purpose, the subject property is ineligible for exemption.
15. We will also briefly examine Hellenic’s claims of charitable use. Contrary to Hellenic’s arguments, caring for the aged is not a *per se* charitable use. *Tipton County Health Care Foundation, Inc. f/k/a Tipton County Memorial Hospital Foundation v. Tipton County Assessor*, 961 N.E.2d 1048, 1052-3 (Ind. Tax 2012). Although Hellenic followed HUD cost tables in setting its rent rates, it did nothing to show how those rates related to the market rates in the area. It also had leases that allowed for eviction for non-payment of rent, similar to any other landlord. And, as the Assessor points out, the existence of an

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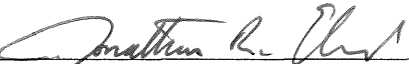
<sup>1</sup> We note that Hellenic only claimed the subject property should be 85% exempt from taxation. Where a property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative distribution of time between exempt and non-exempt uses. *Hamilton Cnty. Ass’r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017). Hellenic offered no such analysis.

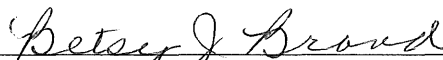
assessment statute for low-income housing similar to the subject property, I.C. § 6-1.1-4-41, presupposes that not all low-income housing is exempt from taxation. Beyond housing, the additional services Hellenic provided were paid for through Medicaid or private fees. There is nothing in the record showing that Hellenic provided any sort of charity care or any significant services free of charge. Thus, the evidence as a whole is insufficient to show that Hellenic's use of the subject property was charitable.

#### CONCLUSION

16. Hellenic failed to show that the subject property was owned for charitable purposes. For that reason, we find the subject property to be 100% taxable for the 2020 assessment year.

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

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.