



## STATUTORY FRAMEWORK AND CASE LAW

- Under Indiana Code, real estate is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes. IC 6-1.1-10-16. Based on the case law interpreting IC 6-1.1-10-16, 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.<sup>1</sup>
- Two recent cases from the Indiana Tax Court determined that affordable housing did not meet these requirements. See *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. Tax Ct. 2009) *trans. denied.*; *Housing Partnerships v. Owens*, 10 N.E.3d 1057 (Ind. Tax Ct. 2014), *trans. denied.*
- As a result of these cases, from county to county, there is inconsistency in whether, and to what extent, affordable housing should be treated as exempt. In some counties, there is little or no chance of a 501c3 charity receiving exemption, which leaves the charity with the options of litigating or paying property tax which it cannot afford. In other counties, full or partial exemption is granted to most types of affordable housing as long as the owner can show charitable ownership, below market rents, and social services are provided.

## ELEMENTS OF THIS LEGISLATIVE PROPOSAL

- Adds a new section to supplement IC 6-1.1-10-16 that provides for property tax exemption specifically for certain types of affordable housing.
- References the IRS rules regarding 501c3 exemption for affordable housing and provides that if that test is met and demonstrated, then exemption is granted. The factors provided in the IRS rules and this proposed legislation are as follows:
  - 501c3 charity (or its 100% owned LLC), and
  - At least 75% of the units are rented to low-income residents and other specific requirements, or
  - Based on facts and circumstances, the property is operated to relieve the poor and distressed through provisions of affordable housing and/or services.

---

<sup>1</sup> Indiana Code Section 5-20-1-1(3) sets forth a finding by the Indiana General Assembly that “the provision of decent, safe and sanitary housing for persons and families of low and moderate income who would otherwise be unable to obtain adequate housing at costs they could afford is a valid public purpose for which public money may be spent.”