

REPRESENTATIVES FOR PETITIONER:

Darrell L. Gerig III
Rachel N. Harroff
Peter G. Mallers, Attorney

REPRESENTATIVES FOR RESPONDENT:

Pat Love
Thomas D. Fellrath
Kimberly Klerner
Angeles Salinas
Ashley Esther
John Rogers, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PARKVIEW HEALTH SYSTEM, INC.,)	
)	Petition No.: 02-065-99-2-8-00001
Petitioner)	
)	
v.)	County: Allen
)	
ALLEN COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS,)	Township: Washington
)	Personal property
Respondent)	Assessment Year: 1999
)	

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

March 26, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to

the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

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 personal property owned by the Petitioner qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-7, Parkview Health System, Inc. (Parkview) filed Form 132, Petition for Review of Exemption, petitioning the Board to conduct an administrative review of the Allen County Property Tax Assessment Board of Appeals’ (PTABOA) denial of Parkview’s exemption application for the 1999 assessment year. The exemption application was filed on May 14, 1999. The PTABOA denied the application on October 13, 1999. Parkview filed the Form 132 petition on October 25, 1999.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on January 29, 2003 in Fort Wayne, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

Darrell L. Gerig III
Rachel N. Harroff
Peter G. Mallers, Attorney

For the Respondent:

Pat Love
Thomas D. Fellrath
Kimberly Klerner
Angeles Salinas
Ashley Esther
John Rogers, Attorney

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Darrell L. Gerig III
Rachel N. Harroff

For the Respondent:

Pat Love
Kimberly Klerner
Angeles Salinas
Ashley Esther

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Ex. 1 – Certificate of Incorporation for Parkview Health Systems, Inc;
Petitioner's Ex. 2 – Letter from Internal Revenue Service;
Petitioner's Ex. 3 – Bylaws of Parkview Health Systems, Inc.;
Petitioner's Ex. 4 – Administrative Policy Manual for Parkview Health Systems, Inc.;
Petitioner's Ex. 5 – Parkview Medical Group write-off policy.

For the Respondent:

Respondent's Ex. 1 – Tax information for parcels under appeal;

Respondent's Ex. 2 – Copy of Ind. Code § 6-1.1-10-16;

Respondent's Ex. 3 – Copy of Ind. Code § 6-1.1-10-18.5.

7. The following additional items are officially recognized as part of the record of proceedings:

Board Ex. A – Form 132 petitions and related attachments;

Board Ex. B – Hearing notices.

Jurisdictional Framework

8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

State Review and Petitioner's Burden

9. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
10. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory

statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

13. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

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. Article 10, § 1 of the Constitution of Indiana.
15. Article 10, § 1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, 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 Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the

property must be predominantly used or occupied for the exempt purpose. 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. Ind. Code § 6-1.1-2-1.
18. 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*, 611 N.E. 2d 708 (Ind. Tax 1993).
19. 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 (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). 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.
20. 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)).
21. 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).

Discussion of Issue

Whether personal property owned by the Petitioner qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes

22. The Petitioner contends that it qualifies for exemption under Ind. Code § 6-1.1-10-16 for charitable purposes.
23. The Respondent contends the Petitioner's charitable acts are de minimis and do not qualify the property for exemption.
24. The applicable rules governing this issue are:

Ind. Code § 6-1.1-10-16(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.

Ind. Code § 6-1.1-10-16(h) / Ind. Code § 6-1.1-10-18.5(a)

This section does not exempt from property tax an office or a practice of a physician or group of physicians that is owned by a hospital licensed under IC 16-21-1 or other property that is not substantially related to or supportive of the inpatient facility of the hospital unless the office, practice, or other property:

- (1) provides or supports the provisions of charity care (as defined in IC 16-18-2-52.5), including providing funds or other financial support for health care services for individuals who are indigent (as defined in IC 16-18-2-52.5(b) and IC 16-18-2-52.5(c)); or
- (2) provides or supports the provisions of community benefits (as defined in IC 16-19-9-1), including research, education, or government sponsored indigent health care (as defined in IC 16-21-9-2).

However, participation in the Medicaid or Medicare program alone does not entitle an office, practice, or other property described in this subsection to an exemption under this section.

Ind. Code § 6-1.1-10-36.3

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.

(b) If a section of this chapter states one (1) or more purposes for which

property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(1) Property that is exclusively used or occupied for one (1) or more of the stated purposes is totally exempt under that section.

(2) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a church, religious society, or not-for-profit school is totally exempt under that section.

(3) Property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.

(4) Property that is predominantly used or occupied for a purpose other than one (1) of the stated purposes is not exempt from any part of the property tax.

(c) Property is not used or occupied for one (1) or more of the stated purposes during the time that a predominant part of the property is used or occupied in connection with a trade or business that is not substantially related to the exercise or performance of one (1) or more of the stated purposes.

25. Evidence and testimony considered particularly relevant to this determination include the following:

A. The property under appeal is located at 3124 East State Boulevard Suite 2A, Fort Wayne, St. Joseph Township, Allen County. The subject property is occupied by administrative offices of Parkview Medical Group (PMG). PMG is a group of physicians working under the umbrella organization known as Parkview Health System, Inc. The personal property under appeal consists of office furniture and equipment. The PTABOA has determined the personal property to be 100% taxable (Board Ex. A). The administrative law judge did not inspect the property.

B. The parent organization, Parkview Health System, Inc., is a not-for-profit corporation, and is exempt from federal income tax under Section 501 (c)(3) of the Internal Revenue Code of 1986. The corporation is operated for charitable, scientific, and educational purposes. The corporation provides qualified research services and other community benefit-oriented programs that satisfy the health care needs of indigent persons, medically underserved areas, and the community as a whole (Pet. Ex. 3 at 4).

- C. The corporation requires the doctors it employs to assist in the furtherance of its charitable purpose by providing care to the indigent and being involved in community-benefit oriented programs (Gerig testimony, Pet. Ex. 4).
- D. The dollar amount per year of indigent care for all of PMG is as follows: \$2,400.28 for 1998; \$7,733.77 for 1999; \$1,342.80 for 2000; \$13,992.84 for 2001; and \$13,531.86 for 2002. These totals are for approximately 35 physicians. These amounts are separate and distinct from Medicaid or bad debt write-off (Gerig testimony).
- E. PMG community-benefit oriented programs include training of physicians at Indiana University Medical School (\$8,000 estimated benefit per year), training and lecturing at Michiana Community College and Anthis Training Center (\$11,900), training of physician's assistants at St. Francis University and Indiana Wesleyan (\$12,000), serving as team physicians for sports teams and bands (\$11,250), service on local boards (\$3,000) (Id).
- F. PMG's estimated gross revenue for the years 1998-2002 is as follows: \$9 million for 1998; \$9.5 million for 1999; \$10 million for 2000; \$10.5 million for 2001; and \$11 million for 2002. Excluding Medicaid and Medicare, the revenue (65% of above amounts) is as follows: \$5.85 million in 1998; \$6.175 million in 1999; \$6.5 million in 2000; \$6.825 million in 2001; and \$7.15 million in 2002 (Id).

Analysis of Issue

26. While the Petitioner acknowledges that the dollar amounts for indigent care are extremely small in relation to total revenue, the Petitioner stresses that PMG physicians must take indigent patients. The Petitioner contends that the statute does not indicate a percentage of indigent care standard that must be met in order to obtain an exemption from property taxes. Therefore, the percentage of indigent care is immaterial. The Petitioner suggests that the lack of a standard may be by design, and that the proper focus is whether the activities of the physicians further the exempt purpose of the hospital. Since the physicians must take indigent patients, the Petitioner concludes that this furthers the hospital's exempt purpose.

27. The Respondent argues that the PTABOA decision comes before this Board under the presumption of correctness. The Respondent characterizes the Petitioner's level of indigent care, as well as its level of community related benefits activities, as "de minimis", and contends there must be a minimum standard in indigent care given by a petitioner to obtain an exemption.
28. In order to be exempt in whole or in part from property taxation, Petitioner must meet one or more of the following three standards or tests:
 - a. The "predominant use" standard as set forth in Ind. Code § 6-1.1-10-36.3
 - b. The "substantial relation" test set forth in Ind. Code § 6-1.1-10-16(h)
 - c. The "charity care" or "community benefit" obligation as set forth in Ind. Code § 6-1.1-10-16(h).

The latter two tests are directly applicable to the subject property.

Predominate Use

29. A "predominate use" test was adopted for determining whether property qualifies for exemption under Ind. Code Chapter 6-1.1-10. "Although charitable giving might serve as evidence to support claimed charitable use of the facility, the statutory test since 1983 has been predominate use of the facility, not distribution of income for charitable purposes." *State Board of Tax Commissioners v. New Castle Lodge # 147*, 765 N.E. 2d 1257, 1263 (Ind. 2002).
30. Pursuant to Ind. Code § 6-1.1-10-36.3, property is predominantly used or occupied for one or more stated purposes if it is used or occupied for one or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property. Property that is predominately used or occupied for purposes other than one of the stated purposes is not exempt from any part of the property tax.

31. The Petitioner presented no evidence, nor is there anything in the record, indicating that the predominate use of the property is providing indigent care or community benefits.

Reasonably Necessary or Substantially Related

32. The “reasonably necessary” test, applied by the Tax Court in *LeSea Broadcasting Corp. v. State Board of Tax Commissioners*, 525 N.E. 2d 637 (Ind. Tax 1988), held that property is exempt if its ownership, use and occupancy are reasonably necessary to further the exempt purpose. For physician’s offices, such as those at issue here, a similar standard has been codified in IC 6-1.1-10-16(h). The property must be “substantially related to or supportive of the in-patient facility of the hospital.”
33. In *St. Mary’s Medical Center v. State Board of Tax Commissioners*, 571 N.E. 2d 1247 (Ind. 1991), the Supreme Court affirmed a prior Tax Court decision that the nexus between the use and occupancy of the subject buildings by physicians and the hospital’s exempt purpose was insufficient as a basis for exempt status. The facts and circumstances of the instant matter are directly on point to the *St. Mary’s* decision.
34. The administrative offices of PMG are not reasonably necessary to further the exempt purpose of Parkview Health System, Inc.

Charity Care

35. Ind. Code § 6-1.1-10-16(h) and Ind. Code § 6-1.1-10-18.5(a) creates an alternative route to exempt status for physician offices, even if the property is not “substantially related” to the hospital’s exempt purpose, if the property provides or supports the provision of charity care or community benefits.
36. From 1998-2002, PMG took in an estimated \$50,000,000 in gross revenue. After Medicaid and Medicare are deducted, the total is \$32,500,000. During this time, PMG provided \$39,002 in care for the indigent. This is 0.12% of total revenue. Also, PMG

provided approximately \$184,600 in community benefits. This is 0.56% of total revenue. Thus, from 1998-2002, PMG's charitable acts amounted to 0.68% of its total revenue.

37. While the statute does not specify a minimum amount of charity care and community benefit necessary to qualify for exemption, there must be some meaningful contribution, if the purpose of tax exempt status is to be served. The taxpayer must demonstrate that it provides "a present benefit to the general public...sufficient to justify the loss of tax revenue." *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), aff'd 571 N.E. 2d (Ind. Tax 1991)).
38. The level of charity care and community benefits provided by Petitioner are so small as to be *de minimus*. In seeking guidance on what might constitute a sufficient level of charitable giving to warrant tax exempt status, we turn to *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E. 2d 678 (Ind. 1988), the Supreme Court held at charitable contribution rate of 2.8% would not entitle the property to a tax exemption, stating that "[t]he percentage of income (2.8) given as charitable donations can hardly be claimed to cloak the appellee with charitable immunity" (*Id* at 681). Furthermore, as the Supreme Court stated, "[t]he small amount of charitable contribution engaged in by the appellee is no more than is engaged in by many businesses and individuals." (*Id*).
39. The amount of charitable and community service conferred upon the public by the Petitioner is insufficient to justify tax exempt status.

Summary of Final Determination

40. The property in question does not qualify for exemption pursuant to Ind. Code § 6-1.1-10-16. PMG provides at best a minimal amount of charity care and community benefits. The property in question is not predominately used, nor is it reasonably necessary, for the exempt purpose of Parkview Health System, Inc. The property remains 100% taxable.

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

Chairman, 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. 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.