

REPRESENTATIVES FOR PETITIONER: Anthony M. Zirille, BAKER & DANIELS.

REPRESENTATIVES FOR RESPONDENT: Bart Blosser, Allen County Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

REDIMED, INC.,)	Petition Nos.: see attached list
)	
)	County: Allen
)	
Petitioner)	Townships: Aboite, St. Joseph, Washington, Wayne
)	
v.)	Parcel Nos.: 11-0013-0020
)	77-0028-0061
ALLEN COUNTY BOARD OF)	80-0011-0037
REVIEW,)	Personal Property
)	
Respondent)	Assessment Years: 1993, 1994, & 1995
)	

Appeal from the Final Determination of
Allen County Board of Review

May 20, 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 the land, improvements, and personal property owned by the Petitioner qualify 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, Dale D. Cochard, President of Redimed (Petitioner) filed numerous Form 132, Petitions for Review of Exemption, petitioning the Board to conduct an administrative review of the above petitions. The Petitioner filed all Form 136, Applications for Property Tax Exemption, in a timely manner. The Respondent gave proper notice of denial of the Form 136 petitions.
3. The Petitioner filed Form 132 petitions seeking a review of the denied Form 136 applications. The Form 132 petitions were all filed in a timely manner.
4. A review of the Form 132 petitions filed by the Petitioner indicate that four of the petitions were duplicate filings. No action will be taken on the duplicate petitions. See attached list.
5. The subject properties (parcels) on appeal are located at:
11-0013-0020 7333 W. Jefferson Blvd., Fort Wayne
77-0028-0061 3717 Maplecrest Road, Fort Wayne
80-0011-0037 315 E. Cook Road A & B, Fort Wayne
PP 304 Fairfield Avenue, Fort Wayne
6. Effective August 1, 1995, the Lutheran Hospital of Indiana Inc., was sold to a for-profit corporation. As part of the transaction, the assets of Redimed, Inc. were sold to the same for-profit corporation, with the remaining corporate shell of Redimed, Inc., the non-profit corporation, changing its name to the Lutheran Health Foundation Sub-1, Inc.

Hearing Facts and Other Matters of Record

7. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 22, 1995 before Hearing Officer George M. Helton.

8. The following persons were present at the hearing:

For the Petitioner:

Anthony M. Zirille, BAKER & DANIELS

Dale Cochard, CEO of Redimed/Lutheran Health Foundation

For the Respondent:

Bart Blosser, Allen County Assessor

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

For the Petitioner:

Anthony M. Zirille

Dale Cochard

For the Respondent:

Bart Blosser

10. The following exhibits were presented at the hearing:

For the Petitioner:

Exhibit 1 – Brief which included the following exhibits:

A - Copies of Form 132 petitions and Form 136 applications with attachments for March 1, 1993

B - IRS letter regarding application for exemption (Oct. 26, 1993)

C - Not-for-Profit Tax Registration Certificate

D - Copies of Form 132 petitions and Form 136 applications with attachments for March 1, 1994

E - Copies of Form 132 petitions and Form 136 applications with attachments for March 1, 1995

F - Certificate of Incorporation and Articles of Incorporation for Redimed, Inc.

G - By-Laws of Redimed

H - Redimed, Inc. Administrative Policy; Charity Policy

For the Respondent:

NONE

11. At the hearing, the Hearing Officer requested additional evidence from the Petitioner. On November 21, 1995, the Petitioner submitted additional evidence. The evidence is labeled as follows:

Petitioner's Exhibit 2 – Cover letter dated November 21, 1995 with the following attachments: a letter dated October 25, 1995 from Dale Cochard to Tony Zerilli; handwritten schedules showing bad debt and charity; and Proposed Findings of Fact and Conclusions of Law.

12. On February 19, 1996, the Petitioner faxed to the Hearing Officer a Summary Income Statement and Balance Sheet for July 31, 1995 for Redimed, Inc. The Summary Income Statement is labeled as Petitioner's Exhibit 3.

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

Board Item A – Form 132 petitions

Board Item B – Notice of Hearing on Petition

Jurisdictional Framework

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

State Review and Petitioner's Burden

15. 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).
16. 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.]
17. 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.]
18. 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.]
19. 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

20. 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.
21. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
22. 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

23. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
24. 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).

25. 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.
26. 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)).
27. 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 the land, improvements and personal property owned by Redimed, Inc., qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

28. The Petitioner contends the subject properties are used in the same manner as its parent company, Lutheran Hospital. Lutheran Hospital is exempt from both Federal taxes and Indiana property taxes.
29. The Respondent contends the subject does not qualify for an exemption from property taxes due to a concern over other similar facilities. The Respondent testified he was not sure how Petitioner gave charity to the public.

30. The applicable rules governing this Issue are:

Ind. Code § 6-1.1-10-16(a)

All of part of a building is exempt from 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.

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

- a. Lutheran Hospital purchased Redimed in 1992. Lutheran did not change the name of Redimed because of the goodwill and community recognition of the name. *Zirille testimony.*
- b. Lutheran Hospital was a 501(c)(3) corporation and exempt from property taxes in Indiana for the years in question. *Petitioner's Exhibit 1.*
- c. Redimed was re-organized as a 501(c)(3) corporation exempt from federal taxes with its own Board of Directors that reported to the Directors of Lutheran Hospital. Redimed was a wholly owned subsidiary of Lutheran Hospital. *Zirille testimony.*
- d. Under the new corporate structure, Redimed was required to provide service to people regardless of their ability to pay for the service. This requirement was governed by guidelines established by Lutheran Hospital. *Cochard testimony.*
- e. Redimed provides medical services (simple cuts, bruises, sprains, and fractures) that would fall between those services rendered by a family doctor and services of an emergency room. *Cochard testimony.*
- f. Redimed was expected to give 5% each year as charity care. However, the actual amount of charity care differed each month. *Cochard testimony.*
- g. Redimed provides community services that would not be reflective in the financial records. These services include giving supplies to a local free clinic, performing free blood screenings at local retailers, and going to local high schools and providing medical services to athletic events at no cost. *Cochard testimony.*

Analysis of ISSUE

32. Redimed was organized by The Lutheran Hospital of Indiana, Inc. to further Lutheran

Hospital's mission by providing primary care and walk-in medical services to the community while promoting its Christian ministry.

33. The Petitioner stated that the corporate structure dictates that Redimed provide services to people regardless of their ability to pay. The Petitioner is expected to give 5% of the overall business to charity care. The Petitioner also wrote off bad debt collections for services.
34. 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

35. 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).
36. 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.

37. 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

38. 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.”
39. 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.
40. The Petitioner cites to the *St. Mary’s* case stated above as well as the *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850 (Ind. Tax 1990). The Petitioner states that these cases support their contention that a property which is owned and used for charitable purposes is tax exempt.
41. The properties are owned by Lutheran Hospital and offer limited medical services to the community. However, The Petitioner has not shown how the ownership, use and occupancy of the properties are reasonably necessary to further the exempt purpose of Lutheran Hospital.

Charity Care

42. 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.

43. 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 Petitioner stated that they are expected to give 5% of the overall business to charity. However, the Petitioner provided no support for this statement. 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 1247 (Ind. Tax 1991)).
44. At the hearing, the Petitioner provided Summary Income Statements for the years ending December 31, 1992, 1993, and 1994. The "Charity Care Allowances" show \$0; \$1,464; and \$2,493 respectively. The "Total Net Revenues" for the years are \$3,782,045; \$6,065,768 and \$6,633,926 respectively. The "Provision for Uncollect." (see *Summary Income Statements*) show \$98,424; \$153,651; and \$199,058 respectively. (Petitioner's Exhibit 1).
45. For the period ending July 31, 1995, the Petitioner shows "Charity Care Allowances" of \$236; "Total Net Revenues" of \$3,745,795; and "Provision for Uncollect." of \$144,039. (Petitioner's Exhibit 3).
46. Subsequent to the hearing, the Petitioner submitted a handwritten listing of charity and bad debt for 1993, 1994, and part of 1995. (Petitioner's Ex. 2). The numbers for charity and bad debt on the handwritten listing do not match the numbers shown as "Charity Care Allowances" and "Provision for Uncollect." on the Summary Income Statements.
47. The Petitioner also provided a letter giving examples of the goods and services given to the community. (Petitioner's Exhibit 2). The Petitioner estimates values for the goods and services. A brief summary is provided below:

- a. Matthew 25 - \$2,500 over three (3) years.
- b. Schools - \$2,000 per year or \$6,000 for the three (3) years.
- c. Immunization clinics/health fairs - \$5,000 over three (3) years.
- d. Health events - \$3,000 each year or \$9,000 for the three (3) years.
- e. Youth soccer/girls softball - \$500 annually or \$1,500 for the three (3) years.

The total for the three (3) years is \$24,000 [2,500 + 6,000 + 5,000 + 9,000 + 1,500]. The average per year would be \$8,000 [24,000 ÷ 3].

48. Using 1994 as an example, the charity care and community benefits would be as follows:

Charity Care Allowances (¶44)	2,493
Provision for Uncollect. (¶44)	199,058
Community benefits (¶47)	<u>8,000</u>
Total	209,551

In 1994, the Petitioner had Total Net Revenues of \$6,633,926. The charity care and community benefits compared to the Total Net Revenues is 3.2% (209,551 ÷ 6,633,926). Therefore, for 1994 the Petitioner’s charitable acts and community benefit amounted to 3.2% of its total revenue.

49. 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*).

50. 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

Whether the land, improvements, and personal property owned by Petitioner qualify for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

51. The property in question does not qualify for exemption pursuant to Ind. Code § 6-1.1-10-16. Redimed 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 Lutheran Hospital. 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.

Attachment to Redimed, Inc. Findings and Conclusions

REDIMED, INC.

Petition Numbers by Township:

Aboite Township	Key #	Notes
02-038-93-2-8-00060	11-0013-0020	
02-038-93-2-8-00067	11-0013-0020	Duplicate of 02-038-93-2-8-00060
02-038-94-2-8-00104	11-0013-0020	
02-003-95-2-8-00014	11-0013-0020	
St. Joseph Township		
02-063-93-2-8-00058	77-0028-0061	
02-063-93-2-8-00069	77-0028-0061	Duplicate of 02-063-93-2-8-00058
02-063-94-2-8-00107	77-0028-0061	
02-063-95-2-8-00011	77-0028-0061	
Washington Township		
02-065-93-2-8-00059	80-0011-0037	
02-065-93-2-8-00068	80-0011-0037	Duplicate of 02-065-2-8-00059
02-065-94-2-8-00106	80-0011-0037	
02-065-95-2-8-00012	80-0011-0037	
Wayne Township		
02-067-93-2-8-00057	PP	
02-067-93-2-8-00066	PP	Duplicate of 02-067-93-2-8-00057
02-067-94-2-8-00105	PP	
02-067-95-2-8-00013	PP	