

**State of Indiana
Board of Tax Review**

St. John Health System Corporation,)	On Appeal from the Madison
)	County Board of Review
Petitioner,)	
)	
)	Petition for Review of Exemption,
v.)	Form 132
)	
)	Petition No. 48-96-2-8-00017
Madison County Board of Review,)	
)	
Respondent.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

Whether the real property owned by St. John's Health System Corporation, consisting of three parcels, qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 under a claim of charitable purpose.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, St. John's Health System Corporation (St. John's) filed an Application for Property Tax Exemption, Form 136 with the Madison County Auditor. The Form 136 was filed on May 7, 1995. The Madison County Board of Review (County Board) denied the application and gave St. John's notice on January 5, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-3, St. John's filed a Form 132 petition seeking a review by the State. The Form 132 petition was filed February 2, 1996.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 13, 1997 before Hearing Officer Wayne Hudson. Mr. Tom Beaman, Attorney-at-law, Ms. Kathy Zampoltz, Manager of Accounts, and Mr. Dan Gray, Director of Engineering Services, were present on behalf of St. John's. Ms. Jean Hornberger, Deputy Auditor, was present on behalf of the County Board.

5. At the hearing, the subject Form 132 Petition was made a part of the record as Board Exhibit A. The Notice of Hearing was marked as Board Exhibit B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – A description of the amount of area used at each location and the purpose of each user.

Petitioner's Exhibit 2 – A copy of the Articles of Incorporation for Saint John's Health Care Corporation with a Certificate of Assumed Name of Saint John's Health System.

Petitioner's Exhibit 3 – A copy of the Statement of Philosophy of St. John's Health System.

Petitioner's Exhibit 4 – Copies of St. John's 1995 Annual Report and other financial information.

6. The properties at issue in this appeal consist of land, buildings, and paved parking areas and are described as follows:

Carl Erskine Ambulatory Services Center (Erskine Building)
2020 Meridian Street, Anderson, Anderson Township

Wilbur Roby Medical Office Building (Roby Building)
141 West 22nd Street, Anderson, Anderson Township

Pendleton Health Center (Pendleton Center)
350 JW Walker Drive, Pendleton, Fall Creek Township

St. John's originally included its property located in Edgewood as part of its Form 132 petition. However, at the hearing, St. John's withdrew this property from the appeal.

7. The County Board granted partial property tax exemption for the Erskine Building and the Pendleton Center in the amount of 40.65% and 4.87%, respectively. The County Board wholly denied exemption for the Roby Building.
8. The Erskine Building is a three story medical facility. Of the 85,180 total square footage, 5,080 square feet is used for a for-profit medical supply service, 8,550 square feet is leased office space for non-employee physicians, 2,335 square feet is employee physician office space, and 69,215 square feet is used for hospital services, common and maintenance areas, and vacant space. (Pet. Ex. 1.)
9. The Roby Building is a medical office building with 34,800 square feet of office space. Of the 34,800 total square footage, 28,279 square feet is leased to non-employee physicians, 1,656 square feet is employee physician office space, and

4,865 square feet is used for hospital services, common areas, and vacant space. (Pet. Ex. 1.)

10. The Pendleton Center is a medical office building with 7,200 square feet of office space. Of the 7,200 total square footage, 3,600 square feet is leased to non-employee physicians and the remaining 3,600 square feet is used for hospital services, common areas, and vacant space. (Pet. Ex. 1.)
11. St. John's is an Indiana not-for-profit corporation organized, among others, exclusively for "charitable, scientific, educational, and religious purposes as a Not-for-Profit corporation". (Pet. Ex. 2, p. 3.) St. John's cannot participate in any activities "not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code". (Pet. Ex. 2, p. 4.) St. John's, as part of its mission, is committed to offering quality health care "particularly for the poor and underserved" in the community. (Pet. Ex. 3.)
12. As part of its Statement of Philosophy, St. John's established and maintains a Charitable Assistance Policy. St. John's charitable assistance is determined on criteria such as patient or family need, financial resources, and obligations. The only limitation to St. John's policy is assistance for services billed by outside organizations (e.g., private nursing, ambulance transport, etc.). (Pet. Ex. 3.)

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

Burden

2. The courts have long recognized that in the administrative review process, the State is clothed with quasi-judicial power and the actions of the State are judicial in nature. *Biggs v. Board of Commissioners of Lake County*, 7 Ind. App. 142, 34

N.E. 500 (1893). Thus, the State has the ability to decide the administrative appeal based upon the evidence presented.

3. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995).
4. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, Section 5.51; 73 C.J.S. Public Administrative Law and Procedure, Section 128.
5. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State can properly refuse to consider the evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998)(citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239 (Ind. Tax 1998)).
6. If the taxpayer were not required to meet his burden of proof at the State administrative level, then the State would be forced to make a case for the taxpayer. Requiring the State to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E. 2d 1099 (Ind. Tax 1999); *Whitley, supra*; and *Clark, supra*.
7. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

8. In the event the taxpayer sustains his burden, then the burden shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence.

Constitutional and Statutory Basis for Exemption

9. Generally, all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

10. Article 10, Section 1 of the Constitution reads:
 - (a) The General Assembly shall provide, by law, for the uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property real and personal. The General Assembly may exempt from property taxation any property in the following classes:
 - (1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes.

11. Article 10, § 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. Ind. Code § 6-1.1-10-16 is the provision enacted by the General Assembly for the exemption of property owned, occupied, and used for the above stated purposes in genera. It reads in pertinent part:
 - (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, or charitable purposes.

12. The justification for tax exemption in the public benefit. *State Board of Tax Commissioners v. Wright* (1966), 139 Ind. App. 370, 215 N.E. 2d 57. The purpose of tax exemption, whether for religious or other classification, is to insure

that the property and funds devoted to one public benefit are not diminished by being diverted through taxation for another public benefit. *Id.*

13. The grant of tax exemption releases property from the obligation of bearing its share of the cost of government and disturbs the equality and distribution of the common burden of government upon all property. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax 1989), *aff'd.*, 571 N.E. 2d 1247 (Ind. 1991). The grant of tax exemption shifts the burden to others or results in the loss of tax revenue. *NAME*, 671 N.E. 2d at 220.
14. Accordingly, exemptions are strictly construed against the organization seeking exemption and in favor of taxation. *Id.* at 220; *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987). A taxpayer seeking exemption bears the burden of proving that it is entitled to exemption. *NAME*, 671 N.E. 2d at 220 (citing *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 611 N.E. 2d 708, 714 (Ind. Tax 1993)). As a condition precedent to being granted an exemption for charitable or educational purposes, the taxpayer must demonstrate that it provides "a present benefit to the general public ... sufficient to justify the loss of tax revenue." *St. Mary's Medical Center*, 534 N.E. 2d at 279.
15. In determining whether the property qualifies for exemption, the predominant and primary use of the property controls. *NAME*, 671 N.E. 2d at 220 (citing *Fort Wayne Sports Club*, 258 N.E. 2d at 881 and *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*, 251 N.E. 2d 673, 679 (Ind. App. 1969)).
16. The use of the property for exempt purpose is the minimum requirement for exemption, but the Generally Assembly may add other requirements when enacting exemption statutes. *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, n. 2 (Ind. Tax. 1997).

17. The Tax Court in *St. Mary's Medical Center* applied a “reasonably necessary” test that test with regard to medical office buildings occupied and used by physicians, holding that because the physicians leased the offices from the hospital and these offices were used for the physicians’ private practices, this was not a use that was reasonably necessary to the charitable mission of the hospital.
18. Subsequent to *St. Mary's*, the Indiana legislature added subsection (h) to IC 6-1.1-10-16:

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 provision 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 provision of community benefits (as defined in IC 16-21-9-1), 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.

19. Therefore, pursuant to IC 6-1.1-10-6(h), space leased by a hospital to physicians for use in their private practices will not be exempt form property tax, unless the other statutory requirements are met.

Conclusions Regarding the Exemption Claim

20. St. John’s is seeking exemption for its properties used in the operation of its health care facilities. St. John’s claims its properties are used for charitable

purposes under Ind. Code § 6-1.1-10-16.

21. As previously stated, when seeking property tax exemption, the burden is placed upon the petitioner to show that the property is specifically entitled to the exemption. The petitioner must demonstrate, with factual evidence, that the property meets the requirements set forth in the exemption statute to attain property tax exemption. However, when the parties do not dispute whether or not the purpose is an exempt one, the petitioner is relieved of this burden.

Erskine Building

22. Because the County Board granted partial exemption for these properties, there is no dispute as to the exempt nature of St. John's and its activities. The only issue in dispute is whether the amount of exemption granted by the County Board is correct. Thus, St. John's need not show that its properties specifically meet the requirements to qualify for exemption. Rather, St. John need only show that the amount of exemption granted by the County Board is incorrect.
23. Property is "predominately used" for a specified purpose if it is occupied or used for more than 50% of the time it is occupied or used for that purpose during an assessment year. Ind. Code § 6-1.1-10-36.3(a). Property used for multiple purposes, both exempt and non-exempt, is exempt from taxation if the property is predominately used for the exempt purpose. The exemption bears the same proportion to the total assessment as the time the property was used for an exempt purpose bears to the time the property was used for a non-exempt purpose during an assessment year. Ind. Code § 6-1.1-10-36.3(b)(3). In other words, a property occupied or used 75% of the time during an assessment year for an exempt purpose would qualify for an exemption equal to 75% of the total assessment.
24. With regard to the Erskine Building, St. John's presented evidence detailing, by floor and overall, the amount of space used by St. John's for its exempt purposes

and the amount of space used for purposes other than the exempt purposes during the year. This evidence demonstrates that the Erskine Building is used as follows:

Use	Square Footage	Percentage
Hospital Purposes	45,195	53%
Non-exempt	13,630	16%
Vacant/Leasable	9,500	11%
Common Areas	16,855	20%
Total	85,180	100%

25. Although the record is unclear on this point, it is logical to conclude, because portions of the building are leased to private practices, that the usage of the Erskine Building remains consistent throughout an assessment year and, therefore, is used 100% of the assessment year for St. John's exempt purpose.
26. St. John's has brought forth evidence demonstrating that the Erskine Building is predominately used for St. John's exempt purpose, because more than 50% of the building is used for purposes directly related to the functions of the hospital 's inpatient facility.
27. A portion of the building is used for non-exempt purposes, i.e. the medical supply facility and certain spaces leased to physicians for their private practice. This portion, amounting to 16% of the property's square footage, is not tax exempt.
28. The treatment of the remaining spaces, vacant property and common areas, must now be considered.
29. In the absence of evidence indicating that the vacant/leasable portions of the building are intended for use in a tax-exempt purpose, those portions of the property will be treated as non-exempt. Therefore, an additional 11% of the

building will be treated as taxable.

30. The common areas, including the mechanical and maintenance space on the penthouse floor, serves both the exempt and non-exempt portions of the building and therefore will be divided proportionately between exempt and non-exempt. Because approximately twice as much of the subject property is devoted to exempt purposes, the common area will be treated 1/3 non-exempt and 2/3 exempt.
31. For the above reasons, St. John's is entitled to a 67% (53% used for hospital purposes and 2/3 of 20% common area, which is 14%. $53\% + 14\% = 67\%$) property tax exemption for the portion of the Erskine Building used in carrying out St. John's exempt purpose. The remaining 33% of the Erskine Building is subject to property taxation.

Pendleton Center Building

32. With regard to the Pendleton Center, St. John's presented evidence detailing the amount of space used by St. John's for its exempt purposes and the amount of space used for purposes other the exempt purposes during the year. The evidence demonstrates that 50% is used for non-exempt purposes, 25% is used for exempt hospital purposes and the remaining 25% is unfinished, vacant space.¹
33. Because the Pendleton Center Building is not predominantly used for exempt purposes, it is fully taxable.

¹Although the record is unclear on this point, it is logical to conclude, because portions of the building are leased to private practices, that the usage of the Pendleton Center remains consistent throughout an assessment year.

Roby Building

28. St. John's also seeks property tax exemption for the portion of the Roby Building used to carry out St. John's exempt purpose. St. John's claims that portions of the Roby Building are used to carry out St. John's charitable purposes and meets the requirements set forth under Ind. Code § 6-1.1-10-16 for property tax exemption.
29. To repeat, a property must be predominately used for one of the stated exempt purposes in order to achieve property tax exemption. A property is predominately used if it is used or occupied for one of the stated exempt purposes for more than 50% of the time it is used during an assessment year. Property predominately used for one of the stated exempt purposes is exempt in an amount that bears the same proportion to the total assessment as the amount of time the property is used for the exempt purpose during the assessment year bears to the amount of time the property is used for other purposes during the assessment year. Ind. Code § 6-1.1-10-36.3.
30. St. John's presented evidence detailing the amount of space used by St. John's for its exempt purposes and the amount of space used for purposes other than the exempt purposes during the year. This evidence demonstrates that 19% of the Roby Building is used for the operation of the hospital and its related services and the remaining 81% is used for purposes other than the exempt purposes, i.e. space leased to physicians for their private practices.
31. Therefore, the Roby Building is not predominantly used for exempt purposes and is 100% taxable.

Summary of Final Determination

Erskine Building: 67% exempt

Pendleton Center: 100% taxable

Roby Building: 100% taxable

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review