

REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Attorney

REPRESENTATIVE FOR RESPONDENT: Nick Cirignano, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Universal Health Realty,	)	Petitions:	82-027-11-3-4-01008-16
	)		82-027-12-3-4-00044-17
Petitioner,	)		82-027-13-3-4-00043-17
	)		82-027-14-3-4-00042-17
v.	)		82-027-15-3-4-00041-17
	)		
Vanderburgh County Assessor,	)	Parcel:	82-06-35-017-125.012-027
	)		
Respondent.	)	Assessment Years:	2011-2015

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Appeals from the Final Determinations of the  
Vanderburgh County Property Tax Assessment Board of Appeals

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March 11, 2019

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Universal Health Realty argued that the subject property should have received a 2% tax cap for the 2011-2015 assessment years because it is used as a hospital, a long term care facility, and a residential property. We find that it failed to show the subject property falls under any of the statutory categories for a 2% tax cap and find in favor of the Assessor.

## PROCEDURAL HISTORY

2. Universal Health Realty filed Petitions for Correction of an Error with the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2011-2015 assessment years. The PTABOA denied the appeals and Universal filed petitions<sup>1</sup> with the Board.
3. On October 25, 2018, the Board’s designated Administrative Law Judge (“ALJ”), Timothy Schuster, held a hearing. Neither he nor the Board inspected the property.
4. Paul Jones represented Universal Health Realty and Nick Cirignano represented the Vanderburgh County Assessor. Blake Bunner, CEO of Encompass Health testified under oath for Universal Health Realty. Jacqueline Doty-Fox testified under oath for the Assessor.
5. The parties submitted the following exhibits:

Petitioner’s Ex. A:	Property record cards for the subject property,
Petitioner’s Ex. B:	Diagram of the subject property,
Petitioner’s Ex. C:	2011-2018 Hospital licenses for the subject property,
Petitioner’s Ex. D:	Indiana Department of Local Government Finance (“DLGF”) memorandum dated October 30, 2008,
Petitioner’s Ex. E:	DLGF memorandum dated December 1, 2008,
Petitioner’s Ex. F:	Diagram of the subject property with shaded areas indicating leased space in the subject property.
Respondent’s Ex. A:	Form 133 petitions with attachments,
Respondent’s Ex. B:	Property record cards for the subject property,
Respondent’s Ex. C:	Excerpt from <a href="http://www.healthsouthdeaconess.com">www.healthsouthdeaconess.com</a> ,
Respondent’s Ex. D:	DLGF memorandum dated January 27, 2012,
Respondent’s Ex. E:	DLGF memorandum dated December 28, 2012,
Respondent’s Ex. F:	Presentation of Eric Bussis, DLGF on <i>Property Class Codes and Assessed Value Allocations</i> .
6. The record also includes: (1) all pleadings, briefs, and documents filed in the current

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<sup>1</sup> Universal Health Realty erroneously filed a Form 131 petition with the Board for the 2011 tax year. The parties agreed to treat this as a Form 133 for purposes of this appeal.

appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital record of the hearing.

### FINDINGS OF FACT

7. The subject property is a rehabilitation hospital facility licensed by the Indiana State Department of Health under Indiana Code §16-21. Encompass Health operates the facility and has 85 licensed beds on the property. The facility provides post-discharge rehabilitative services to individuals who are not ready to return home. Patients reside temporarily at the property, and stay two weeks on average before transitioning back home or to a permanent nursing facility. In addition, Universal leased a small portion of the facility to various other entities for outpatient services. *Bunner testimony; Pet'r. Ex. C.*
8. For the years in question, the Assessor classified the property under DLGF classification code 447—commercial office 1 or 2 story. The property received a 3% tax cap allocation. *Resp't. Ex. B; Pet'r. Ex. D and E.*

### CONCLUSIONS OF LAW AND ANALYSIS

9. Indiana Code § 6-1.1-20.6-7.5, also known as the property tax cap statute, limits a property owner's tax liability to a percentage of the property's gross assessment. The amount of the credit depends on the property type:

Sec. 7.5 (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural property exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

10. Universal claims its property should have received a 2% tax cap on three independent

grounds: (1) that it is a private hospital, (2) that it is a long term care property, and (3) that it is a residential property. We address each claim in turn.

**a. Private Hospital**

11. As shown above, the tax cap statute does not specifically address which tax cap a hospital should receive. But Universal argued that all hospitals fall under the 2% tax cap based on a 2008 DLGF Memorandum. That memorandum provides a list of property class codes (the codes used to apply costs for mass appraisal) and the corresponding tax caps associated with those codes. Universal argued that it was erroneously given a code of “447—commercial office 1 or 2 story” when it should have been given a code of “412—commercial nursing homes & hospitals.” The DLGF memorandum associates code 412 with a 2% tax cap. *Pet’r Ex. D* at 4.

12. We decline to address what classification code is appropriate for the subject property because it is irrelevant to our decision. A DLGF memorandum can be helpful guidance, but it cannot alter or expand a statute. Thus, to claim a 2% tax cap, Universal must demonstrate that the subject property falls within one of the three categories that receive a 2% tax cap. Simply claiming that the subject property is used as a hospital is insufficient. Moreover the DLGF memorandum itself acknowledges that it is not binding:

Please note that depending on the circumstances, some property codes may have more than one possible circuit breaker cap. The ultimate decision on the most appropriate property class code and allocation rests with the local assessing official.

*Resp’t Ex. D* at 1.

**b. Long Term Care Property**

13. We now turn to whether the subject property qualifies as a “long term care property” for the purposes of the tax cap statute. I.C. § 6-1.1-20.6-2.3 defines a long term care property as one that:

- (1) is used for the long term care of an impaired individual; and
- (2) is one (1) of the following:
  - (A) A health facility licensed under IC 16-28.

(B) A housing with services establishment (as defined in IC 12-10-15-3) that is allowed to use the term “assisted living” to describe the housing with services establishment’s services and operations to the public.

(C) An independent living home that, under contractual agreement, serves not more than eight (8) individuals who:

- (i) have a mental illness or developmental disability;
- (ii) require regular but limited supervision; and
- (iii) reside independently of their families.

Universal argued that the subject property should qualify under I.C. § 6-1.1-20.6-2.3(2)(A) because it is subject to some provisions of I.C. 16-28. In support of this claim, it points to the definition of health facility in I.C. § 16-18-2-167(c) that states that health facilities licensed under I.C. 16-21 are subject to the provisions of I.C. 16-28. But the statute does not grant a 2% tax cap to facilities that are “subject to” I.C. 16-28, instead the 2% tax cap is granted to facilities “licensed under” I.C. 16-28. As the Assessor points out, and Universal admits, the subject property is licensed under a different part of the Indiana Code—I.C. 16-21. Its license states that it “has fulfilled the requirements for licensure and is subject to provisions of IC 16-21...” *Resp’t Ex. C*. We cannot ignore the plain language of the statute that requires a health care facility to be “licensed under” I.C. 16-28 in order to qualify for a 2% tax cap. It may well have been an oversight when facilities licensed under I.C. 16-21 were not expressly included, but Universal must look to the legislature for relief.

14. The subject property likewise fails to meet the other definitions of long term care property. It is not an independent living home that would qualify under I.C. § 6-1.1-20.6-2.3(2)(C). Nor is it a housing with “services establishment” under I.C. § 6-1.1-20.6-2.3(2)(B) because the definition of housing with “services establishment” referenced in the statute specifically excludes hospitals licensed under I.C. 16-21. Ind. Code § 12-10-15-3(b)(2).

### **c. Residential Property**

15. Finally, Universal argued the subject property is residential. Residential property is real property containing two or more dwelling units, with a shared common area, and the land on which the building is located. I.C. § 6-1.1-20.6-4(2)(A). Although dwelling unit is not defined in Title 6 of the Indiana Code, Universal points to the definition of dwelling unit in I.C. § 32-31-5-3(a) which reads:

As used in this chapter, “dwelling unit” means a structure or part of a structure that is used as a home, residence, or sleeping unit...

Universal argued that because the subject property has beds, it is used as a “sleeping unit” and thus is residential property. There are several problems with this argument.

16. The Assessor pointed out that the Board addressed a similar argument in *Buckeye Hospitality Dupont, LLC v. Allen Cnty. Assessor* (IBTR November 22, 2016). In that case, we found that while dwelling unit is defined in Title 32, that statute is unrelated to the tax caps and presumably has different underlying policy concerns. We found the definition of “dwelling” in I.C. § 6-1.1-12-37(a)(1) more instructive. It reads:

Residential real property improvements that an individual uses as the individual’s residence, including a house or garage.

A residence is distinct from simply a place to sleep. Or, as the Indiana Court of appeals has explained, a “[r]esidence, as used in our tax laws, means a permanent abode, as distinguished from a temporary sojourn. *Brookover v. Kase*, 41 Ind. Appl. 102, 83 N.E. 524, 525 (1908) (citing *Culbertson v. Board, etc.*, 52 Ind. 261 (1876)). This interpretation is bolstered by the very existence of the long-term care category discussed above. If residential property included all buildings with beds in them, there would be no need for a separate category for long term care property.

17. Bunner’s testimony reveals that the subject property is not used as a permanent abode, rather it is an intermediary between the acute care hospital and a patient’s home or a patient’s new living arrangement—such as assisted living or skilled

nursing. Thus, we find that the subject property does not qualify as residential property for the purposes of the tax cap statute.

**SUMMARY OF FINAL DETERMINATION**

18. Universal Health failed to show that the subject property qualified for a 2% tax cap under any of the possible categories. Thus, we find in favor of the Assessor and order no change to the subject property's classification.

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>>.