

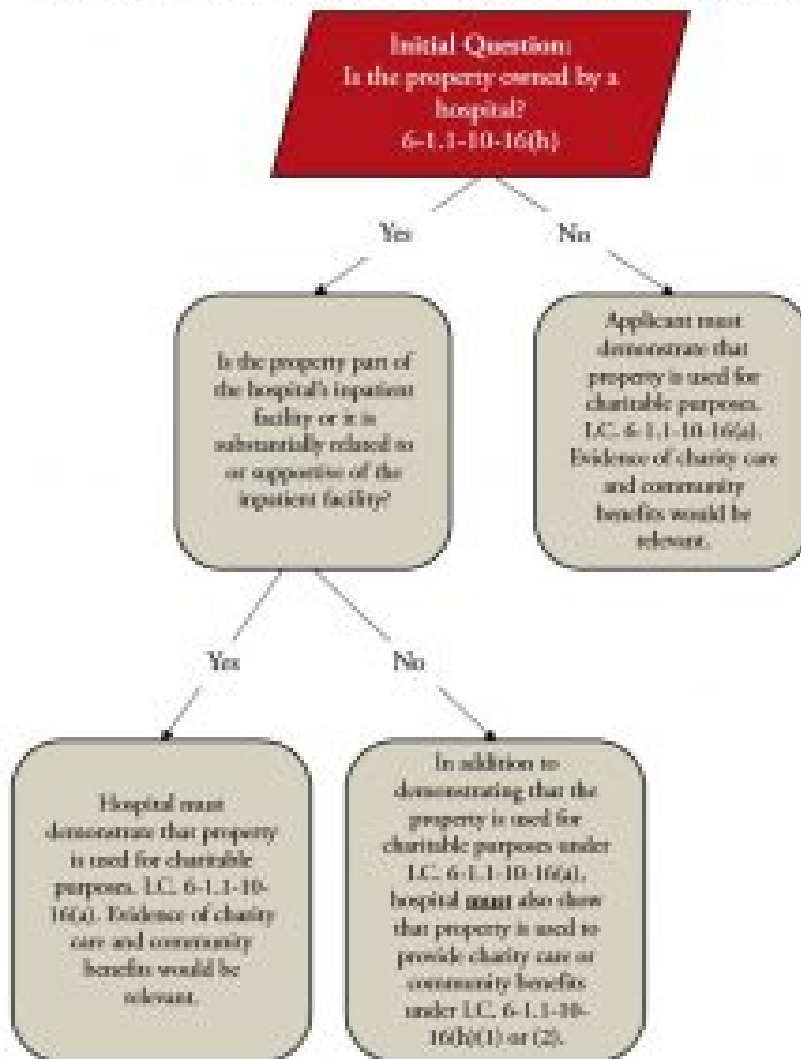
## INDIANA TAX COURT DENIES PROPERTY TAX EXEMPTION OF OFF-CAMPUS MEDICAL OFFICE BUILDING

An Indiana hospital owns a medical building in Newburgh, Warrick County, Indiana (the “Property”) by way of a wholly-owned subsidiary that is an Indiana nonprofit corporation (the “Applicant”). The Applicant leases parts of the Property to its affiliates for the delivery of health care services. For the 2014 and 2015 tax years, the Warrick County Property Tax Assessment Board of Appeals denied the applicant’s property tax exemption applications for the Property. The Indiana Board of Tax Review (“IBTR”) upheld that denial, and the Applicant appealed the denial to the Indiana Tax Court. Last week, the Tax Court upheld the decision of the IBTR, denying the Applicant’s property tax exemption.

### TAX COURT’S DECISION

The Applicant’s case was based on the proposition that nonprofit corporations that provide health care to patients without regard to their ability to pay for such care are fulfilling a charitable purpose, which makes them eligible for exemption from property taxes. The Applicant argued that Property and its occupants provided such care, and the Applicant put on evidence of the amount of free and discounted care for the years at issue. Included within such financial information was the amount of bad debt and the unreimbursed cost of Medicare and Medicaid services. All occupants of the Property were either departments of the parent inpatient hospital or corporate affiliates thereof.

## Analyzing Hospital Property Tax Exemptions Following the Tax Court's Decision



The Applicant argued that it was entitled to exemption under any of three available statutory provisions, namely that:

- (1) The Property was owned, used and occupied for charitable purposes under I.C. § 6-1.1-10-16(a) (herein "Section 16(a)");
- (2) The Property was substantially related to or supportive of the inpatient facility of the Applicant's affiliated hospital under I.C. § 6-1.1-10-16(h) (herein "Section 16(h)"); or, if the Court found no such substantial relation or support; and
- (3) The Property was used to provide charity care and community benefits under I.C. § 6-1.1-10-16(h)(1) and (2).

The Tax Court found that it did not need to address the latter two arguments because it interpreted (for the first time) that Section 16(h) is only applicable to hospital-owned property, and because the Applicant was not a hospital, it could not avail itself of either of the two exemption avenues set forth in Section 16(h). The Court then went on to dispense with the Applicant's final argument under Section 16(a) by holding that it is not enough to provide care without regard to a patient's ability to pay. Rather, the Court found that the Applicant failed to introduce evidence of exactly how the Property was used to "relieve human want through charitable acts different from the everyday purposes and activities of man in general" and that the amount of free and discounted care provided was not "sufficient to justify the loss of the tax revenue" in question.

In dicta, the Court also seemed to indicate that the amount of time spent providing "charity care" needed to exceed 50 percent of the total

amount of time that all activities were being pursued in the Property. Here the Court is referencing the so-called “predominant use” test. Indiana Code § 6-1.1-10-36.3 states that “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 50 percent of the time that it is used or occupied in the year that ends on the assessment date of the property.” In applying the predominant use test, the Court appeared to conflate the Applicant’s use of the property for “charitable purposes” (the standard under Section 16(a), which includes its willingness, at all times, to care for patients without regard for their ability to pay) with the Applicant’s provision of “charity care” (which only applies under Section 16(h) where patients are unable to pay). The Applicant argued that Section 16(a) requires only that the Applicant own, use and occupy the Property for charitable purposes. While the Applicant produced evidence that it provided charity care as part of its overall charitable purposes, providing free or reduced care more than 50 percent of the time had not previously been interpreted as a requirement under the predominant use test, as that test speaks only to charitable purposes more generally. The term “charity care” has a narrow statutory definition while “charitable purposes” has a broader definition set forth in case law.

## IMPLICATIONS

The implications of the Tax Court’s holding seem to be that (1) more specific evidence of the free and discounted care will need to be provided in order to justify a property tax exemption for charitable properties; and (2) there needs to be a very specific financial accounting of such care that can be compared to the amount of property tax revenues that are forgone due to the tax exemption. Of particular concern is the Court’s novel interpretation of the predominant use test where it seemed to say that the charitable purposes exemption will only be granted when the property is used more than 50 percent of the time to provide charity care (free and discounted care). Many Indiana off-campus medical buildings and even inpatient hospitals would not be able to meet this test. It is possible that Indiana assessors will begin denying property tax exemptions as a result of this novel application of the predominant use test.

Additionally, (3) the Tax Court also took a narrower view of the term “other property” as used in Section 16(h) in stating that, to qualify for an exemption under that section, such “other property” must not only be substantially related to or supportive of the inpatient facility of a hospital (or otherwise used to support charity care or community benefits), but the property must also be owned by a hospital. Whereas previously, outpatient facilities such as the Applicant could attempt to qualify for exemption under Section 16(a) or Section 16(h), the Tax Court has now foreclosed that possibility, even if the property is owned by an affiliate of a hospital. The implication is that an exemption under Section 16(h) requires direct hospital ownership of the property; otherwise, the applicant must prove its case for exemption under Section 16(a) (showing general charitable purposes).

## PRACTICAL TAKEAWAYS

Hospitals licensed under I.C. § 16-21 are already required to account for charity care and community benefits but may not be doing that for all of their off-campus medical facilities. In the aftermath of the Tax Court’s decision, applicants will be well advised to account for charity care and community benefits on a location by location basis and where there are multiple occupants in a location all pursuing charitable ends, on an occupant by occupant basis. In doing so, providers should be prepared to walk the Assessor through a methodic explanation of the charity provided at the location in question and demonstrate a clear connection between the charitable use and the value of that use compared to the loss of tax revenue.

The Tax Court’s full opinion in *St. Mary’s Building Corporation v. Sarah E. Redman*, Warrick County Assessor, Case No. 18T-TA-00013 can be found [here](#).

If you have questions or would like additional information about this topic, please contact:

- Robert Hicks at (317) 977-1433 or [rhicks@hallrender.com](mailto:rhicks@hallrender.com);
- Joel Swider at (317) 429-3638 or [jswider@hallrender.com](mailto:jswider@hallrender.com); or
- Your regular Hall Render attorney.

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