

REPRESENTATIVE FOR PETITIONER: Randal Kaltenmark, Barnes & Thornburg, LLP.

REPRESENTATIVES FOR RESPONDENT: Mark GiaQuinta.& Sarah Schreiber, Haller & Colvin, LLC.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Putnam Post-Acute Holdings LLC,	)	Petition:	34-012-18-2-8-00656-18
	)		34-012-18-2-8-00657-18
Petitioner,	)		34-012-18-2-8-00658-18
	)		34-012-18-2-8-00659-18
	)		34-012-18-2-8-00660-18
	)		34-012-18-2-8-00661-18
	)		34-012-18-2-8-00662-18
	)		
	)	Parcel:	34-05-33-326-011.000-012
v.	)		34-05-33-100-011.000-012
	)		34-05-33-326-012.000-012
	)		34-05-33-326-016.000-012
	)		34-05-32-277-005.000-011
	)		34-00-56-000-002.800-012
	)		34-00-56-000-002.700-012
	)		
	)	County:	Howard
Howard County Assessor,	)		
	)	Assessment Year:	2018
Respondent.	)		

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**May 28, 2021**

**FINAL DETERMINATION**

- Putnam Post-Acute Holdings, LLC (“Post-Acute”), a for-profit entity wholly owned by the Putnam County Hospital (“the Hospital”), a political subdivision, contended that the real and personal property of its skilled nursing and assisted living facility, (“Century”) located in Howard County, should be exempt from taxation on three grounds: (1) that it is used for a charitable purposes, (2) that it is owned by a political subdivision, and (3) that it is leased to a political subdivision, The Howard County Assessor (“Assessor”) agreed

that the Hospital is a political subdivision, but contended that the subject property does not qualify for an exemption. We agree and find the property to be 100% taxable.

### PROCEDURAL HISTORY

2. Post-Acute appealed its 2018 property tax assessment for Century, contending that the property is exempt under Indiana Code § 6-1.1-10-16 (a) because it is used for charitable purposes. After the Howard County Property Tax Assessment Board of Appeals (“PTABOA”) denied Post-Acute the relief it sought, it appealed to the Board arguing that Century qualified for a charitable exemption for both personal and real property. The Assessor filed a Motion for Summary Judgment supported by a brief on this issue, along with its Designation of Evidence on April 18, 2019.
3. Post-Acute responded with a Cross Motion for Summary Judgment, Designation of Evidence in Support of Its Motion and Motion to Amend its Petitions. The Assessor objected to the Motion to Amend. In its Motion, Post-Acute requested that the Board allow it to add an additional legal basis for its appeal, by arguing that the property is exempt because it is owned by a political subdivision under Ind. Code § 6-1.1-10-4 and leased by a political subdivision under Ind. Code § 36-1-10-188. The Board granted Post-Acute’s Motion to Amend its Appeal.
4. On March 5, 2020 the Board’s administrative law judge, Jennifer Thuma, heard arguments on the parties respective Motions for Summary Judgment.
5. The parties designated the following evidence in support of their respective motions:

Post-Acute’s designation with its Cross Motion for Summary Judgment:

Petitioner Exhibit A:	Sworn Affidavit of Dennis Weatherford
Petitioner Exhibit 1:	Post-Acute’s Articles of Incorporation
Petitioner Exhibit 2:	Post-Acute’s Amended Articles of Incorporation
Petitioner Exhibit 3:	Operating Agreement of Post-Acute
Petitioner Exhibit 4:	Amended Operating Agreement of Post-Acute
Petitioner Exhibit 5:	Articles of Association of Putnam County Hospital
Petitioner Exhibit 6:	Putnam Hospital-Filed Report

Petitioner Exhibit 7:	HUD Regulatory Agreement with Putnam
Petitioner Exhibit 8:	HUD Mortgage Statement
Petitioner Exhibit 9:	Lease Agreement—Putnam & Post-Acute
Petitioner Exhibit 10:	Putnam License from ISDH-Greentown Facility
Petitioner Exhibit 11:	Management Agreement—Putnam & MRC
Petitioner Exhibit 12:	Errata Sheet-Transcript-Weatherford
Petitioner Exhibit 13:	Errata Sheet-Transcript-Thomas Watts
Petitioner Exhibit 14:	Putnam Hospital Interrogatory Responses
Petitioner Exhibit 15:	Post-Acute Closing Documents-Purchase of Century Villa

Post-Acute’s second supplemental designation of evidence:

Petitioner Exhibit 16:	Putnam Hospital Board of Trustees Resolutions
Petitioner Exhibit 17:	Putnam Hospital Board of Trustees Resolutions
Petitioner Exhibit 18:	Assignment of Leases, Rents & Revenues
Petitioner Exhibit 19:	Putnam Hospital, Post-Acute Financial Statements
Petitioner Exhibit 20:	Weatherford Transcript
Petitioner Exhibit 21:	Errata Sheet-Weatherford Transcript
Petitioner Exhibit 22:	Deposition transcript-Thomas Watts
Petitioner Exhibit 23:	Errata Sheet-Watts Transcript
Petitioner Exhibit 24:	Property Record Card-Parcel for Parcel No. 05-33-326-019.000-012

Assessor’s designation with her Motion for Summary Judgment:

Respondent Exhibit 1:	Petitions for Review of Exemption, Form 132
Respondent Exhibit A:	Deposition of Dennis Weatherford
Respondent Exhibit B:	Deposition of W. Thomas Watts
Respondent Exhibit C:	Aerial Photos – 2018 & 2019
Respondent Exhibit D:	Century Villa Admission Packet
Respondent Exhibit E:	Century Villa Profit & Loss Statement
Respondent Exhibit F:	Century Villa Financial Position
Respondent Exhibit G:	Admissions Face Sheet
Respondent Exhibit H:	Respondent’s Memorandum of Law

Assessor’s designation with her Response to Post-Acute’s Cross Motion for Summary Judgment:

Respondent Exhibit A:	Deposition of Dennis Weatherford Deposition of Thomas Watts, Volume II
Respondent Exhibit B:	Deposition of Dennis Weatherford, Volume II
Respondent Exhibit H:	Putnam County Hospital License
Respondent Exhibit I:	Putnam County Hospital Financial Policy
Respondent Exhibit J:	General Warranty Deed, dated January 30, 2018
Respondent Exhibit K:	Exceptional Living Letter to Responsible Party

## FINDINGS OF FACT

### a. Putnam County Hospital

6. County officials established the Putnam County Hospital in 1948 in accordance with Indiana law. *Pet'r. Ex. 5*. The Indiana State Department of Health ("ISDH") licenses the Hospital under Ind. Code § 16-21. *Resp't. Ex. H*. It is the only hospital in Putnam County and ISDH classifies it as a critical access facility. The Hospital is a small, community-based facility with 25 beds, accredited as a qualified Medicare and Medicaid provider of services. *Weatherford deposition, p. 14, 144-145*.
7. The Hospital has a charity care policy based upon federal poverty income levels, as well as related policies with sliding fees based upon patients' abilities to pay, including a policy to provide discounts to patients without insurance. Additionally, the Hospital also has policies for write-off of bad debt, collection, and other related financial related topics. The Hospital applies these policies only to patients who receive services directly from the Hospital on-site at its facilities in Putnam County. *Weatherford deposition p. 24, p. 159; Resp't. Ex. I*.
8. The Hospital maintains partnerships with skilled nursing facilities throughout Indiana. The Hospital serves as the operator and manager by contract of several skilled nursing and assisted living facilities in other Indiana counties outside of Putnam County, including a nursing facility in Princeton. *Pet'r. Ex. 5*. It does not own any other skilled nursing or assisted living facilities other than Century. *Weatherford deposition, p. 112-113, 134, 135*.

### b. Century Villas and Century Fields—Skilled Nursing (Nursing Home) and Assisted Living Facilities

9. When the Hospital learned that the prior owners of Century, a local family who also worked at the facility, wanted to leave the business, the Hospital's Board of Trustees decided that buying Century would provide a logical additional service line for the Hospital. *Weatherford deposition, Pet'r. Ex. A, p. 17; Watts deposition, p. 42-43, 54-45*.

10. Century is comprised of a skilled nursing facility which is located on one side of the complex, (“Century Villas”) and an assisted living facility located on the other side of the complex (“Century Fields”). Century Villas includes 84 licensed skilled nursing facility beds. Century Fields is comprised of 42 assisted living apartments licensed to house up to 84 residents. Century is located 1 hour and 45 minutes away from the Hospital in Howard County. *Weatherford deposition, p. 152-153.*
11. The Hospital Board sought to ensure that it met its fiduciary duty by protecting the assets of the Hospital before purchasing Century. The Hospital performed extensive due diligence of the financial risks and rewards and analyzed the level and extent of service to patients, in addition to having an appraisal of the property completed. *Weatherford deposition, p. 63-66, 138.*
12. Purchasing Century represented a different model for the Hospital, because it owns the facility through its wholly owned entity, Post-Acute, while its other business arrangements are partnerships in which the Hospital contracts to manage facilities. *Weatherford deposition, Resp’t. Ex. A, p. 17.* The Hospital may by law own a skilled nursing and assisted living facility outright in its own name, but to obtain a more favorable interest rate, it formed Post-Acute Holdings, LLC. *Weatherford Deposition, p. 10.*

**c. Putnam Post-Acute Holdings, LLC.**

13. The Federal Housing and Urban Development agency (“HUD”) required that a sole purpose entity be dedicated to the facility. *Resp’t. Ex. A; p. 9, 20.* HUD required a single-purpose entity because the property serves as collateral for the loan. *Weatherford deposition, p. 143, Watts deposition, p. 157-158.*
14. To obtain the HUD loan, the Hospital created the single purpose entity under the name Putnam Post-Acute Holdings, LLC. Weatherford filed paperwork with the Indiana Secretary of State to create and register Post-Acute in December of 2017 as a for-profit entity. Weatherford signed the Articles of Organization and listed his title as

“Organizer.” The Secretary of State issued a Certificate of Organization for Post-Acute. *Pet’r. Ex. 1, Indiana Secretary of State Certificate of Organization.*

15. The Hospital Board executed various undated resolutions to authorize its CEO, Dennis Weatherford, and Roger Boruff, CFO, Treasurer and Secretary of the Board, to take the necessary steps to execute a loan to Post-Acute from the Hospital to provide initial funding to buy Century. *Pet’r. Ex. 16 & 17.*
16. Weatherford was listed as the authorized agent in an updated filing for Post-Acute’s Articles of Incorporation with the Indiana Secretary of State in April of 2018. He signed the document using the title of CEO of the Putnam County Hospital. *Pet’r. Ex. 2.* Post-Acute has no board of directors and does not have meetings. *Weatherford deposition, p. 153.* The Hospital is the sole owner of Post-Acute and it has no other members. *Watts deposition, p. 160.*
17. In January of 2018, Post-Acute entered into a lease agreement with the Putnam County Hospital for Century. Weatherford signed as Lessor for Post-Acute, listing his title as Hospital CEO. Weatherford also signed for the Lessee, Putnam County Hospital, and his title was listed as Hospital CEO. *Pet’r. Ex. 9.*

**d. Exceptional Living**

18. Exceptional Living Centers provides operational expertise for Century and manages the facility on a daily basis. It is owned by Medical Rehabilitation Centers, LLC, (“MRC”) which has offices and operates from Lexington, Kentucky. Both are for-profit entities. *Watts deposition, p. 30-31.* MRC is a partnership, five-eighths of which is controlled by Watts and his family, owners of Lexington Health Management, LLC, a for-profit entity. *Watts deposition, p. 30.* Hoosier Care Investments is a minority partner and owns three-eighths of Medical Rehabilitation Centers, LLC. *Watts deposition, p. 11-17.*
19. Exceptional Living operates 17 skilled nursing facilities throughout the Midwest with several in Indiana. *Watts deposition, p. 21-23.* It provides services such as payroll

administration, benefits processing, collecting accounts receivable, processing payable accounts, procurement, human resources and food service. After the Hospital bought Century, Exceptional Living centralized its complex operational functions such as Medicaid billing, to its corporate Lexington office. The Hospital's management contract provides that Exceptional Living receives 5% of all patient revenue from the operation of the facilities. *Watts deposition, p. 18-20, 35, 92-97.*

20. The Hospital intentionally refrains from interfering in management of Century and takes a hands-off approach to operations of the facility. Exceptional Living makes all decisions on management of employees and the application and implementation of financial policies. *Weatherford deposition, Pet'r. Ex. A, p. 22-24; Watts deposition, p. 32.*
21. The Hospital has not and does not refer patients to Century and no residents or patients of Century are referred to the Hospital nor have they ever been treated. Century's employees do not consult medical staff at the Hospital regarding patient care at Century. The Hospital employees do not advise medical staff about individual patient care at Century. Hospital staff do not see charts of patients at Century. Watts does provide financial report results to Weatherford and reports the results of surveys. Watts testified that his goal is to return "something extra" over and above costs, to the Hospital. *Weatherford deposition, p. 50-51, 151-152; Watts deposition, p. 78, 175.*
22. Any community benefit programs such as health screenings, provided at Century are insignificant and not quantified. Exceptional Living and Century provide no free programs or services to the community. *Weatherford deposition, p. 60-61.*
23. Exceptional Living requires that potential residents of Century Fields, the assisted living section of the facility, sign lease agreements that include references to ancillary support services and charges that are described as "a la carte" depending upon a resident's needs and requests. *Watts deposition, p. 134; Resp't. Ex. G.* There are no independent living facilities on the campus and the other side of the facility consists of the skilled nursing (nursing home) section of Century Villas. *Watts deposition, p. 77.*

24. The Exceptional Living Residential Care Agreement provides that the resident rents the apartment on a month-to-month basis. The agreement allows residents to use the apartment and common areas and provides that the facility does not make any promise to repair or improve apartments. Exceptional Living requires that residents pay a security deposit before moving into an apartment. Century retains the security deposit throughout the resident's tenancy and deducts for any damage incurred to the apartment at the termination of residency. *Resp't. Ex. G, p. 5.*
  
25. According to Exceptional Living written policies, residents are liable for all costs and expenses Century incurs for legal advice and any action related to the agreement, including attorney's fees, disbursements, and court costs. Individuals must agree to be held liable for these costs before becoming residents. The policies also state that residents are charged late fees of \$50 if rent and fees are not paid on the date due. Additionally, Exceptional Living charges \$40 for each check returned by a financial institution. If two payments are returned by a financial institution, the resident is required to pay rent and any fees due by cashier's check. Century sends collection notices to residents for failure to pay. Exceptional Living policies provide that unpaid balances are subject to interest rates. *Resp't. Ex. D, p. 21; Resp't. Ex. G, p. 3, 5-8; Resp't. Ex. K.*
  
26. Exceptional Living policies state that it may change any rate for service with five days written notice to the resident. The resident will incur new rate fees unless he or she terminates the agreement in accordance with written procedures, which include 30 days of written notice to the facility. *Resp't. Ex. G, p. 5-6.*
  
27. Exceptional Living may terminate a resident's apartment rental agreement if the resident or responsible party fails to pay fees and charges when due. The facility may terminate the agreement for non-payment with less than 30 days' notice to the resident or responsible party. Responsible parties must sign an exhibit to the resident agreement prior to a prospective resident moving into a Century Fields apartment. The responsible



party agrees to pay amounts due within 30 days of receiving notice of nonpayment by the resident. *Resp't. Ex. G, p. 6-12.*

28. Century Villa residents are usually admitted directly from the hospital to the skilled nursing facility. Ninety-nine percent of residents arrive directly from local hospitals in Howard County. *Watts deposition p. 78.*
29. Exceptional Living's admission policy at Century Villas requires a 30-day advance payment from patients and residents who use private pay resources to cover their costs. Before a patient or resident is admitted, Exceptional Living requires that a responsible party commit in writing that he or she will cover any shortfalls in payment for services for patients at Century Villas. *Watts deposition, p. 114, 118; Resp't. Ex. D, p. 17.*
30. The Hospital's indigent and charity care policies do not apply to Century Villas, including its charity care policy. *Weatherford deposition p. 24, 158.* Exceptional Living applies its own financial policies, including collection and bad debt, to Century Villas. *Weatherford deposition, p. 157.* Exceptional Living does not have a charity care policy for Century Villas. It does require patients to sign a collection policy in which they agree to pay late fees. The policy includes descriptions of collection efforts which Exceptional Living will employ when a resident or patient does not pay or pays late. *Watts deposition, p. 179-181.* If patients, residents or responsible parties do not pay on time, or the agreement for services is breached, Exceptional Living states in its admissions policy that individuals are subject to interest at the maximum rate permitted by law, attorney fees and costs to enforce the services agreement. *Watts deposition, p. 120, 122-123.* Exceptional Living employees work to limit gaps in payment. *Watts deposition, p. 87-91*
31. Exceptional Living does not have an indigent care policy, but it writes off patient accounts which it does not collect after pursuing its collection policy. Bad debt is not a separate line item from indigent care. Exceptional Living's Century Villa's collection policy includes moving the resident or patient after nonpayment through any sources including private pay, Medicaid, and Medicare. Should a patient need to be transported

to a hospital for treatment, Exceptional Living will not maintain or reserve a room for the individual unless an amount determined by Exceptional Living is paid up front before leaving the facility. *Watts deposition, p. 102-105.*

32. Exceptional Living's goal is to cover expenses and have additional monies as profit from Century. *Watts deposition, p. 106.* Since Exceptional Living has operated the facility, Century has positive net income, over and above costs. *Watts, p. 110.*
33. The Hospital anticipates that revenues in excess of costs and HUD reserve requirements will be returned to the Hospital to support its service lines. Exceptional Living has not provided any revenue in excess of costs to the Hospital because it has only operated the facility for a brief time period. *Weatherford deposition, p. 37-40.*
34. Exceptional Living can make a profit managing Century solely based upon payments from Medicare patients and residents, excluding income from other payment sources. *Watts deposition, p. 105.* Patient treatment in the nursing facility is paid by Medicare, Medicaid, private insurance or a person's private funds. These are all set with different rates and some are set by statute. *Weatherford deposition, p. 30-50.*
35. The Hospital does not depend upon anticipated or current excess revenue stream from Century to remain solvent. *Weatherford deposition, p. 51-54.* The financial viability of the Hospital is not dependent upon receiving profit from Century. *Weatherford deposition, p. 157.*

#### CONCLUSIONS OF LAW

36. Both parties filed motions for summary judgment. Our procedural rules allow parties to move for summary judgment "pursuant to the Indiana Rules of Trial Procedure." 52 IAC § 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary

judgment must make a prima facie showing of both elements. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). *Id.* In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. See *Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

37. Exemption statutes are strictly construed against the taxpayer and the burden is on the taxpayer to establish its right to an exemption. *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 280 (Ind. Tax Ct. 1989). Exemptions are strictly construed because they release property from paying its portion for government services such as police and fire protection, which all property shares. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E. 2d 1009, 1014 (Ind. Tax Ct. 2004). The granting of an exemption effectively shifts the burden of tax that property owner would have paid, to other parcels which are not exempt. See generally, *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E. 2d 218 (Ind. Tax Court 1996).
38. Post-Acute claims that the subject property is entitled to a charitable exemption, or in the alternative, an exemption for property owned or leased by a political subdivision. We address each claim in turn.

**a. Post-Acute was not used for Charitable Purposes**

39. Post-Acute argues that Century qualifies for a charitable exemption under Ind. Code § 6-1.1-10-16 (a) which provides that “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.”<sup>1</sup> While the term “charitable purpose” is to be defined and understood in its broadest, constitutional sense,” as described in *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E. 2d 177, 182. (Ind. Tax Court 2005) there are well established limits.

40. Indiana courts have held that they will find that a charitable purpose exists when evidence is provided “of relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general and there is an expectation of a benefit to the public by providing such acts.” *Hamilton County Assessor v. SPD Realty, LLC.*, 9 N.E. 3d 773, 775 (Ind. Tax Court 2014). Indiana law requires that the charitable purpose exception conferred by use of the property relieves the government of a cost that it would otherwise bear and that the property does not primarily serve a commercial profit motive. *Id. See also Starke County Assessor v. Porter-Starke Services, Inc.*, 88 N.E. 3d 3814-815, 819 (Ind. Tax Court 2017). In addition, worthwhile and noble activity alone is not enough. *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax Court 1990).
41. Generally not-for-profit hospitals are considered charitable but if an exempt hospital owns other property, that property does not automatically receive an exemption. *Indianapolis Osteopathic Hospital at 1015*. Post-Acute argues that Century qualifies for a charitable exemption because it has undertaken the government burden of caring for the elderly and it is not used to make a profit. In addition, Post-Acute argues that the financial policies of Century’s manager, Exceptional Living, constitute charity care to the elderly.
42. Contrary to Post-Acute’s claims, simply providing care for the elderly is not necessarily charitable. In *Tipton County Health Care Foundation, Inc., v. Tipton County Assessor*,

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<sup>1</sup> The Assessor argues that Ind. Code § 6-1.1-10-16 (h) prohibits Century from receiving an exemption because it is not substantially supportive of the in-patient hospital facility and it is not used to provide charity care or community benefits. But the Indiana Tax Court held in *St. Mary’s Building Corporation v. Sarah Redman, Warrick County Assessor*, 135 N.E. 3d 681 (Ind. Tax Court 2019) that 16(h) does not apply when dealing with separate corporate entities.

961 N.E. 2d 1048 (Ind. Tax Court 2012), the Indiana Tax Court found that the owner of an assisted living facility was not entitled to an exemption when it merely asserted that the facility provided for the needs of the elderly, while providing no other evidence. *Id.* at 1051. The Court also reminded taxpayers that each exemption case stands on its own facts and is not susceptible to bright-line tests or other abbreviated inquiries. *See also Jamestown Homes of Mishawaka, Inc., v. St. Joseph County Assessor*, 914 N.E. 2d 13, 15 (Ind. Tax Court 2009).

43. Here, the designated evidence shows that there is little, if any, charitable activity at Century let alone enough to meet Indiana's predominant use test, which requires that property be used more than 50% of the time for charitable purposes. Century does not provide any significant amount of charity care, nor does it provide community benefits such as health screenings or education. The Hospital takes a hands-off approach and allows Exceptional Living, a for-profit company, to manage Century with next to no interference from the Hospital. While Post-Acute argues that Exceptional Living does not evict patients or residents and attempts to find other places for them to live if they fail to pay, the designated evidence shows that patients and residents must agree to strict collection policies, which include payment of legal fees, collection costs, late fees, and be subject to removal from the facilities. Century does not have a charity care policy and any charitable care provided is incidental and treated the same as bad debt. Exceptional Living also holds other responsible parties liable for costs should a patient or resident not pay for services provided. The Hospital does not interfere in any way with collection efforts, nor does it require that its own charity care policies apply to Century. Residents are also charged for all additional services.

44. Thus, the designated evidence shows there is little burden actually born by Post-Acute. Either residents and patients pay for the care themselves, or the government pays for the care via Medicare/Medicaid. Exceptional Living also charges a management fee for its services. Such a management fee is not fatal to a claim for exemption, but it can be an indication of a profit motive. In *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc* the Indiana Tax Court held that a nursing home and assisted

living facility, owned by a nonprofit and managed by a for-profit entity, was entitled to a charitable exemption even though it charged a management fee. But in that case, there were definite indicators of a charitable purpose, such as never turning a resident away due to inability to pay. *Id. at 180*. Century has no such policy.

45. Finally, Post-Acute correctly contends that the Indiana Tax Court recognizes that efforts to provide an element of fraternity or fellowship, whether through free services or counseling of tenants, can indicate a charitable purpose. *Hebron-Vision* at 26 (citing *Jamestown Homes of Mishawaka* at 1138, 1144 (Ind. Tax Court 2009)). In *Hebron-Vision* and *Jamestown Homes*, the taxpayers also provided the services at no cost to residents. But the designated evidence shows that Century charges its residents for all services. No free services of the kind contemplated in *Hebron-Vision* are offered in any significant amount. For these reasons we must conclude that Post-Acute is not entitled to a charitable exemption.

**b. Post-Acute is not a Political Subdivision**

46. Post-Acute also claims Century should receive an exemption under Ind. Code § 6-1.1-10-4 because it is property owned by a political subdivision. It bases this claim on the facts that (1) the County Hospital, a political subdivision, was statutorily authorized under Ind. Codes § 16-22-3-1 and 23-17-4-2 to create Post-Acute and (2) it created Post-Acute for the purpose of owning and leasing property back to the hospital. The Assessor disagrees with this analysis, arguing that because Post-Acute was not created or used for municipal purposes, it is ineligible for such an exemption.
47. We first note that powers provided to municipal corporations and political subdivisions are granted and limited by the Indiana Constitution and the Indiana General Assembly. While definitions and references to municipal corporations and political subdivisions are found throughout the Indiana Code, the applicable definition in this case is found in Ind. Code § 6-1.1-1-12 which defines a political subdivision as:

a “county, township, city, town, separate municipal corporation, special taxing district, or school corporation.”

Ind. Code § 36-1-2-10 defines a “municipal corporation” as:

a unit, school corporation, library district, local housing authority, fire protection district, public transportation corporation, local building authority, local hospital authority or corporation, local airport authority, special service district, or other separate local governmental entity that may sue and be sued.”

48. The Indiana Supreme Court has also found that a municipal corporation almost always has the authority to raise revenue whether by levying taxes, collecting taxes, collecting fees, issuing bonds or borrowing funds. Local government units also have the authority to review fiscal operations of some municipal corporations. They may also exercise eminent domain. *J.A.W. v. Marion County Department of Public Welfare*, 698 N.E. 2d 1202,1211. (Ind. S. Ct. 1997). In *Chadwick County Treasurer v. City of Crawfordsville*, 24 N.E. 2d 937, 941-42 (Ind. 1940) the Court found that any property which they may acquire for their purposes may lawfully be exempted from taxation.
49. It is undisputed that the County Hospital is a political subdivision. But we cannot conclude that any entity lawfully created by a political subdivision is itself a political subdivision, nor are we convinced that was the intent of the legislature. Post-Acute does not have the same restrictions or powers that the County Hospital does. While the Hospital controls Post-Acute, Century is essentially operated as an independent entity with no interaction with the day-to-day work of the hospital. Post-Acute cites to cases such as *Joint County Park Board v. Stegemoller*, 88 N.E.2d 686 (Ind. 1949) and *Metal Working Lubricants v. Indianapolis Water*, 746 N.E. 2d 352 (Ind. Ct. App. 2001).<sup>2</sup> But both those cases represented traditional municipal functions. In *Joint County Park Board*, the city was authorized to create a board to operate public parks, a traditionally municipal function. Likewise, in *Metal Working Lubricants*, a private company was operating a public utility, another traditionally municipal function. As the Assessor points out, the operation of a facility like Century is not a traditional municipal function.

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<sup>2</sup> Post-Acute also cites to our decision in *Imaging Center v. Howard County* (IBTR May 16, 2011), but that case involved a property that was operated as an extension of the County Hospital with shared staff and policies whereas this case involves a property that is operated entirely independently of the Hospital.

50. *Chadwick County Treasurer* established that property acquired by municipal corporations may be exempt. *Id.* at 942. But we do not take that to mean that a separate entity, even if wholly owned by a political subdivision, is necessarily exempt—especially given the Tax Court’s recent guidance in *St. Mary’s Building Corporation v. Sarah Redman, Warrick County Assessor*, 135 N.E. 3d 681 (Ind. Tax Court 2019) where it found that a separate corporate identity cannot be disregarded.<sup>3</sup> In addition, the Indiana Supreme Court found in *Bonney v. Indiana Finance Authority*, 849 N.E. 2d 473, 487 (Ind. S. Ct. 2006) that the use of the property is the controlling factor in whether a property may receive an exemption. Under these circumstances where there is no statute that specifically designates corporations such as Post-Acute as political subdivisions, the property is not used for a traditionally municipal function, and the property is not operated as an extension of the County Hospital, we cannot conclude that is a political subdivision or municipal corporation as intended by the legislature.
51. Post-Acute argues that it was only created in order to fulfill the requirements of the HUD loan, and for that reason, it should be treated the same as the County Hospital. But as the Tax Court held in *St. Mary’s*, we cannot ignore the fact that it is a separate corporate entity. Even though it was created solely for the purpose of securing the HUD loan, such a decision can have other consequences, such as being subject to property taxation.
52. The Assessor also argues that even if Post-Acute is a political subdivision, it cannot qualify for an exemption under Ind. Code § 6-1.1-10-4 because Century is not owned for municipal purposes. Although municipal purposes are not mentioned in the statute, the Assessor argues that the Indiana Constitution requires us to read that requirement into it and to do otherwise would render the statute unconstitutional as applied. We agree with the Assessor that a municipal purpose is necessary. The cases cited above all involved some sort of traditional municipal function such as roads, public utilities, or public parks. Post-Acute argues that because the County Hospital is a municipal corporation, and it

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<sup>3</sup> For the same reason, we cannot conclude that the County Hospital’s exemption as a political subdivision flows to Post-Acute simply because it is a wholly owned subsidiary.



was statutorily authorized to create Post-Acute, that makes the activities of Post-Acute necessarily municipal. We disagree with that interpretation. The Indiana Code makes clear that not all property owned by a municipal corporation is exempt. Ind. Code § 6-1.1-10-16(b) and 6-1.1-10-5 provide exemptions for property owned by cities and towns only if that property is used for certain exempt purposes. This implies that some property owned by cities and towns would not be exempt. In addition, Ind. Code § 6-1.1-10-37 specifically provides for the taxation of certain property held by otherwise exempt entities if it is leased to a non-exempt entities. While we agree that property owned by the County Hospital and used for its purposes would be exempt, we cannot conclude that the Hospital has virtually unlimited power to create exempt entities entirely unrelated to the central function of the Hospital. As the Assessor points out, following Post-Acute's reasoning would open the floodgates for a variety of properties to receive a political subdivision exemption while bearing no resemblance to the traditional functions of government.<sup>4</sup> Thus, given these facts where the property is not used for a traditional municipal purpose, we find that it does not qualify for an exemption.

**c. Century does not Qualify as Property Leased to a Political Subdivision**

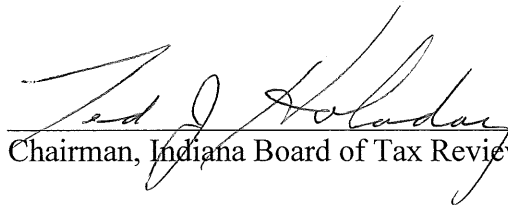
53. Finally, Post-Acute contends that Century is exempt from property tax because it is leased to a political subdivision, the County Hospital. While Ind. Code § 36-1-10-18 exempts property leased to a political subdivision, Ind. Code § 36-1-10-1 specifically states that the chapter in question does not apply to hospitals established and operated under Ind. Code § 16-22. Post-Acute argues that this exception does not apply because the property is leased as a comprehensive care facility under Ind. Code § 16-28 not as a county hospital. We find this argument unpersuasive. Post-Acute is essentially claiming Ind Code § 36-1-10-8 should apply because Century is leased to a County Hospital, then claiming that the exception should not apply because it is not leased to a County Hospital. We find this to be inconsistent.

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<sup>4</sup> This problem is exacerbated in situations like the present case, where the originating entity is located in a different taxing district and even a different county than the property at issue. Allowing an exemption for any entity created under these circumstances would allow for a gross imbalance between the different counties.

## CONCLUSION

The designated evidence shows that the subject property is not used for charitable purposes, is not owned by a political subdivision, and does not qualify as property leased to a political subdivision because the hospital exception applies. Thus, we find the Assessor provided evidence sufficient to meet Indiana's standard for summary judgment. We find the property to be 100% taxable.

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
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>.