

REPRESENTATIVE FOR PETITIONER: Michael T. Bindner, Attorney at Law
Locke Reynolds

REPRESENTATIVES FOR RESPONDENT: Sharon Fleming, Non Profit Deputy,
Lake County Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ST. MARGARET MERCY)	Petition No.: 45-032-99-2-8-10000
HEALTHCARE CENTERS, INC.)	
Petitioner,)	County: Lake
)	
v.)	Township: St. John
)	
LAKE COUNTY PROPERTY TAX)	Parcel No.: 20130612001
ASSESSMENT BOARD OF APPEALS)	
Respondent.)	Assessment Year: 1999
)	

Appeal from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals (PTABOA)

January 14, 2004

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 property owned by St. Margaret Mercy Healthcare Centers, Inc. (Petitioner) and used in the operation of the OMNI 41 Health & Fitness Connection (OMNI) qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-11-3, the Petitioner filed an Application for Property Tax Exemption (Form 136) claiming a 76.5% exemption for the OMNI. The Lake County Property Tax Assessment Board of Appeals (PTABOA) allowed the exemption for the 1998 assessment date.
3. In December 1999, the PTABOA reviewed the 1998 exemption applications filed by the Petitioner. The PTABOA decided to revoke the exemption for the OMNI for the 1999 assessment date. The PTABOA notified the Petitioner by letter dated February 4, 2000.
4. Pursuant to Ind. Code § 6-1.1-11-7, the Petitioner filed a Form 132, Petition for Review of Exemption. The Form 132 was filed on March 3, 2000.

Hearing Facts and Other Matters of Record

5. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 6, 2001, in Crown Point, Indiana, before Tim Rider, the duly designated Administrative Law Judge (ALJ) authorized by the Board. Previously scheduled hearings had been continued several times by Motion of the Petitioner.
6. The following persons were present at the hearing:
For the Petitioner:

Michael T. Bindner, Attorney at Law, Locke Reynolds

Timothy P. Galvin, Jr., Chairman of the Board, St. Margaret Mercy Healthcare
Centers, Inc.

Barbara M. Greene, VP for Business Development, St. Margaret Mercy Healthcare
Centers, Inc.

For the Respondent:

Sharon Fleming, Non Profit Deputy County Assessor

Hank Adams, St. John Township Assessor

Jacqueline Rokosz, Deputy Assessor, St. John Township

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

For the Petitioner:

Timothy P. Galvin, Jr.

Barbara M. Greene

For the Respondent:

Sharon Fleming

Hank Adams

8. The following exhibits were presented at the hearing:

For the Petitioner:

Exhibit 1 – Power of Attorney.

Exhibit 2 – Restated Articles of Incorporation and By-laws for Petitioner.

Exhibit 3 – Financial Statements years ending December 31, 1998 and 1999.

Exhibit 4 – IRS Code 501(c)(3) determination letter.

Exhibit 5 – IRS Form 990 tax return for 1999.

Exhibit 6 – Indiana Form IT-35AR for 1999.

Exhibit 7 – Notice of Action on Property Tax Exemption Application for 1992.

Exhibit 8 – Form 136, Application for Property Tax Exemption, for OMNI for 1998.

Exhibit 9 – Lake County PTABOA action letter for 1999 dated February 4, 2000.

Exhibit 10 – Form 132 Petition for Review of Exemption for OMNI.

- Exhibit 11 – Hearing Notice.
- Exhibit 12 – Publication “Ethical and Religious Directives for Catholic Health Care Services” by National Conference of Catholic Bishops (1999).
- Exhibit 13 – Petitioner’s mission statement.
- Exhibit 14 – Petitioner’s charity care policy.
- Exhibit 15 – Annual fiscal report – Acute Care – Indiana Department of Health.
- Exhibit 16 – Petitioner’s Social Accountability Report.
- Exhibit 17 – Surgeon General’s report – Physical Activity and Health.
- Exhibit 18 – Petitioner’s mission and philosophy regarding owning a wellness center with a summary of Lake County 2000 joint survey.
- Exhibit 19 – Newspaper article “Some Pain, New Gains” dated December 5, 1999.
- Exhibit 20 – IRS Continuing Professional Education (CPE) Exempt Organizations Technical Instructional Program.
- Exhibit 21 – IRS Private Letter Ruling request for OMNI and follow up correspondence.
- Exhibit 22 – Survey of Wellness Center Members, 1999.
- Exhibit 23 – IRS Private Letter Ruling regarding OMNI dated 9/26/00.
- Exhibit 24 – OMNI Wellness Center Brochure – Policies & Rules.
- Exhibit 25 – Description of OMNI building areas; exempt and taxable square footage.
- Exhibit 26 – OMNI Wellness Center Program Materials.
- Exhibit 27 – OMNI Wellness Center Fitness Class Monthly Schedule.
- Exhibit 28 – OMNI Community Skating Rink Monthly Schedule.
- Exhibit 29 – OMNI Wellness Center and Community Skating Rink Social Accountability Programs.

For the Respondent:

- Exhibit 1 – Numerous newspaper advertisements.
- Exhibit 2 – Picture of OMNI sign dated June 3, 2001.
- Exhibit 3 – Picture of OMNI dated June 3, 2001.
- Exhibit 4 – Picture of OMNI dated June 3, 2001.

9. The following exhibits were submitted by the Petitioner subsequent to the hearing:

Exhibits entered on 3/18/02:

Exhibit 30 – Brochure – PEDIATRIC . . . Rehabilitation Services.

Exhibit 31 – Brochure – Heart Smart-Inventory . . . Heart Health.

Exhibit 32 – Lake County Health Assessment: 2000.

Exhibit 33 – *Wall Street Journal* article dated 3/12/02 “Obesity tops Smoking for Medical Costs”.

Exhibit 34 – Petitioner’s post-hearing brief.

Exhibit 35 – Petitioner’s proposed findings/conclusions – hard copy.

Exhibit 36 – Petitioner’s proposed findings/conclusions – on disc.

Exhibits entered on 7/22/02:

Exhibit 20a – IRS Exempt Organizations CPE Handout (Rev. 8-2001).

10. The following filings were received post-hearing:

- a. On June 21, 2001, the Petitioner filed a request to hold a decision in abeyance so settlement could be pursued.
- b. On July 10, 2001, the Appeals Division requested an extension of time to issue its determination. The State Board of Tax Commissioners granted the Appeals Division until January 16, 2002, to issue its determination.
- c. On December 7, 2001, the Petitioner filed a waiver of forty-five (45) day deadline and asked for an extension of time until mid-February 2002 to file a post-hearing brief. The ALJ so ordered on December 10, 2001.
- d. On February 11, 2002, the Petitioner requested an additional thirty (30) days to file its post-hearing brief. The ALJ issued an order extending both parties filing period to March 18, 2002.
- e. On March 18, 2002, the Petitioner filed a post-hearing brief with proposed findings of fact and conclusions of law; additional exhibits 30 through 34; and several State Board of Tax Commissioner’s publications. The PTABOA filed no post-hearing brief. Later on March 18, 2002, the Petitioner submitted a revision to the Findings of Fact and Conclusions of Law.

- f. Also on March 18, 2002, the Petitioner filed a request to hold a final determination in abeyance until at least May 31, 2002, to allow the parties additional time for settlement negotiations.
 - g. Subsequent to May 31, 2002, the ALJ received numerous telephonic updates/communications from both parties indicating that settlement was being pursued.
 - h. On July 22, 2002, the ALJ spoke with each party separately and both indicated that settlement negotiations had not been fruitful and each expressed the desire to proceed to final determination.
 - i. The Petitioner followed-up its verbal notification in writing also on July 22, 2002, and attached to that writing was an updated Exhibit 20 that was captioned Exhibit 20a.
11. The following additional items are officially recognized as part of the record of proceedings:
- Board Exhibit A - Form 132 Petition filed with the Board on April 5, 2000.
 - Board Exhibit B - Notice of Hearing dated May 3, 2001.
 - Board Exhibit C - All filings and orders associated with this proceeding.
12. The following matters or facts were stipulated and agreed to by the parties: This proceeding began with seven parcels being litigated, but the parties agreed that the health club in question was on Parcel No. 20130612001. Accordingly, the Petitioner agreed to withdraw the six petitions for the parcels not in dispute. Parcel No. 20130612001 is the only parcel subject to this final determination.

Jurisdictional Framework

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

State Review and Petitioner's Burden

14. 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).
15. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products*, 704 N.E. 2d at 1119 (Ind. Tax. Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. 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.]
17. 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.]
18. 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

19. 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.
20. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
21. 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

22. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.
23. 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*, 669 N.E. 2d 199 (Ind. Tax 1996).

24. 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.
25. 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)).
26. 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 property owned and used in the operation of the OMNI qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

27. The Petitioner contends that 87.5% of OMNI's real property and 100% of the personal property should be exempt from property tax pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes. The Petitioner's original claim was for 76.5% for real property and 100% for personal property. The Petitioner is now including the Community Skating Rink in the claim for exemption.

28. The Respondent contends that the operation of the fitness center is business enterprise and, as such, is not entitled to a charitable property tax exemption.

29. The applicable rules governing this issue are:

Ind. Code § 6-1.1-10-16(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, 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.

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

- a. The Petitioner is an Indiana nonprofit, public benefit corporation that is exempt from federal income tax pursuant to Internal Revenue Code § 501(c)(3) and exempt from Indiana gross income tax.
- b. The Petitioner is required to operate “exclusively for charitable, scientific and educational purposes” per Section 1.03 of its Bylaws. (See Petitioner’s Exhibit 2).

- c. The PTABOA previously approved the Petitioner’s request for property tax exemption for the March 1, 1998 assessment date including a 76.5% exemption for the property known as the OMNI Health Center.
- d. In December 1999, the PTABOA revoked the exempt status for the OMNI as of the March 1, 1999 assessment date. The PTABOA notified the Petitioner of this determination by letter dated February 4, 2000. (See Petitioner’s Exhibit 9 and Board Exhibit A).
- e. The Petitioner has requested an 87.5% exemption for real property and a 100% exemption for personal property. The total square footage of the property is 160,804. The requested real property exemption was calculated as follows:

	<u>Total Square Footage</u>	<u>Percentage</u>
Pediatric Rehabilitation	3,706	2.3%
Wellness Center	100,686	62.6%
Community Skating Rink	<u>36,374</u>	<u>22.6%</u>
Total	140,766	87.5%

- f. The leased restaurant, other leased space, and diamond members locker room encompasses 20,038 square foot or 12.5% of the total facility. The Petitioner is not asking for exemption for this area.

Pediatric Rehabilitation

- g. The pediatric rehabilitation provided at OMNI includes physical therapy, occupational therapy, speech and language therapy and developmental therapy for children from infancy through adolescence.
- h. These same services were available at the Petitioner’s Hammond hospital campus. The OMNI location was offered to alleviate space problems at the Hammond hospital.
- i. Standards for admission are the same as at the Hammond hospital location, requiring either a referral or a prescription from a doctor to be admitted for treatment.

Wellness Center

- j. The wellness center consists of a large open fitness room with cardiovascular exercise and strength equipment and exercise facilities, including two pools; a one-tenth mile running track; one tennis, nine racquetball, and four combination

basketball and volleyball courts; aerobic exercise, Tae Kwon Do and Yoga classrooms; and locker rooms available to all members.

- k. The wellness center is staffed by nurses, dieticians, exercise physiologists, a kinesiologist, and exercise instructors certified by either the American Fitness Association or the International Dance and Exercise Association. All staff members are trained in CPR and first aid.
- l. Upon joining the wellness center, each member is entitled to a free fitness assessment. After the assessment, a qualified staff member will design an individual exercise program and provide individual instruction on the equipment.
- m. Membership in the wellness center is available to individuals who pay an initiation fee and monthly fee, which varies depending on the age and length of membership and available hours of operation. Daily rates are available to non-members.
- n. The wellness center also provides Phase IV cardiac rehabilitation programs. Patients are referred by their attending physician. An individual exercise program is designed for each patient. The patient also undergoes nutrition counseling. Patients in the cardiac rehabilitation program are non-members. The monthly fee for the cardiac rehabilitation program, which is also available at the hospital, is billed by the hospital. If a patient elects to become a member at the completion of their rehabilitation, a reduced initiation fee is charged.
- o. Various arthritis therapy programs are held in one of the two pools on a routine basis during the week. The classes are designed by the Arthritis Foundation. The pools are also used by pediatric rehabilitation patients. Aquatic exercise classes, arthritis therapy classes and swimming lessons are available to the general public.
- p. The wellness center also provides a number of wellness and education programs including a heart disease series, other disease identification and prevention, diabetes management, weight management, nutrition counseling, smoking cessation programs, personal training, prenatal and postnatal exercise programs, and stress management. These programs are open to the general public for a nominal fee. The wellness center also conducts children's programming such as sports classes and camp sessions for the general public.

- q. The Petitioner contends that the services provided by the wellness center are part of their overall mission. By providing wellness facilities, the Petitioner can more effectively participate in the prevention, education and intervention processes and thus improve the health of the communities it serves.

Community Skating Rink

- r. The community roller skating rink is generally available for use by the general public. The rink is the site of youth, teen and adult hockey leagues, school functions and other community activities. The operation of the rink provides a recreational activity for the community similar to a park or community swimming pool. The rink also provides health benefits and adds another exercise option to OMNI's diverse facilities.

Analysis of Issue

- 31. The Petitioner contends that the courts have acknowledged that the provision of health care services can be the basis for exemption from property taxes. The Petitioner further contends the Indiana Tax Court has determined that how an organization uses the net revenues from its operations will affect the property tax exemption status of the property. The Petitioner donates the net revenues from OMNI back to the community when it uses them to subsidize its hospital operations and its charity care and community benefits.
- 32. The PTABOA argues that the OMNI was a profitable health club in a prime location before the Petitioner purchased it in January 1998. Further, the PTBOA maintains that the OMNI is being operated as a profitable health club and, as such, is in competition with other health clubs in the area, which pay property taxes.
- 33. In order to be exempt in whole or in part from property taxation, the 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).

34. The most reasonable method of determining taxable status of the OMNI property is to examine each major segment independently. Those segments are pediatric rehabilitation (2.3% of total), wellness center (62.6% of total) and community skating rink (22.6% of total). Each segment must be examined according to the criteria described below.

a. Predominant Use

35. A “predominant 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 predominant 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 predominantly used or occupied for purposes other than one of the stated purposes is not exempt from any part of the property tax.

b. Reasonably Necessary or Substantially Related

37. 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 other property owned by a hospital, such as at issue here, a similar standard has been codified in Ind. Code § 6-1.1-10-16(h). The property must be “substantially related to or supportive of the in-patient facility of the hospital.”

c. Charity Care

38. 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 other property owned by a hospital, 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.
39. 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 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 (Ind. Tax 1991)).

Pediatric Rehabilitation

40. Pediatric rehabilitation occupies 2.3% of the OMNI. Admission to pediatric rehabilitation requires a referral or prescription. The pediatric rehabilitation area is used 100% of the time for physical, occupational, speech, and developmental therapy.
41. Admission to pediatric rehabilitation requires a referral or prescription from a doctor.
42. The pediatric rehabilitation area meets both the “substantial relation” and “predominant use” tests.

Wellness Center

43. The Petitioner contends that the services provided by the wellness center are “reasonably necessary” to achieve its charitable purpose of improving the health of the community. Because the wellness center is “reasonably necessary” for the Petitioner to achieve its exemption purpose, it is substantially related or supportive of the inpatient facility and, therefore, Ind. Code § 6-1.1-10-16(h) does not apply.

44. Further, the Petitioner contends that even if the wellness center was not considered to be substantially related or supportive of the inpatient facility, the wellness center would still qualify under Ind. Code § 6-1.1-10-16(h) because of the charity care, public programs' shortfalls, and community benefits, which totaled \$24.2 million in 1999. In addition, patients in cardiac rehabilitation are eligible for the Petitioner's charity care policy. The wellness center also sponsors a number of educational programs available to the general public that are considered community benefits.
45. The Indiana Tax Court has held that for property to be exempt it must be "reasonably necessary for the maintenance of, and not just related to, the exempt purposes of the charitable organization". *Alte Salems Kirche, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 40, 44 (Ind. Tax 2000) citing *St. Mary's Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 517 N.E.2d 1247, 1249 (Ind. 1991).
46. In *St. Mary's* the Indiana Supreme Court affirmed a Tax Court finding that medical office buildings that were owned by a non-profit hospital and leased to doctors and dentists on staff for conduct of their private medical practices were not exempt as this private use was not reasonably necessary to the hospital's exempt purpose of providing hospital care.
47. The Petitioner interprets "reasonably necessary" to mean that the wellness center has to be "helpful (within the bounds of common sense) for the functioning" (i.e., the maintenance) of the exempt entity's charitable purpose. See Petitioner's Exhibit 35 at page 12.

48. The Petitioner presented a great deal of evidence, both through exhibits and testimony, regarding why the OMNI was purchased, how its use relates to the Petitioner's charitable goals, and how the use of the wellness center in particular is reasonably necessary to the Petitioner's purpose of providing wellness and education programs to the general public in an affordable manner.
49. However, an examination of the evidence also reveals that the wellness center at the OMNI is operated in a manner similar to other health and fitness facilities. Since the OMNI belongs to a nonprofit corporation any revenue realized from its operation is used to support other nonprofit aspects of the corporation. However, being a nonprofit corporation does not automatically establish a right to a tax exemption. (See *Raintree Friends*, 667 N.E.2d 810).
50. While it is arguable that the cardiac rehabilitation provided at the wellness center is substantially related or supportive of an inpatient facility, the Petitioner presented little evidence regarding cardiac rehabilitation. There was no evidence submitted to show how many patients and/or how often the wellness center is used for cardiac rehabilitation.
51. The wellness center is predominantly used as a health and fitness facility. The Board does not agree with the Petitioner's interpretation of "reasonably necessary." The operation of the wellness center is no more substantially related or supportive of the inpatient facility than any other privately operated health facility.
52. Based on the evidence presented, the Petitioner has not established that the operation of the wellness center at the OMNI is substantially related to or supportive of the inpatient facility. Therefore, the wellness center is not exempt from property taxes pursuant to Ind. Code § 6-1.1-10-16(a) & (c).
53. As previously stated the Indiana Legislature gave hospitals a chance to gain an exemption for property not substantially related to or supportive of the inpatient facility when it added Ind. Code § 6-1.1-10-16(h). The Petitioner makes the alternative claim that if the wellness center does not qualify under Ind. Code § 6-1.1-10-16(a) & (c) it would still be

exempt under Ind. Code § 6-1.1-10-16(h) because the OMNI specifically provides or supports the provision of charity care and community benefit as required.

54. In attempting to establish an exemption pursuant to Ind. Code § 6-1.1-10-16(h)(1) the Petitioner alludes to Petitioner's Exhibit 14, which is the charity care policy for Saint Margaret Mercy Healthcare Centers. Further, the Petitioner points out in its post hearing brief (Petitioner's Exhibit 34) that the corporation furnished charity care, public programs' shortfalls and other community benefits totaling about \$24.2 million in 1999. Charity care provides health care to patients who meet certain criteria under its policy, without charge or at amounts less than established rates based on the ability to pay. The charity care amounted to approximately \$7,708,000. The public programs' shortfall is defined as the cost of providing services to Medicaid and Medicare beneficiaries in excess of government payments. The community benefits include community education and research, which also includes education of medical professionals and education of the public. Petitioner's Exhibit 34.
55. The PTABOA does not disagree with the Petitioner's evidence of charity care, but it argues that OMNI is operated as a profitable health club and provides little or no charity care. Evidence indicates that the PTABOA is correct. The Petitioner, in attempting to demonstrate charitable activities of OMNI, introduced Petitioner's Exhibit 29 entitled Social Accountability Programs. The majority of the programs benefit the members and users of the wellness center, not the general public. An examination of that exhibit reveals little, if any, activities that would be considered "charitable". In fact, members fees or insurance pay for most of the activities listed. The Petitioner has not carried its burden of showing that it qualifies for an exemption pursuant to Ind. Code § 6-1.1-10-16(h)(1).
56. The Petitioner also contends that it qualifies for an exemption pursuant to Ind. Code § 6-1.1-10-16(h)(2) because promoting the health and wellness of the community satisfies the community benefit requirement.

57. Ind. Code § 6-1.1-10-16(h)(2) alludes to the providing of “community benefits” (as defined in I.C. § 16-21-9-1) as being necessary to qualify for an exemption. In Ind. Code § 16-21-9-1 community benefits are defined as “the unreimbursed cost to a hospital of providing charity care, government sponsored indigent health care, donations, education, government sponsored program services, research, and subsidized health services.”
58. While the Petitioner has established that the wellness center provides some community benefit, the benefit provided is not “unreimbursed” as most, if not all of the benefit provided, is either paid for by insurance or by fee-paying members.
59. The predominant use of the wellness center is as a health and fitness facility. The Petitioner has failed to show that the wellness center is predominantly used for an exempt purpose.
60. The wellness center does not meet any of the three tests; “predominant use”, “substantial relation”, or “charity care/community benefit”.

Community Skating Rink

61. The community roller skating rink is generally available for use by the general public. The operation of the rink provides a recreational activity for the community similar to a park or community swimming pool.
62. The Petitioner relies on an Indiana Tax Court decision in *Plainfield Elks Lodge v. State Board of Tax Commissioners*, 733 N.E.2d 32 (Ind. Tax 2000) which determined that the facilities owned by the lodge qualified for a charitable exemption because the properties were predominately used for charitable purposes.
63. The reliance on *Plainfield Elks* is misplaced because the Petitioner presented no evidence that the skating rink was predominately used for charitable purposes. If the Petitioner is

to receive an exemption for the skating rink it must pass at least one of the three tests described above.

64. The Petitioner has presented little evidence that would cause the Board to reach the conclusion that the skating rink was reasonably necessary to support the Petitioner's inpatient mission. Further, evidence presented does not convince the Board that the charitable/community benefit requirement of Ind. Code § 6-1.1-10-16(h) has been met.
65. In fact, the Petitioner had not previously asked for an exemption for the skating rink. It now asks, relying on an Internal Revenue Service ruling that exempts the rink from federal taxes pursuant to the Petitioner's previously granted exemption from federal taxes under section 501(a) of the Internal Revenue Code.
66. As previously pointed out by citing the Indiana Tax Court in *Raintree Friends*, the granting of a federal tax exemption does not entitle a taxpayer to a property tax exemption because the basis for each of these exemptions is different.
67. Accordingly, the skating rink does not qualify for a property tax exemption, as it does not meet any of the three tests.

Final Determination

68. The only portion of the OMNI facility (Parcel Number 20130612001) that qualifies for a property tax exemption is the pediatric rehabilitation area. This area is 2.3% of the total OMNI parcel. As previously noted in NAME, 671 N.E. 2d at 221, to qualify for an exemption from property taxes for charitable purposes, the charitable use of the property must be its "predominant" use. Pursuant to Ind. Code § 6-1.1-10-36.3(a) to establish a purpose as the predominant use the property must be occupied for that purpose more than fifty percent (50%) of the time. Since only 2.3% of the OMNI parcel is used for a charitable purpose, the Petitioner qualifies for no charitable property tax exemption.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Commissioner, 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.