

REPRESENTATIVE FOR PETITIONER:
Gregory A. Sobkowski, Hodges & Davis, P. C.

REPRESENTATIVE FOR RESPONDENT:
Christopher A. Buckley, Gordon A. Etzler & Associates

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Greater Portage Chamber of Commerce,)	Petition: 64-016-10-2-8-00001
)	
)	
)	
Petitioner,)	
)	
v.)	Parcel: 64-05-13-155-022.000-016
)	
)	
Porter County Assessor,)	County: Porter
)	
Respondent)	
)	
)	Assessment Year: 2010

Appeal from the Final Determination of
Porter County Property Tax Assessment Board of Appeals

January 2, 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

A taxpayer appealing from the denial of an exemption under Indiana’s general exemption statute, Ind. Code § 6-1.1-10-16, has the burden of proving that the property was owned, occupied, and predominately used for an exempt purpose. In this case, the Greater Portage Chamber of Commerce, (the “Chamber”), failed to show it owned, occupied, and

predominately used the property for charitable purposes, and thus failed to prove it is entitled to an exemption.

PROCEDURAL HISTORY

1. On May 13, 2010, the Chamber applied for 80% exemption on its office building claiming the property was exempt under I.C. § 6-1.1-10-16(a) because a portion of the office building was used for charitable purposes (Form 136). On September 23, 2010, the Porter County Property Tax Assessment Board of Appeals determined that the building was 100% taxable for the March 1, 2010, assessment date (Form 120). On November 3, 2010, the Petitioner filed a Form 132 Petition for Review of Exemption with the Indiana Board of Tax Review (the “Board”).

HEARING FACTS AND OTHER MATTERS OF RECORD

2. On July 8, 2014, the Board held a hearing in Valparaiso, Indiana, through its designated Administrative Law Judge (ALJ) Ellen Yuhan.
3. Terry Hufford, Executive Director of the Greater Portage Chamber of Commerce, was sworn as a witness at the hearing.
4. The Chamber submitted the following exhibits:
Petitioner Exhibit 1 – Community profile brochure published by the Greater Portage Chamber of Commerce,
Petitioner Exhibit 2 – List of the 2013 Community Award Nominations.
5. The Respondent (“Assessor”) did not present any exhibits.
6. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
Board Exhibit A – Form 132 Petition with attachments,

Board Exhibit B – Notice of Hearing, Reschedule- dated May 16, 2014,
Board Exhibit C – Hearing sign-in sheet.

7. The subject property is a 3,000 square foot office building located at 2642 Eleanor Street, Portage, Indiana.
8. Neither the Board nor the ALJ inspected the property.

SUMMARY OF THE CHAMBER’S EVIDENCE AND CONTENTIONS

9. The Chamber is a 501(c)(6) non-profit organization exempt from federal income tax. The purpose of the Chamber is to advance the business community and to enhance the civic, commercial, industrial, and professional welfare of Portage, Indiana and its neighboring communities. The Chamber is a conduit for any organization that comes to it for assistance. *Hufford testimony; Attachment to Board Exhibit A.*
10. The Chamber publishes a community profile for the purpose of economic development. It is the only organization in the community to do so. The profile showcases the city, the community, the parks, and the schools. The Chamber distributes 10,000 copies of the brochure every year to businesses, realtors, and professional people. If not for the Chamber, the city or someone else would have to publish it. *Hufford testimony; Sobkowski argument; Petitioner Exhibit 1.*
11. The county sponsors an event called Chamber Network Night, CNN. Along with the chairman of the Portage portion of CNN, the Chamber started a Portage Community Business Night, with the idea that if it showcased businesses in Portage, then the Portage businesses would also want to showcase themselves from a county standpoint. This annual event became a major success. Ninety businesses participate in this event showcasing their wares, and 1,000 citizens come to the event to see what they can purchase in Portage and shop local. There are restaurants that donate their wares. People

benefit from the exposure and the restaurants and businesses that participate have seen an increase in their productivity. This event has also resulted in more Portage businesses attending the county CNN. *Hufford testimony.*

12. The Chamber has been involved in recognizing both businesses and community members for their contributions to the community with awards such as volunteer of the year, humanitarian of the year, educator of the year, etc. The Chamber sponsors the Night of Recognition for the nominees. This is a great opportunity for people to share their feelings and recognize these people for their accomplishments. This is something that is not done by any other agency in the community. *Hufford testimony; Petitioner Exhibit 2.*
13. Another way the Chamber showcases their businesses is through the Music in the Park series. About 15 years ago, Portage Live Entertainment, which receives a grant from the John Anderson Foundation, wanted to expand their music series. It came to the Chamber and the Chamber approached the businesses. The series has 30 sponsors and has expanded from three or four shows a year to 16. This is a real community event that 300 to 400 people attend every Tuesday night, some who might not be able to financially afford such entertainment. These are free, live performances that are provided because of the collaboration of the Chamber, the City of Portage Parks and Recreation Department, and Portage Live Entertainment. *Hufford testimony; Petitioner Exhibit 1.*
14. The Chamber supports a food pantry and Gabriel's Horn, a shelter for women and young children. At the Music in the Park events, those charities have donation boxes. These donations help to offset the cost of running those operations. *Hufford testimony.*
15. The Chamber also helps Gabriel's Horn with an annual fundraising event. The Chamber assists in designing the brochure and getting tickets donated by another Chamber member. Chamber members donate items for the silent auction and attend the function. The Chamber tries to help whoever walks through the door to succeed in what they are

trying to do, especially when it is a worthwhile event. The Chamber does not receive any compensation for the support it gives Gabriel's Horn. *Hufford testimony.*

16. The Chamber collaborates with the Education Foundation, which provides grants to teachers for summer educational activities. The Chamber promotes and advertizes the organization and helps fundraise for the grants. These funds are not part of the school corporation budget. Annually the Education Foundation gives out between \$6,000 and \$8,000. Over the last 10 years, the Foundation has awarded about \$65,000 to teachers. The Foundation strives to make sure that every dollar donated is spent on the activity that the teacher proposed to help the children learn and enjoy the summer. *Hufford testimony.*
17. The Chamber's role in assisting the Foundation has been through a silent auction in April and a 500 Club raffle. The Chamber provides the labor for the printed materials, such as invitations, registration forms, and the brochure for that event. A printer donates the tickets for the 500 Club so that more dollars go to the Foundation. *Hufford testimony.*
18. The Chamber supports the Backpack Program, a benefit for Portage Township school children. There are about 8,000 children in the Portage Township schools. Somewhere between 55% and 58% of those children are on free and reduced lunch. This program was started by a teacher who realized that some children were not buying a lunch, not getting a lunch, and in the summertime, were not eating on a regular basis. The teacher went to her church and the church made some donations to the Indiana food bank. Four years ago the Chamber became involved with the Backpack Program. *Hufford testimony.*
19. Currently, the Backpack Program provides food for 170 students to take home so they have food for the weekend during the school year. The program is a collaboration with the schools, the food pantry and the Chamber. The Chamber raises 85% to 90% of the funds. It costs \$200 to be a full sponsor for the 30 weeks and that comes from our citizen members and any member who chooses to do so. Some Chamber members donate \$1,000 to feed five children. *Hufford testimony.*

20. In the past, the City of Portage had a Perch Fest. The Chamber recruited volunteers from its list of members to work the event. Then last year when the current mayor had a church organization help him with a Bacon Fest, the Chamber tried to guide them through what it would take to oversee the operation of a festival and it was very successful. *Hufford testimony*
21. Chamber members pay a fee based on the number of employees. For instance, if a member has one to four employees, it would pay \$215 per year. If it had five to eleven employees, it would pay \$270 a year. The dues go for salaries, maintenance, utilities and things of that nature. *Hufford testimony.*
22. When the Chamber has an event where tickets are sold or where a member pays to sponsor an event, the money goes to offset the cost of the event. The Chamber's proceeds do not go directly to charity. The Chamber does not write checks to other non-profits. In the events where the Chamber partners with a charitable organization it provides other resources, such as equipment, manpower, and the ability to raise funds from its members. A significant amount of Chamber resources are used for Chamber purposes to benefit the members. *Hufford testimony.*
23. The Chamber occupies 1,500 s/f of the 3,000 s/f office building. In 2010, the Lupus Foundation rented space for \$700 per month. Catholic Charities is currently in that space which is about 700 to 1,000 square feet and it pays rent of \$900 a month. Dr. Nordstrum, a doctor who works for the federal government, pays \$450 a month and Meridian Title rents a 10' x 10' office for \$400 a month. *Hufford testimony.*
24. Mr. Hufford testified that it would be difficult to judge the amount of time spent on activities that benefit the members and activities that benefit the community at large. The activities that benefit the Chamber are significant. The Chamber's primary purpose is to make sure that Chamber members stay in business. But, a secondary or supplemental

function of the Chamber is to promote the Portage community. The Chamber's activities help with economic development, help with the quality of life, and help organizations stay afloat. *Hufford testimony*.

25. The Chamber notes that no case law has addressed chambers of commerce specifically and whether or not they are entitled to property tax exemption. There is case law about what charitable purposes include. In *College Corner, LP v. Department of Local Government Finance*, the court held that a charitable purpose would be found where one of two circumstances exists: where there is evidence of relief of human want manifested by obviously charitable acts different from everyday purposes and activities of man in general; and where there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. The court went on to say that when a private organization takes on tasks that otherwise would fall to the government, this provides a benefit to the community as a whole because it allows the government to direct its funds and attention to other community needs. *Sobkowski argument*.
26. The Chamber publishes the community profile which someone else or the city would have to do. The Chamber's award recognition provides a benefit to economic development which relieves the government of obligations to promote economic development. The Chamber provided support for the city's Perch Fest which helped the city during the years when the event took place. The partnership with the Education Foundation provides a direct benefit to the community by funding grants for activities that otherwise would not take place. The Backpack Program is a form of direct charity because, while the Chamber does not write a check, it helps raise funds for the program. Finally, by supporting Gabriel's Horn's fundraising efforts, the Chamber helps support the charitable purpose for which Gabriel's Horn was organized. *Sobkowski argument*.
27. The Chamber's activities as described fall within the case law definition of charity and are significant enough to entitle the Chamber to at least a partial exemption. *Sobkowski argument*.

SUMMARY OF THE ASSESSOR'S EVIDENCE AND CONTENTIONS

28. There is no precedent that governs this issue, and no specific statute addresses an exemption claimed by a chamber of commerce. There are no guidelines that seem to indicate whether the activities of a chamber of commerce fall within the very narrow definition of charitable as determined by the Board and by the Indiana Tax Court. This is an issue of first impression for the Board, the Tax Court, and Assessor. *Buckley argument.*
29. The Chamber's purposes are desirable but do not fit under the definition of charitable as a matter of law. The definition of charitable is that it must relieve human want or suffering and it must be more than just the ordinary acts of man in general. While the Chamber's acts are noble, Mr. Hufford testified that the predominate use of the real estate is to benefit the members. *Buckley argument.*
30. In the *National Association of Miniature Enthusiasts (NAME)* case, the organization conducted various activities that were similar to the activities in this case, but the primary purpose was to benefit its members. The Indiana Tax Court determined that was not sufficient to justify a charitable or educational exemption. Just as in this case, the primary purpose is to benefit the members. The members pay a fee to conceivably receive some sort of benefit from the Chamber. *Buckley argument.*
31. Additionally, the Chamber receives rent from other occupants of the building. Pursuant to the *Oaken Bucket* case, simply charging less than market rent is similarly insufficient to demonstrate a charitable purpose for the property. Also, only 1,500 s/f of the total 2,800 s/f is being used by the Chamber, approximately half of the building. Even if it were determined that Chamber business is an exempt purpose, the fact that the organization is receiving rent on the other half of the real estate would limit the Chamber

to one half exemption at most. But that is only in the alternative if the Board were to find that the Chamber's activity constitutes an exempt purpose. *Buckley argument*.

32. The primary purpose of the Chamber is economic development and to benefit its members. It is difficult to demonstrate the direct impact the Chamber has upon society at large, but that is a secondary benefit. The donations, as noble as they are, do not qualify the Portage Chamber of Commerce for a charitable exemption pursuant to the existing laws as we know them today. *Buckley argument*.

BASIS OF EXEMPTION AND BURDEN

33. The general rule is that all property is subject to taxation. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
34. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
35. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Id.* at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

ANALYSIS

36. Indiana Code § 6-1.1-10-16(a) states 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.” I.C. § 6-1.1-10-16(a). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (Ind. Ct. App. 1969)).
37. Exemption statutes are strictly construed against the taxpayer. See *New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000), *aff’d*, 765 N.E.2d 1257 (Ind. 2002). However, “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005).
38. Evaluating whether a property is owned, occupied, and used for exempt purposes is a “fact sensitive inquiry; There are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E. 2d 13, 14 (Ind. Tax Ct. 2009). Every exemption case “stand[s] on its own facts” and how the parties present those facts. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d at 1009, 1014 (Ind. Tax Ct. 2004); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis and it cannot assume the evidence speaks for itself).

39. The claimed exempt use must be the “predominant use” of property. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). “Property is predominately 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.” I.C. § 6-1.1-10-36.3(a). Further, “property that is predominately used or occupied for one (1) or more of the stated . . . is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” I.C. § 6-1.1-10-36.3(c).
40. The parties concede that this is an issue of first impression. The touchstone of a charitable use is the relief of human want through obviously charitable acts, which inure to the public benefit. Relief of human want contemplates services associated with necessities like food, shelter, clothing, safety, health, and well-being, and tasks that would otherwise burden the government. Obviously charitable acts are those that are pursued through altruistic or philanthropic motives rather than self-interest. The relief inures to the public if the benefits are quantifiable and justify the loss of revenue. The charitable use must also be the predominate use.
41. At the outset, the Chamber has admitted that it only occupies 1500 s/f of the 3000 s/f building. The Chamber notes that another portion of the building is leased by the Chamber to Catholic Charities,¹ a not-for-profit. But the record does not include evidence of how Catholic Charities uses the property or whether it would qualify for a religious or charitable exemption. Moreover, the Chamber did not ascribe a charitable

¹ The record is not clear, but it appears that the Lupus Foundation occupied the premises during the relevant period. Because the Chamber fails to describe the activities of either organization, or the Chamber’s reasons for leasing to either organization, the Board’s analysis applies equally to the Lupus Foundation or Catholic Charities.

purpose to its decision to lease the property to Catholic Charities. The Indiana Supreme Court has held that:

Absent evidence that an owner of leased property possesses an exempt purpose separate and distinct from the exempt purpose of its lessee, the owner holds the property for its own benefit, not that of the public, and thus its property is not entitled to the statutory exemption.

Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC, 938 N.E.2d 654, 658 (Ind. 2010). Because the Chamber leases space to both for-profit and not-for-profit entities, the Board concludes that the lease to Catholic Charities was likely for the purposes of defraying the costs of the Chamber's general activities rather than furthering the purposes of Catholic Charities. Thus, the Chamber's entitlement to an exemption must be based solely on its own use and occupancy.

42. The Chamber has indicated a number of worthwhile and philanthropic endeavors in which it participates, but those activities are only relevant if they form the predominate use of the property. When asked to estimate what proportion of resources were allocated between charitable and Chamber purposes, Mr. Hufford affirmed that it was definitely more than half that went to Chamber purposes. Mr. Hufford indicated the focus and his main job as director is to make sure that the 330 businesses that belong to the Chamber stay open. Mr. Hufford also acknowledged that the Chamber's involvement in the community is secondary to helping the private businesses of members of the Chamber.
43. The Board finds that the charitable initiatives of the Chamber do not reflect the predominate use of the property. The predominate use of the property is the Chamber's work in promoting its members and economic development. Thus, the Board must determine whether that use is charitable as contemplated by the exemption statutes.
44. The record provides scant evidence of what precisely the Chamber does for its members on a day-to-day basis. There is little description of how the Chamber helps keep its "members' doors open." The only exhibits include a directory and a summary of awards categories. The Chamber notes its member directory, community profile, networking

events, and community awards. The Chamber also notes that there are benefits to being recognized in the community as a member of the Chamber. The exemption application includes the Chamber's articles of incorporation, by-laws, and a profit and loss statement. The Chamber did not elicit any testimony regarding those items. There are no descriptions of the employees' duties, board minutes, or similar documents that would provide a full picture of the Chamber's activities. The Board can divine little from the profit and loss statement. "Taxpayers may not avoid their burden of proof by 'making a de minimis showing and then forcing the State Board to support its decisions with detailed factual findings.'" *New Castle Lodge*, 765 N.E.2d at 1264.

45. Because of the lack of evidence regarding the Chamber's primary operations, the Board cannot find that the Chamber provides relief from human want, that its motives are obviously charitable, or that its support of members' businesses provides a public benefit. When the exempt activities are "merely incidental" to the main purpose of the organization, and the organization "primarily serves the private interests of an organization's members," a public subsidy is not warranted. *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006) (finding that the educational activities of a trade association are not entitled to an exemption). Without evidence of how the Chamber's services to its members benefits the public, the Board cannot find that the property is predominately used for a charitable purpose.

SUMMARY OF FINAL DETERMINATION

46. The Petitioner failed to prove it owned, occupied, and used the property for an exempt purpose during the relevant period for the March 1, 2010, assessment date. The Board finds for the Respondent.

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

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>>.