

REPRESENTATIVES FOR PETITIONER: Allen Stewart and Steve Beaver

REPRESENTATIVE FOR RESPONDENT: Beth H. Henkel, Law Office of Beth Henkel, LLC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Hall of Heroes Super Hero Museum,)	Petition Nos.: 20-027-20-2-8-00273-20
Inc.)	20-027-20-2-8-00318-20
)	
Petitioner,)	Parcel Nos.: 20-02-29-455-003.000-027
)	20-02-29-455-004.000-027
v.)	
)	County: Elkhart
Elkhart County Assessor,)	
)	Assessment Year: 2020
Respondent.)	

January 07, 2022

FINAL DETERMINATION

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

INTRODUCTION

- Hall of Heroes Super Hero Museum, Inc. (“HoH”) sought an exemption for real property that it uses as a museum dedicated to preserving the 80-year history of superheroes in comics, toys, art, film, and animation. Because HoH failed to prove that it owned, occupied, and predominantly used the property for educational or charitable purposes, it does not qualify for an exemption.

PROCEDURAL HISTORY

2. On September 25, 2019, HoH applied for real property exemptions for the 2020 assessment date for two parcels located at 1915 Cassopolis Street in Elkhart, claiming that it used them for charitable and educational purposes. On March 11, 2020, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 120 determination finding Parcel No. 20-02-29-455-003.000-027 to be 100% taxable. However, the PTABOA failed to act on the application for Parcel No. 20-02-29-455-004.000-027. HoH timely appealed both applications to the Board.¹
3. On August 18, 2021, David Smith, our designated Administrative Law Judge (“ALJ”), held a telephonic hearing on HoH’s petitions. Neither he nor the Board inspected the subject property.
4. Allen Stewart, HoH’s Executive Director, and Steve Beaver, its Chief Financial Officer, testified under oath.
5. HoH submitted the following exhibits, all of which were admitted:
 - Petitioner Ex. 1: Mishawaka Public Library thank you note
 - Petitioner Ex. 2: Alex Freshour recommendation letter
 - Petitioner Ex. 3: Museum floor plan
 - Petitioner Ex. 4: Michelle Bohlmann appreciation letter
 - Petitioner Ex. 5: Indiana University South Bend recommendation letter
 - Petitioner Ex. 6: Goshen Schools thank you e-mail
 - Petitioner Ex. 7: Goshen Schools recommendation letter
 - Petitioner Ex. 8: Museum mobile app-Phase I
 - Petitioner Ex. 9: HoH’s answers to Assessor’s Interrogatories
 - Petitioner Ex. 10: Museum history lecture flyer
 - Petitioner Ex. 11: HoH’s closing documents for purchase of subject property
 - Petitioner Ex. 12: May 14, 2019 appraisal of subject property
 - Petitioner Ex. 13: HoH’s 2017 financial statement
 - Petitioner Ex. 14: HoH’s 2018 financial statement
 - Petitioner Ex. 15: HoH’s 2018 Internal Revenue Service (“IRS”) Form 990

¹ HoH elected to appeal its 2020 application for Parcel No. 20-02-29-455-004.000-027 directly to us. *See* Ind. Code § 6-1.1-11-7(d) (allowing taxpayers to appeal to the Board if the PTABOA fails to approve or disapprove an exemption application within 180 days after it is filed).

Petitioner Ex. 16: HoH's 2019 IRS Form 990
 Petitioner Ex. 17: Museum educational teaching materials
 Petitioner Ex. 18: October 26, 2016 "Innovations in Pharmacy" article
 Petitioner Ex. 19: HoH's Certificate of Incorporation from Indiana Secretary of State
 Petitioner Ex. 20: HoH's IRS Form 501(c)(3) exemption letter
 Petitioner Ex. 21: Girl Scouts Comic Artist Badge booklet
 Petitioner Ex. 22: HoH's 2019 financial statement
 Petitioner Ex. 23: HoH's 2020 financial data
 Petitioner Ex. 24: HoH's August-December 2019 financial data
 Petitioner Ex. 25: *McClain Museum, Inc. v. Madison County Assessor*
 Petitioner Ex. 26: *St. Bd. Tax Comm. v. Professional Photographers*
 Petitioner Ex. 27: *Trinity School of Natural Health, Inc. v. Kosciusko Cty. PTABOA*

6. The Assessor submitted the following exhibits, all of which were admitted:

Respondent Ex. R-1: Museum floor plan
 Respondent Ex. R-2: Museum Tour Guide mobile app-Phase I plan
 Respondent Ex. R-3: HoH's 2018 IRS Form 990
 Respondent Ex. R-4: HoH's 2019 IRS Form 990
 Respondent Ex. R-5: HoH's 2018 financial statement
 Respondent Ex. R-6: HoH's 2019 financial statement
 Respondent Ex. R-7: HoH's 2019 financial statement while in subject building
 Respondent Ex. R-8: HoH's 2020 financial data
 Respondent Ex. R-9: HoH's responses to Interrogatories
 Respondent Ex. R-10: *Dep't of Local Government Finance v. Roller Skating Rink Operators Ass'n*
 Respondent Ex. R-11: *Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*
 Respondent Ex. R-12: *Trinity School of Natural Health, Inc. v. Kosciusko Cty. PTABOA*

7. The record also includes the following: (1) all pleadings, briefs and documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

8. HoH is an Indiana not-for-profit corporation that was formed in 2009. *Pet'r Ex. 19*. It is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue

Code. *Pet'r Ex. 20.*

9. On May 29, 2019, HoH purchased the real property identified as Parcel Nos. 20-02-29-455-003.000-027 and 20-02-29-455-004.000-027 (collectively, the “subject property”). *Pet'r Ex. 11.* The subject property’s primary improvement is a one-story, 5,000 square foot commercial building (the “Museum”). *Pet'r Ex. 12.* The Museum consists of five rooms: a main room, a 336-square foot multi-purpose room, a storage room, and two restrooms. The main room is the primary exhibit hall and contains a comic book library/archive, a front desk, an arcade area, and a gift shop area. The multi-purpose room is used for teaching classes, board meetings, and party rentals. *Stewart testimony; Pet'r Exs. 3, 9.*
10. HoH opened the Museum in September 2019. It is open to the public six days per week (closed on Wednesdays). Although HoH charges the public an admission fee for the Museum, it provides free passes to libraries, school systems, and local charities. The Museum has one of the largest collections of comic books in the country, with more than 65,000 comic books in its archives. It also has over 10,000 items on exhibit including toys, costumes, and movie props from the last 80 years. *Stewart testimony; Pet'r Ex. 9.*
11. HoH provides tours and educational programs at the Museum for groups including Boy Scouts, Girl Scouts, schools, libraries, summer camps, and churches. It also promotes literacy by supporting library summer reading programs with free passes to the Museum. Additionally, Stewart, who holds degrees in secondary education and history, promotes literacy and history through classes he teaches at the Museum and through lectures he gives at universities and Comic Cons. *Stewart testimony; Pet'r Ex. 9.*
12. Stewart also works directly with teachers to offer programming at the Museum that satisfies Indiana’s educational standards. They work together to develop programs involving superheroes, comic books, and the arts that will engage the kids and get them interested. The focus is on trying to make sure the programs are both fun and

educational. The lesson plans can include things such as a comic book report or learning about comic book science. The Museum also hosts programming for the Girl Scouts that allows them to work on earning a Superhero Badge. *Stewart testimony; Pet'r Ex. 17.*

13. The educational programs HoH offers at the Museum are either free or reduced fee, depending on a particular organization's budget. HoH charges the reduced rate to cover the cost of materials and extra staffing. Upon special request, the Museum's archives are open to the public free of charge to allow people access for educational purposes. The Museum does not loan out materials like a library does, but it does occasionally sell duplicates of items already in its collection to raise money for things like display cabinets. It also sells comic books in the gift shop. *Stewart testimony; Pet'r Ex. 9.*
14. HoH conducts educational programs at the Museum by request. It does not hold regular, weekly classes, and there were no regular classes at the Museum during 2019. Although HoH had several meetings with teachers that were going to hold regular classes at the Museum in 2020, those plans were put on hold due to COVID. Stewart estimated that he taught classes approximately 25% of the time that the Museum was open during 2019 and 2020. *Stewart testimony.*
15. During 2019, HoH held one educational program at the Museum—a statewide Girl Scout comic art badge event on November 15th where 51 students were taught how to draw comics. HoH also claims to have held a zoom program for 80 students from the Goshen school system on December 9, 2019. However, based on the emails Stewart exchanged with teacher Courtney Bemiller, we find that the program was actually held on December 9, 2020. *Stewart testimony; Pet'r Exs. 6, 7, 9.*

CONCLUSIONS OF LAW

A. BASES FOR EXEMPTION

16. Although tangible property in Indiana is generally taxable, the Legislature has exercised

its constitutional power to exempt certain types of property. *Hamilton Cnty. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Because exemptions relieve properties from bearing their fair share of the cost of government services, they are strictly construed against the taxpayer. A taxpayer therefore bears the burden of proving that its property qualifies for an exemption. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).

17. All or part of a building is exempt from taxation if it is owned, and exclusively or predominantly used or occupied for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). The exemption extends to a tract of land on which an exempt building is situated, as well as to parking lots and other structures that serve the exempt building. I.C. § 6-1.1-10-16 (c)(1)-(2).

18. Property is predominantly used for one or more stated purpose if it is used for those purposes during more than 50% of the time that it is used in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3. A property is 100% exempt if it is exclusively used or occupied for exempt purposes or if it is predominantly used for exempt purposes by a church, religious society, or nonprofit school. I.C. § 6-1.1-10-36.3(c)(1)-(2). Otherwise, a property qualifies only for an exemption that “bears the same proportion to the total assessment” as the amount of time the property’s exempt use bears to its total use. I.C. § 6-1.1-10-36.3(c)(3). Where a property is not used exclusively for exempt purposes, a taxpayer must offer evidence comparing the relative distribution of time between exempt and non-exempt uses. *Hamilton Cnty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017).

B. Analysis

19. Although HoH is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, the grant of a federal or state income tax exemption does not

entitle a taxpayer to property tax exemption. *See Raintree Friends Housing, Inc. v. Indiana Dep't of Revenue*, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996) (non-profit status does not automatically entitle a taxpayer to a tax exemption). And based on the record before us, we conclude that HoH failed to show that it owned, occupied, and predominantly used the Museum for educational or charitable purposes during the year preceding the 2020 assessment date.

20. HoH's evidentiary presentation focused primarily on the Museum's educational purposes. To receive an educational-purpose exemption, a taxpayer must show that it provides a public benefit through educational instruction that is the "substantial equivalent" to instruction offered in Indiana's tax-supported institutions. *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). The closer the taxpayer's activity is to traditional educational programs offered in public schools, the more obvious the public benefit. But a taxpayer need not offer courses that are directly analogous to courses taught in public schools; rather, the taxpayer's courses simply need to be related to public-school offerings. *Id.* (citing *Trinity School of Natural Health v. Kosciusko Cnty. Prop. Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1238 (Ind. Tax Ct. 2003)). And the taxpayer need only relieve the state's burden of providing public education to "some limited extent." *Id.* (quoting *Trinity School*, 799 N.E.2d at 1238).
21. While HoH may have planned on providing educational programming at the Museum that was intended to satisfy Indiana's educational standards, it admitted that it did not hold any such classes at the Museum during 2019. Indeed, the only educational programming HoH held at the Museum in 2019 was a single Girl Scout event held on November 15th. Furthermore, Stewart estimated that he only taught classes approximately 25% of the time that the Museum was open during 2019 and 2020. We therefore conclude that HoH did not predominantly use the Museum for educational purposes in 2019. Thus, it does not qualify for an educational-purpose exemption.

22. We now turn to HoH's charitable-purpose exemption claim. The term "charitable purpose" is defined and understood in its broadest constitutional sense. *Knox Cnty. Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). A charitable purpose will generally be found 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. *Id.*
23. In support of its claim, HoH submitted a copy of the Tax Court's decision in *McClain Museum, Inc. v. Madison Cty. Ass'r*, 134 N.E.3d 1096 (Ind. Tax Ct. 2019). In *McClain Museum*, the taxpayer's primary building contained an exhibition area and library, a restoration area, a storage area, and a reception/meeting hall. *Id. at 1099*. The taxpayer used its property to exhibit military equipment, uniforms, photographs, manuals, and books previously used by the United States' armed forces in various conflicts from World War I to Desert Storm. *Id. at 1098-1099*. The court concluded that the museum qualified for a charitable exemption because it provides "a place where members of the general public can learn about our country's military history and heritage as well as pay homage to its veterans and their families for the sacrifices they made in defending our freedoms," and because its activities "enhance the public's knowledge and understanding of a part of the American experience." *Id. at 1104*.
24. We conclude, however, that a museum focused on the history of superheroes is fundamentally different than a museum devoted to preserving our country's military history. Indeed, we think that the Museum's subject matter is more akin to the recreational and hobby activities addressed in *National Ass'n of Miniature Enthusiasts v. State Bd. Of Tax Commr's*, 671 N.E.2d 218 (Ind. Tax Ct. 1996). In that case, the taxpayer's property contained a museum and library relating to miniatures. *Id. at 220*. Among other things, the taxpayer used its property to house a permanent collection of miniatures, plan and present house parties, publish a quarterly periodical, promote local miniature clubs, and to conduct workshops on miniatures. *Id.* The court concluded that

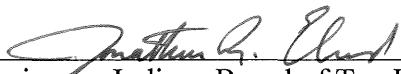
the taxpayer was not entitled to a charitable exemption because “[o]perating a museum for the public and enhancing the public’s knowledge about miniatures, while a noble endeavor, does not relieve human want and suffering.” *Id. at 221*. We therefore conclude that the Museum does not qualify for a charitable-purpose exemption.²

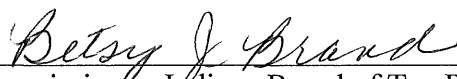
25. Because HoH failed to show that the Museum was owned, occupied, and predominantly used for educational or charitable purposes during the year preceding the 2020 assessment date, we conclude that the subject property does not qualify for an exemption.

CONCLUSION

In accordance with the above findings of fact and conclusions of law, we find the subject property to be 100% taxable.

ISSUED: 1/7/2022


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

² Even if we viewed the Museum’s use as charitable, HoH would still not be entitled to the 100% exemption it seeks because it rents out the Museum’s multi-purpose room for non-exempt parties. Because HoH does not exclusively use that space for exempt purposes, it needed to provide a comparison of the relative distribution of time it was used for exempt and non-exempt purposes. At the very least, HoH’s failure to provide us with such a comparison here would have undermined its exemption claim with respect to the 336-square foot multi-purpose room, which we note occupies approximately 6.7% of the Museum’s total square footage. *See Duke*, 69 N.E.3d at 572 (“[F]ailure to provide the Indiana Board with a comparison of the relative amounts of time that a property was used for exempt and non-exempt purposes is fatal to a claim of exemption under Indiana Code § 6-1.1-10-36.3.”).

- 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>>.