

REPRESENTATIVE FOR PETITIONER:
Michael R. Carney, President of KCARC

REPRESENTATIVE FOR RESPONDENT:
Catherine Lane, Knox County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|-----------------------------|---|------------------|--------------------------|
| Knox County Association for |) | Petition No.: | 42-027-11-2-8-00002 |
| Retarded Citizens, Inc., |) | | |
| |) | Parcel No.: | 42-12-15-101-009.000-027 |
| Petitioner, |) | | |
| |) | | |
| v. |) | County: | Knox |
| |) | | |
| Knox County Assessor, |) | Assessment Year: | 2011 |
| |) | | |
| Respondent. |) | | |

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

February 19, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 is whether the subject property should be granted an exemption under Indiana Code § 6-1.1-10-16 for 2011 because the property was predominantly used for charitable purposes.

PROCEDURAL HISTORY

2. On June 22, 2010, Knox County Association for Retarded Citizens, Inc. (KCARC), filed a Form 136, Application for Property Tax Exemption, seeking an exemption for its real property for the 2011 assessment year.¹ The Knox County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on August 23, 2011, finding the Petitioner's real property to be 5% exempt and 95% taxable. On September 20, 2011, pursuant to Indiana Code § 6-1.1-11-7, KCARC filed a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption, requesting that the Board conduct an administrative review of the property's 2011 exemption request.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Tom Martindale, held a hearing on November 28, 2012, in Vincennes, Indiana.
4. The following persons were sworn in at the hearing:
For the Petitioner:
Michael R. Carney, President of KCARC

¹ On Petitioner's Form 136, it appears that both real and personal property were under appeal; however, on both the Form 120 and the Form 132, the Petitioner indicated that it was appealing only its real property.

For the Respondent:
Catherine Lane, Knox County Assessor
Amy Conner, Deputy Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Statements of Activities and Changes in Net Assets for 2011 and 2012,
Petitioner Exhibit 2 – Documents submitted along with the Petitioner’s Form 132: Internal Revenue Service letter dated May 5, 1994, recognizing KCARC as a 501(c)(3) organization, Articles of Incorporation for KCARC, Bylaws for KCARC, KCARC Statements of Financial Position for 2008, 2009, and 2010.

6. The Respondent did not present any exhibits.

7. 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, dated September 6, 2012,
Board Exhibit C – Hearing sign-in sheet.

8. The property at issue is a facility commonly known as “Dove Plant 5” consisting of office space and manufacturing space, located at 2525 North 6th Street, in Vincennes, Indiana.²

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2011, the Knox County PTABOA determined the subject property to be 5% exempt and 95% taxable.

11. The Petitioner contends the subject property was entitled to a 100% exemption in 2011.

² The name “Dove Plant 5” comes from Petitioner’s Form 136.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

BASIS OF EXEMPTION AND BURDEN

13. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. 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.
14. 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).
15. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 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 Ct. 1990)).
16. The taxpayer seeking exemption bears the burden of proving that the property is entitled to exemption by showing that the property falls specifically within the statutory authority

for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PARTIES' CONTENTIONS

17. The Petitioner contends that its property is exempt from taxation pursuant to Indiana Code § 6-1.1-10-16 because it is used for charitable purposes. The Petitioner presented the following evidence in regard to this issue:
 - A. The Petitioner's representative, Mr. Carney, contends that KCARC should be found tax exempt because it is a charitable organization. *Carney argument; Petitioner Exhibit 2*. According to Mr. Carney, KCARC is a not for-profit charitable organization as recognized by the Internal Revenue Service, thus exempting it from federal income taxes under section 501(c)(3). *Id.*
 - B. Mr. Carney argued that Indiana law allows for the exemption of various properties that are "used for furtherance of its purposes to become exempt." *Carney argument*. According to the Articles of Incorporation and Amended Bylaws of the Petitioner, KCARC was organized for "the general purposes of developing, financing, implementing and otherwise executing a variety of programs for the benefit of retarded and otherwise developmentally disabled citizens. These programs shall extend to all aspects related to the health, education and welfare of the persons it has been organized to serve." *Petitioner Exhibit 2*. Mr. Carney testified that the purpose of the subject property is, among other things, to provide employment and training programs for people with disabilities. *Carney testimony*. Mr. Carney stated that while "KCARC hopes to make money," the main purpose is to provide jobs for individuals with disabilities. *Id.*

C. Mr. Carney testified that the facility is currently used for offices, manufacturing and some warehousing activities. *Carney testimony*. Mr. Carney stated that KCARC is currently in the process of manufacturing “sideboard pallets” for Crane Navel Center. *Id.* Further, Mr. Carney testified that KCARC has a document destruction program where it engages in shredding sensitive documents from various organizations around the community and KCARC is beginning to can milk for a defense logistics agency. *Id.*

D. The Petitioner’s representative stated that for “probably 20 years” KCARC has voluntarily paid real estate taxes for properties it owns in Knox County, even though he claims “they did not have to.” *Carney argument*. Further, Mr. Carney stated the Petitioner paid these taxes because it “felt it was the right thing to do.” *Id.* However, Mr. Carney testified that KCARC’s current position makes it “near impossible” to continue to pay these taxes. *Id.* Mr. Carney testified that according to the financial statements provided, KCARC has suffered significant financial losses over the past two years - \$609,000 in 2011 and \$215,000 in 2012. *Id.; Petitioner Exhibit 1.*

18. The Respondent contends that the Petitioner is not entitled to a 100% exemption on the subject property. The Respondent presented the following evidence in support of its contention:

A. The Respondent’s representative, Ms. Lane, contends that the subject property does not qualify for a 100% exemption solely on the grounds it is a 501(c)(3) organization. *Lane argument*. According to Ms. Lane, that the Petitioner is a tax exempt organization does not automatically make the property it owns tax exempt. *Id.* There are exemptions allowed by the federal government that the county assessor’s office does not allow. *Id.; Petitioner Exhibit 1.*

B. Ms. Lane argues that everyone pays taxes unless certain criteria are met, and in this case, the subject property does not meet the criteria for a full exemption. *Lane argument*. According to Ms. Lane, the Petitioner is not acting as a charity; instead it

- is operating to make a profit. *Lane argument.* Ms. Lane stated that there is a lot of money being generated from the subject property, and she does not “believe the company is operating at a loss every year.” *Id.* However, Ms. Lane admitted that the profits generated are being used to help the community. *Id.* “[T]his is something that they do to make money to do all of those other programs that they have.” *Id.*
- C. Finally, Ms. Lane testified that the Petitioner receives exemptions on other properties it owns in Knox County. *Lane argument.* According to Ms. Lane, the county looks at each property on a case by case basis “looking at the grand scheme of things to see what it means and what it means to the community.” *Id.* In fact, Ms. Lane contends, some of the Petitioner’s properties are granted an exemption, even though they may be “borderline questionable” because “the county appreciates what they do for the community.” *Id.*
- D. Ms. Lane argued the subject property is different from the other properties the Petitioner owns because the Petitioner is profiting from the activities taking place at this particular property; thus proving the work done there is not charitable in nature. *Lane argument.* In fact, Ms. Lane contends, the Petitioner is in competition with other businesses; therefore, allowing this property to be exempt would give them “an unfair advantage.” *Id.* However, Ms. Lane testified that the county granted an exemption on the part of the building used as office space and she conceded that “maybe part of the building should be more exempt.” *Id.*

ANALYSIS

19. Indiana Code § 6-1.1-10-16(a) 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.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code § 6-1.1-10-16(a). An exemption requires probative evidence

that a property is owned, occupied, and used for an exempt purpose. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

20. 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). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (1969)). 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).

21. The test used to determine whether all or a portion of a subject property qualifies for an exemption for charitable purposes, is the “predominant use” test. *New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002). Pursuant to Indiana Code § 6-1.1-10-36.3, “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.” Ind. Code § 6-1.1-10-36.3(a). Further, “property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school 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.” Ind. Code § 6-1.1-10-36.3(c).

22. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “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 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital., Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *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; it cannot assume the evidence speaks for itself).
23. In this case, the Petitioner’s representative testified that the Petitioner was a 501(c)(3) organization. However, the grant of a federal or state income tax exemption does not entitle a taxpayer to a property tax exemption because an income tax exemption does not depend so much on how property is used, but on how money is spent. *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 tax exemption). Thus, the Board must look at the use of the subject property to determine whether the property is entitled to a full exemption.
24. According to the Petitioner’s representative, the Petitioner is a non-profit organization whose purpose is to develop, finance, implement and execute a variety of programs for the benefit of “retarded and otherwise developmentally disabled citizens.” *Carney testimony; Petitioner Exhibit 2*. The Petitioner’s representative testified that the use of the subject property is in furtherance of the purposes for which KCARC was incorporated, which includes, among other things, the employment and training of people with disabilities. *Id.*
25. However, the only evidence the Petitioner offered of any “services” that the Petitioner provides is that people with disabilities worked at the subject property and the work done

by disabled individuals was supervised by people without disabilities. *Carney testimony*. The Petitioner’s representative did not provide any evidence of how many individuals with disabilities were employed at the subject property or how many of those employed by the Petitioner were able to seek gainful employment elsewhere having learned employment skills at the subject property. Nor did the Petitioner’s representative provide any details of its employment of disabled individuals, such as length of employment with the Petitioner, the compensation received by these individuals or the requirements for employment. More importantly, the Petitioner’s representative failed to provide details regarding any “training programs” that took place at the subject property. Thus, while the Petitioner provided some evidence that it employed disabled individuals, simply employing disabled individuals does not prove a charitable intent. The Petitioner needed to show that it was providing services to disabled individuals “different from the everyday purposes and activities of man in general.” *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

26. Further, while the Respondent admitted that the Petitioner uses the subject property to earn money “to do all these other programs that they have,” the Petitioner failed to provide any meaningful evidence of its programs other than vague references to “employment and training” occurring at the subject property and references to a “group home” operated by the Petitioner. Thus, while it is a noble act to provide services to individuals with disabilities, and the subject property may, in fact, be used to support a comprehensive program for the benefit of disabled individuals, the Petitioner’s case failed to provide evidence of the scope of KCARC’s programs or services. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.”).

27. Finally, the Petitioner’s representative argued that KCARC has not made a profit on the subject property for the last two years. However “the failure to make a profit does not convert a business into a charitable institution.” *Cullitan v. The Cunningham Sanitarium*, 16 N.E.2d 205, 207 (Ohio 1938). *See also Topeka Presbyterian Manor, Inc. v. Board of*

Knox County Association for Retarded Citizens, Inc.

Findings & Conclusions

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County Commissioners of Shawnee County, Kansas, 402 P.2d 802, 807 (Kan. 1965) (“we recognize that the failure to make a profit does not convert a business into a charitable institution.”), *reversed on other grounds, Lutheran Home, Inc. v. Board of County Commissioners of Dickinson County, Kansas*, 505 P.2d 1118 (Kan. 1973).

28. Here the Petitioner has only shown that it employs disabled individuals in its manufacturing facility. The Petitioner failed to provide evidence of any comprehensive work training program or that its commercial endeavors provides the funding for other programs and services that it offers to disabled individuals. After considering all of the evidence presented by the parties, the Board finds that the Petitioner failed to sufficiently show that its property was owned, operated and used for a charitable purpose for the 2011 assessment year.
29. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

The Petitioner failed to raise a prima facie case that its property was entitled to 100% charitable exemption pursuant to Indiana Code § 6-1.1-10-16. The Board therefore finds in favor of the Respondent and holds that the Petitioner’s real property is 5% exempt and 95% taxable for the March 1, 2011, assessment year.

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>