

REPRESENTATIVE FOR PETITIONER:

Gregory A. Hartzler, Attorney, Yoder, Ainlay, Ulmer & Buckingham, LLP

REPRESENTATIVE FOR RESPONDENT:

Cathy S. Searcy, Elkhart County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

FOURTH FREEDOM	)	Petition Nos.:	20-005-04-2-8-00001
FORUM, INC.,	)		20-005-04-2-8-00002
	)		20-015-06-2-8-00001
Petitioner,	)		20-015-06-2-8-00001A <sup>1</sup>
	)		
	)	Parcel Nos.:	201104460005000015
	)		201104460008000015
v.	)		& Personal Property
	)		
	)	County:	Elkhart
	)	Township:	Elkhart
ELKHART COUNTY	)		
PROPERTY TAX ASSESSMENT	)		
BOARD OF APPEALS,	)	Assessment Years:	March 1, 2004 &
	)		March 1, 2006
Respondent.	)		

Appeal from the Final Determination of  
Elkhart Property Tax Assessment Board of Appeals

**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:

<sup>1</sup> Fourth Freedom Forum, Inc. filed two separate Form 132 petitions for the 2006 assessment year. *Hartzler statement.* The Form 132 for parcel #201104460008000015 was inadvertently attached to petition #20-015-06-2-8-00001 (parcel #201104460005000015). *Id.* Ms Searcy agreed that both parcels were appealed for the year of 2006. The Board therefore considers the Forum’s appeals for both parcels (#201104460005000015 and #201104460008000015) for the 2006 assessment year.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Issues and Short Answers

1. Fourth Freedom Forum, Inc., primarily uses its property to research and analyze international-security-related issues in order to promote its founder's goal of world disarmament. It conducts much of its research under contracts with government agencies and international organizations. It also publicly disseminates its research through reports, articles, and books. But it does not itself use those materials to systematically instruct people.
2. The Forum claims that its property is exempt from taxation because it uses that property for educational, charitable, and scientific purposes. The Board must therefore address the following three issues:
  - (1) Do the Forum's research-related activities substantially equate to instruction and training offered by public schools and therefore qualify as educational purposes under Indiana's exemption statute?
  - (2) By promoting its founder's worldview, in part through paid research, does the Forum perform charitable acts (a) that differ from the everyday purposes of man in general, and (b) from which a public benefit will inure?
  - (3) Is the term "scientific," as used in the exemption statute, broad enough to cover the Forum's activities even though the Forum did not show that it conducts those activities using the scientific method?
3. The Board must answer no to each question. Public schools offer systematic training and instruction, not merely substantive research. The Forum therefore does not provide the type of public benefit contemplated by the educational-

purposes exemption. And promoting one's worldview, however laudable that view may be, does not provide the type of direct public benefit that separates charitable acts from people's everyday activities. The Forum also receives significant compensation for much of its research, which indirectly helps Forum employees enhance their reputations and gain additional personal opportunities. Finally, a property is used for "scientific" purposes only if its user employs the scientific method while conducting its activities at the property. And the Forum did not show that its researchers used the scientific method.

### **Procedural History**

4. The Petitioner, Fourth Freedom Forum, Inc., applied for real- and personal-property tax exemptions for both the March 1, 2004, and March 1, 2006, assessment years. The Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") denied those applications, and the Forum timely filed Form 132 petitions asking the Board to review the PTABOA's determinations. The Board has jurisdiction to hear the Forum's appeals under Ind. Code § 6-1.5-4-1(a).

### **Hearing Facts and Other Matters of Record**

5. On August 8, 2007, Dalene McMillen, the Board's designated administrative law judge ("ALJ"), held a consolidated hearing on the Forum's appeals.
6. The following persons were sworn as witnesses at the hearing:

For the Forum:

David Cortright, President, Fourth Freedom Forum, Inc.

For the PTABOA:

Cathy S. Searcy, Elkhart County Assessor

7. The Forum submitted the following exhibits:<sup>2</sup>

- Petitioner Exhibit 1 – Letter from the Internal Revenue Service to Fourth Freedom Forum, Inc., dated March 4, 1988,
- Petitioner Exhibit 2 – Definition of Regulation § 1.501 (c)(3)-1(d)(2),
- Petitioner Exhibit 3 – Books, journal articles and policy reports written by David Cortright,
- Petitioner Exhibit 4 – Fourth Freedom Forum, Inc. publications and activities report for January 1, 2001 – December 31, 2001,
- Petitioner Exhibit 5 – Fourth Freedom Forum, Inc. publications and activities report for January 1, 2002 – December 31, 2002,
- Petitioner Exhibit 6 – Fourth Freedom Forum, Inc. publications and activities report for January 1, 2004 – December 31, 2004,
- Petitioner Exhibit 7 – Email from Judy Gerhardstein, Fourth Freedom Forum, Inc., to Greg Hartzler, dated August 7, 2007,
- Petitioner Exhibit 8 – Power of Attorney from Fourth Freedom Forum, Inc. to Gregory A. Hartzler, attorney, Yoder, Ainlay, Ulmer, & Buckingham, LLP, dated August 8, 2007.

8. The PTABOA submitted the following exhibits:

- Respondent Exhibit 1 – Summary of witness testimony of Cathy Searcy, Elkhart County Assessor,
- Respondent Exhibit 2 – Copy of the facts, procedural history, issue and judgment for *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996),
- Respondent Exhibit 3 – Copy of *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeal*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003),

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<sup>2</sup> At the hearing, the Forum specifically offered material attached to its Form 132 petitions as evidence. That material includes the Forum's articles of incorporation and by-laws; its financial reports for 2000 – 2005; a publications and activities report for January 1, 2003 – December 31, 2003; brochures and booklets; four newsletters; tangible personal property returns for 2006; the Forum's Form 136 exemption applications; and the PTABOA's Form 120 notices informing the Forum that it had denied those applications. These documents are included in what is labeled for the record as Board Exhibit A. The PTABOA had the opportunity to address those documents at the hearing. Thus, although those documents are not separately labeled as Petitioner's exhibits, they are part of the evidentiary record.

Respondent Exhibit 4 – Copy of the Indiana Board of Tax Review final determination *Richmond Day Nursery Association, Inc. v. Wayne County Property Tax Assessment Board of Appeals*, petition #89-014-02-2-8-00003, issued March 10, 2004.

9. The Board recognizes the following additional items as part of the record:
  - Board Exhibit A – Form 132 petitions with attachments,
  - Board Exhibit B – Notices of Hearing on Petitions,
  - Board Exhibit C – Order Regarding Conduct of Exemption Hearing,
  - Board Exhibit D – Hearing sign-in sheets.
10. The Forum’s real property consists of two parcels. Parcel #201104460005000015 contains .16 acres of vacant land. Parcel #201104460008000015 contains a 6444-square-foot office building with an apartment and garage on 3.520 acres. The property is located at 803 N. Main Street, Goshen, Indiana.
11. The ALJ did not inspect the subject property.
12. The PTABOA determined that the Forum’s real and personal property was 100% taxable.
13. The Forum contends that only its apartment and garage, which it rents out, are taxable. According to the Forum, those structures represent 24% of the improvements. The Forum therefore requests a 100% exemption for land and personal property and a 76% exemption for its improvements.

### **Findings of Fact**

14. In 1982, Howard Brembeck founded World Without Arms, Inc., now known as the Fourth Freedom Forum, Inc., as a not-for-profit Indiana corporation. *Cortright testimony; Board Ex. A, attachments.* Although the Forum has other

- offices, the subject property serves as its headquarters. Its president, David Cortright, works there, as does a six-person staff. *Cortright testimony*.
15. Mr. Brembeck created the Forum to address “the armament problem.” *Board Ex. A, attachment at articles of incorporation*. In fact, the Forum takes its name from a speech by Franklin Delano Roosevelt in which he referred to four freedoms: freedom of speech, freedom of religion, freedom from want, and freedom from the threat of war. *Board Ex. A, attachments*.
  16. The Forum has since expanded its mission to include addressing other national-security related questions. *See Cortright testimony*. For example, it pioneered the concept of “smart sanctions,” aimed at focusing economic pressure on just a few individuals responsible for ongoing problems rather than on entire nations. In that way, governments can limit harm to innocent people. *Id.* The Forum also continues to focus on nuclear disarmament and related issues. *Id.*; *see also Board Ex. A, attachments*.
  17. The Forum promotes its mission in various ways. Foremost, it researches and analyzes national-security-related problems. *See generally, Cortright testimony*. And it often enters into contracts with governments and other organizations to do so. For example, the Dutch and Danish governments engaged the Forum to research ways to assist poor African countries with counterterrorism. *Id.* The Forum has also contracted with other foreign governments, United States governmental agencies, and the United Nations. *Id.*
  18. And the Forum receives significant income from those contracts. Indeed, the individual contracts can involve large sums. Thus, when explaining the Forum’s contractual work, Mr. Cortright testified that the Dutch and Danish governments paid the Forum “a couple hundred thousand” dollars. *Cortright testimony*. All

told, the Forum receives about half its income from grants and contracts.  
*Cortright testimony.* The other half comes from Mr. Brembeck's endowment. *Id.*

19. Neither the Forum nor the entities with which it contracts claim a proprietary interest in the Forum's reports, and the Forum posts those reports on its website. *Cortright testimony.* It also posts articles and other materials. The Forum's website receives up to one-million hits per month. *Cortright testimony; see also Pet'r Ex. 7.* In 2007, about 7-10% of the hits on that website were from servers with educational (.edu) designations. *Pet'r Ex. 7.* Plus, individual students and researchers likely accessed the website through non-educational-designated servers. *Id.* Another 7-10% of the website's hits were from the United States government. *Id.*
20. The Forum's officers and employees also research and write books, articles, and policy reports. *Id.; Pet'r Exs. 4-6.* Various governmental and international organizations, including the United Nations, use those materials. *Cortright testimony.* So do schools. In fact, many of those Forum-employee-authored books are designed as texts for classroom use. *Pet'r Ex. 7.*
21. But almost all the books written by the Forum's officers and employees are published by academic and commercial publishers rather than by the Forum. *See Pet'r Exs. 3-6; Cortright testimony.* And the book publishers contract with individual authors, rather than with the Forum. *See Cortright testimony.*<sup>3</sup> Their employment with the Forum also allows the authors to write more prolifically than they could if they worked in academia, because they do not have to attend meetings and try to write in the evening. *Cortright testimony.*

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<sup>3</sup> "They come to me and say we need a book on so and so. I have a new one that is coming out next year from Cambridge University Press, U.K. . . . and they offered *me* a contract." *Cortright testimony* (emphasis added).

22. The Forum's officers and employees also actively disseminate its message and research by appearing in various environments. They lecture; participate in, and lead discussions; and plan and sponsor seminars. *Cortright testimony; Pet'r Exs. 3-5.* They also speak at local high schools, houses of worship, and civic clubs. *Cortright testimony.*
23. And they teach college courses. For example, Mr. Cortright teaches courses at the University of Notre Dame and Goshen College, and he teaches a one-month course in Spain each spring. *Cortright testimony.* He has also taught at other universities around the country. *Id.*
24. The Forum's officers and employees are contacted about teaching opportunities through the Forum. And when teaching, they draw upon both the Forum's materials and its research staff. *See Cortright testimony.* But they are paid in their individual capacities for their work as adjunct professors. Indeed, when asked whether payments for teaching classes at "the university" went to him personally or to the Forum, Mr. Cortright responded:

Cortright: Yeah, I am paid an adjunct rate at . . . Notre Dame, which comes to me personally. I was paid this before I came onto the Forum and then [it has] just continued during my time with them.

Searcy: So you are a teacher with your own rights not in respect to Forth Freedom Forum?

Cortright: Correct.

*Cortright testimony.*



## Conclusions of Law and Analysis

### A. Burden of Proof

25. A taxpayer seeking exemption under Ind. Code § 6-1.1-10-16(a) must prove that its property is owned, occupied, and predominately used for one of the statutorily listed exempt purposes. *See Indianapolis Osteopathic Hosp. Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1114 (Ind. Tax Ct. 2004)

### B. The Forum does not use its property for educational purposes

26. The Forum correctly notes that the qualifying test for an educational-purposes exemption is whether a property is used to provide education that substantially equates to instruction offered by public schools. In arguing its case, the Forum emphasized the subject matter of its work. Thus, it noted that governments, educators, and students find its materials useful and that nobody else was doing comparable work on the same subjects. But this case presents a more fundamental question—whether the Forum's primary activities of conducting research and publicly disseminating the results substantially equates to instruction offered by public schools. The Board concludes that they do not.

#### 1. Constitutional and statutory bases for exemptions

27. In Indiana, the general rule is that all property in the State is subject to property taxation. *See* Ind. Code § 6-1.1-2-1. Nonetheless, the Indiana Constitution allows the General Assembly to exempt any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. IND CONST. Art. 10, § 1. The Indiana General Assembly, in turn, has enacted legislation exempting property that is owned, occupied, and used for educational, literary,

scientific, religious, or charitable purposes. See Ind. Code § 6-1.1-10-16(a)-(c), (e).

28. But all property receives protection, security, and services from the government. And those governmental services carry with them a corresponding obligation of pecuniary support. When property is exempted from taxation, the burden of paying for those services shifts to non-exempt parcels. *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs* (“NAME”), 671 N.E.2d 218, 220-21 (Ind. Tax Ct. 1996). Therefore, worthwhile activities or noble purpose do not justify exempting a property from taxation. Instead, exemption is appropriate only where a property is being used to provide a public benefit. *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 Ct. 1990)).

## 2. Educational-purposes cases

29. Indiana Courts have applied those basic principles in interpreting the term “educational” under Ind. Code § 6-1.1-10-16(a) and its predecessor statutes. “Education,” as that term is broadly understood, can occur anywhere, including private homes. *Fort Wayne Sports Club, Inc. v. State Bd. or Tax Comm'rs*, 147 Ind. App. 129, 139, 258 N.E.2d 874, 881 (1970). A more restrictive definition is therefore required to avoid irrationally applying the tax-exemption statute. 147 Ind. App. at 139-40, 258 N.E.2d at 881.
30. Thus, a taxpayer must demonstrate a public benefit by showing that it provides education 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 is 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 Sch. of Natural Health v. Kosciusko County 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 Sch.*, 799 N.E.2d at 1238).

31. The Board can find no Indiana case directly addressing the specific question at hand—whether conducting research and publicly disseminating the results equates to instruction offered by public schools. The language that Indiana courts have used to describe the educational-purposes exemption, however, is enlightening. The courts speak to “instruction,” and “training” offered by public schools, not to research and publication. *E.g.*, *Roller Rink*, 853 N.E.2d at 1226; *NAME*, 671 N.E.2d at 222.
32. And the cases granting educational-purposes exemptions almost uniformly involve entities that offered classes or other systematic instruction. *See Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234 (Ind. Tax Ct. 2003) (correspondence school offering health-related courses); *State Bd. of Tax Comm’rs v. Professional Photographers of America, Inc.*, 148 Ind. App. 601, 268 N.E.2d 617 (1971) (school offering courses in various phases of professional photography); *State Bd. of Tax Comm’rs v. Int’l Bus. Coll., Inc.* 145 Ind. App. 353, 251 N.E.2d 39 (1969)(business college offering courses in mathematics, English, typing, shorthand, etc.).
33. The Board can find only one Indiana decision that even arguably allowed an educational-purposes exemption for a property that was not used for systematic instruction or training. *See State Bd. of Tax Comm’rs v. Warner Press, Inc.*, 145 Ind. App. 20, 248 N.E.2d 405 (1969), *modified on transfer* 254 Ind. 183, 258 N.E.2d 621 (1970). In that case, the Indiana Court of Appeals upheld an

- exemption for property that Warner Press used largely to print and sell religious texts and materials. 145 Ind. App. at 24-26, 28-29, 248 N.E.2d at 408, 410-11.
34. But the court’s reliance on Warner Press’s supposedly educational activities was ambiguous at best. First, while the court noted that Warner Press “could correctly claim” that its activities were religious, educational, and charitable, it followed that statement by saying that when those terms are defined in their broadest sense, “there would seem to be no end to the number of organizations that could slide beneath the outer limits of so broad a definition into the cherished state of exemption.” 145 Ind. App. At 28, 248 N.E.2d at 410. Second, the court actually phrased the issue before it as whether Warner Press’s activities “conform[ed] to the broad definition of “religious” as used in the statute and interpreted by subsequent decisions,” not whether Warner Press’s activities were educational. *Id.* Finally, the court expressly based its admittedly “timid affirmance” on the fact that Warner Press promoted *religion* and *charity* in operating its printing press. 145 Ind. App. At 29-30, 248 N.E.2d at 410-11.
35. Even if one views *Warner Press* as squarely addressing an educational-purposes exemption claim, the court decided that case before it announced its “substantial equivalence” test in *Fort Wayne Sports Club*. It therefore provides limited guidance, at best.

**3. The Forum does not use its property to systematically train or instruct**

36. The Forum did not show that it uses its property to systematically train or instruct others. The Forum primarily conducts research and relates its findings in reports and other materials. Indeed, the Forum earns much of its income through contracting with governments and international organizations to research and analyze specific security-related issues.

37. True, in promoting its goal of world disarmament, the Forum strives to inform the public about its research. And its employees lecture and otherwise participate in seminars and other programs. But the thrust of the Forum’s “educational activity” is to serve as a resource for substantive information, not to use that information to systematically train or instruct.
38. Others do use the Forum’s materials to systematically instruct students. Indeed, the Forum’s officers and employees teach college courses, presumably drawing on the Forum’s materials. They may even use textbooks they have written based on the research that they and other Forum employees perform. But they are hired to teach in their individual capacities, not as the Forum’s employees.
39. The Board recognizes that tax-supported universities may perform research and analysis comparable to what the Forum does. But the Forum offered little evidence on that point, beyond Mr. Cortright’s testimony that the Forum’s employees could produce more work than their “academic colleagues” and the fact that many Forum-employee works appear in academic journals and are published by university publishers. *See Cortright testimony.*
40. Regardless, the mere fact that universities perform research does not mean that the educational-purposes exemption is broad enough to cover private entities that perform similar functions. Universities provide many services to support their core educational missions. But not all those services would independently qualify as exempt activities. For example, although universities provide students with venues for sports and recreation those activities do not qualify private entities for exemption. *See Fort Wayne Sports Club*, 258 N.E.2d at 881 (denying educational-purposes to properties used solely for athletic activities, membership meetings, and dances).

41. Thus, because the Forum primarily uses its property to perform research and disseminate the results rather than to systematically train or instruct people, it has failed to show that it qualifies for an educational-purposes exemption.

**C. The Forum does not predominately use its property for charitable purposes**

42. The Forum also claims that it uses its property for charitable purposes. When interpreting Ind. Code § 6-1.1-10-16(a), “the term ‘charitable purpose’ is to be defined and understood in its broadest constitutional sense.” *Knox County Property Tax Assessment Bd. of Appeals v. Grandview Care, Inc.* 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005) (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 145 Ind. App. 522, 251 N.E.2d 673, 682 (1969)). As a result, “[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 purpose and activities of man in general’: and 2) there is an expectation of a benefit that will inure to the public by the accomplishment of such acts.” *Id.* (quoting *Indianapolis Elks*, 251 N.E.2d at 683).
43. Once again, the Board can find no reported Indiana decisions addressing whether the Forum’s core activities—conducting research and publicly disseminating the results—qualify as charitable. While the term “charitable” must be broadly construed and encompasses more than simply providing for the needy,<sup>4</sup> it is worth noting that the Forum’s activities do not fit neatly within traditional notions of charity. As the Forum readily acknowledges, it does not directly alleviate want or suffering. It neither donates money nor offers food and shelter. And it does not fulfill other concrete needs such as helping seniors live independently for as long as possible. *Raintree Friends Housing, Inc. v. Ind. Dep’t of State Revenue* 667 N.E.2d 810, 815 (Ind. Tax Ct. 1996).

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<sup>4</sup> *College Corner, L.P. v. Dep’t of Local Gov’t Fin.*, 840 N.E.2d 905, 909 (Ind. Tax Ct. 2006).

44. The Forum instead argues that it reduces human suffering by trying to prevent war, and by helping governments effectively target sanctions and otherwise function in the international sphere. *Hartzler argument; Cortright testimony.*
45. The Forum's claims, however, strain the limits of even the broadest notion of charity. The Forum pursues its founder's political ideals. Those ideals may be laudable. Few would argue that war is good, although some may sincerely disagree that nuclear disarmament is the best way to avoid it. But the relative merits of the Forum's ideals are not the point. The question is whether simply promoting those ideals is an obviously charitable act that (1) differs from the everyday purposes and activities of man in general, and (2) bestows a public benefit. The Board finds that it is not.
46. The Forum also relies on the fact that the Internal Revenue Service ("IRS") has recognized it as exempt from federal income taxation under Internal Revenue Code Section 501(c)(3). *Hartzler argument, Cortright testimony; Pet'r Exs. 1-2.* But that fact has little bearing on whether the subject property is exempt under Indiana's property taxation statutes. Indeed, the Indiana Tax Court has rejected the argument that it should adopt IRS guidelines in determining whether an organization has charitable status in Indiana. *Raintree*, 667 N.E.2d at 816 n. 8.
47. In addition, the Forum claims that it reduces governmental burdens by providing research that public servants have neither the time nor inclination to conduct themselves. But in many cases, it provides that research in exchange for significant compensation. Indeed, Mr. Cortright testified to at least one contract under which the Dutch and Danish governments paid the Forum "a couple hundred thousand" dollars. *Cortright testimony.* In that sense, the Forum is no different from other government contractors such as road-construction companies or security providers. Few would argue that those entities should receive exemptions.

48. In fact, even if the Forum’s other activities were to qualify as charitable, its contract work would not. The Board recognizes that the mere fact that the Forum charges for some of its services does not automatically make its property-use non-charitable. Both the Court of Appeals and the Tax Court have held that institutions for the aged do not lose their claims for a charitable-purposes exemption merely by charging their residents fees when “it does not appear that the fees are more than sufficient to pay the expense of maintenance or that the proprietors of the institution derive any profit therefrom. *State Bd. of Tax Comm’rs v. Methodist Home for the Aged*, 143 Ind. App. 419, 429, 241 N.E.2d 84, 90 (1968) (quoting 1921-23 Op. Att’y Gen. 438 (1921)); *Raintree*, 667 N.E.2d at 814.
49. But the Forum did not show that its contractual income was merely sufficient to cover its operating costs. The Forum offered “statements of financial position” for the years ending December 31, 2002-2005. *See Board Ex. A, attachments*. Those statements, however, do not readily disclose either the income that the Forum earned from its contracts or how the Forum spent that income. *Id.* Perhaps one might glean that information from a more sophisticated reading of the Forum’s financial statements. But the Forum did not offer any guidance in that area. *See Indianapolis Racquet Club, Inc. v. Washington Twp. 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”).
50. Too, while the Forum’s principals do not actually receive any profits from its contracts, that lack of distributed profits is not dispositive. The Forum’s officers and employees receive something valuable from the contracts—financing to promote their work. And their work for the Forum enhances their reputations. That leads, among other things, to opportunities as adjunct professors and published authors.



51. Thus, even if the Forum's uncompensated activities were charitable, it would have had to show that they predominated over its non-charitable contractual work. Ind. Code § 6-1.1-10-36.3(a); *New Castle Lodge #147, Loyal Order of Moose, Inc.* 765 N.E.2d 1257, 1259 (Ind. 2002). A property is predominantly used or occupied for exempt purposes if it is used for exempt purposes more than 50% of the time that it is used or occupied. *Id.* And if the property is not exclusively used for exempt purposes, its exemption is proportional to the amount of time it is actually used or occupied for exempt purposes. Ind. Code § 6-1.1-10-36.3(c)(3). Thus, where a taxpayer uses a property for both exempt and non-exempt purposes, it must present more than anecdotal information to prove its entitlement to an exemption. *See State Board of Tax Commissioners v. New Castle Lodge*, 765 N.E.2d 1257, 1264 (Ind. 2002).
52. Here, the Forum did not break down its use of the subject property between compensated, non-exempt activities and uncompensated, exempt activities. Indeed, as noted above, the Forum did not offer evidence to show how much money it received from its contracts with governmental actors, much less how much time it devoted to fulfilling those contracts.
53. Thus, the Forum did not make a prima facie case that it uses its property for charitable purposes. Even if some of its activities qualify as charitable, the Forum did not present any evidence to show that those exempt activities predominate over its non-exempt ones. And to the extent its exempt activities predominate, the Forum did not provide sufficient evidence for the Board to determine an appropriate percentage for its exemption.

#### **D. The Forum does not use its property for scientific purposes**

54. Finally, the Forum claims that it uses the subject property for scientific purposes. According to the Forum, its research and publication activities are scientific because other experts review its employees' articles before they are published in journals. *Cortright testimony*.
55. The Board cannot find any Indiana authority interpreting "scientific" as that term is used in Ind. Code § 6-1.1-10-16(a). It therefore looks to general rules of statutory construction as well as the basic principles underlying Indiana's exemption statutes.
56. Where the General Assembly uses undefined terms, those terms should be given their common meanings. *J.K.B. v. Armour Pharmaceutical Co.*, 640 N.E.2d 602, 605 (Ind. Ct. App. 1996). The Merriam-Webster Online Dictionary defines "scientific" as "of, relating to, or exhibiting the methods or principles of science." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1043 (10<sup>th</sup> ed.). It provides various definitions for "science," from the very broad "the state of knowing: knowledge as distinguished from ignorance or misunderstanding," to the more narrow "knowledge or a system of knowledge covering general truths or the operation of general laws esp. as obtained and tested through scientific method." *Id.* at 1042.
57. Thus, scientific has both a general and a more specific meaning. Generally, it means simply relating to knowledge. More specifically, it means relating to knowledge as obtained or tested through the scientific method.
58. Given the principles underlying Indiana's exemption statute, the Board believes that the General Assembly intended the more specific meaning. Were the Board to read "scientific" in its general sense, it would lead to the same problem that the

*Fort Wayne Sports Club* court sought to avoid in construing the term “educational” —the potential number of qualifying entities would be limitless. *Fort Wayne Sports Club*, 147 Ind. App. at 139-40, 258 N.E.2d at 881; *see also Warner Press*, 248 N.E.2d at 410. And such a broad reading would violate a basic rule of statutory construction, because it would render meaningless the exemption statute’s separate reference to educational purposes. *See Pabey v. Pastrick*, 816 N.E.2d 1138, 1148 (Ind. 2004).<sup>5</sup> Every educational use would be scientific, because it would relate to knowledge.

59. Thus, to qualify for an exemption based on using a property for scientific purposes, a taxpayer must show that its use incorporates the scientific method. And the “scientific method” involves “principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses.” MERRIAM-WEBSTER at 1043.
60. While Mr. Cortright testified at length about the subject matter of the Forum’s research, he said little about the *methods* that its researchers employ. At best, he testified that articles written by the Forum’s employees are subjected to peer review before being published. The Forum, however, did nothing to show that its researchers formulate and test hypotheses. The Forum therefore failed to make a *prima facie* case that it was entitled to an exemption on grounds that it uses its property for scientific purposes.

### **Summary of Final Determination**

61. The Forum failed to raise a *prima facie* case that its property is entitled to an exemption. The Board finds in favor of the PTABOA.

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<sup>5</sup> “We do not presume that statutory language is ‘meaningless and without a definite purpose,’ but rather seek to give effect ‘to every word and clause.’” 816 N.E.2d at 1148 (quoting *Combs v. Cook*, 238 Ind. 392, 397, 151 N.E.2d 144, 147 (1958)).

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

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Chairman, 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>>