

REPRESENTATIVE FOR PETITIONER:

Katie Kotter, Attorney

REPRESENTATIVE FOR RESPONDENT:

Catherine Lane, Knox County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KNOX COUNTY ASSOCIATION FOR	)	Petition Nos.:	42-027-13-2-8-00001
RETARDED CITIZENS, INC. (“KCARC”)	)		42-027-14-2-8-00001
)		
Petitioner,	)	Parcel No.:	42-12-15-101-009.000-027
)		
v.	)	County:	Knox
)		
KNOX COUNTY ASSESSOR,	)	Township:	Vincennes
)		
Respondent.	)	Assessment Years:	2013 & 2014

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

November 30, 2015

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:

ISSUE

1. Whether the property under appeal, or a portion thereof, was exempt from property taxation for the 2013 and 2014 assessment years because it was owned, occupied, and used by Petitioner for charitable purposes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JURISDICTIONAL FRAMEWORK

2. 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 Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PROCEDURAL HISTORY

3. This appeal involves a manufacturing facility known as Dove Manufacturing Plant V, located at 2525 N. 6th Street in Vincennes.
4. Petitioner filed its Form 136 Application for Property Tax Exemption (“Form 136”) for 2013 on April 22, 2013, claiming 100% of the subject property should be exempt. On September 24, 2013, the Knox County Property Tax Assessment Board of Appeals (“PTABOA”) issued its Form 120 Notice of Action on Exemption Application (“Form 120”) finding the subject property to be 5% exempt and 95% taxable. On April 9, 2014, Petitioner filed its Form 132 Petition for Review of Exemption (“Form 132”) with the Board.
5. Petitioner filed its Form 136 for 2014 on April 21, 2014, claiming 100% of the subject property should be exempt. On July 28, 2014, the PTABOA issued its Form 120 finding the subject property to be 5% exempt and 95% taxable. On August 13, 2014, Petitioner filed its Form 132 with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. On June 4, 2015, the Board’s Administrative Law Judge, Jacob Robinson (“ALJ”), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

7. Attorney Katie Kotter represented the Petitioner. The following people were sworn as witnesses and testified:
 - For Petitioner: Michael R. Carney, President, KCARC
 - For Respondent: Catherine Lane, Knox County Assessor¹

8. Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1: Tax Exempt Status Determination from IRS
 - Petitioner Exhibit 2: KCARC’s Articles of Incorporation
 - Petitioner Exhibit 3: KCARC’s Bylaws
 - Petitioner Exhibit 4: Overview of KCARC’s Programs and Services
 - Petitioner Exhibit 5: Photos/Maps of KCARC and Dove Plant V
 - Petitioner Exhibit 6: KCARC’s 2013 and 2014 Forms 132 and attachments
 - Petitioner Exhibit 7: PTABOA’s 2013 and 2014 Forms 120
 - Petitioner Exhibit 8: Indiana Exemption Statutes - Ind. Code § 6-1.1-10-16 and Ind. Code § 6-1.1-10-36.3

9. Respondent did not submit any exhibits.

10. The following additional items are recognized as part of the record:
 - Board Exhibit A: Form 132 Petitions with attachments
 - Board Exhibit B: Notices of Hearing
 - Board Exhibit C: Hearing Sign-In Sheet

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

¹ Amy Conner, Knox County Deputy Assessor, was sworn, but did not testify.

OBJECTIONS

11. Petitioner's counsel objected to several questions during Respondent's cross-examination of Mr. Carney. Respondent was asking Petitioner on which properties it was paying real and personal property taxes. Petitioner's counsel objected on the grounds of relevancy because the questions were not related to the subject property. The ALJ took the objections under advisement. Subsequently, Respondent either withdrew the questions or adequately rephrased them to focus only on the subject property. Thus, the Board deems Petitioner's objections moot.

PETITIONER'S CONTENTIONS

12. Petitioner is a 501(c) (3) tax exempt non-profit corporation organized under the laws of Indiana. It is operated exclusively for the benefit of individuals and families with special needs. Since its incorporation in 1972, Petitioner's sole mission has been to provide advocacy and opportunities for the benefit of developmentally disabled citizens through various programs and services.
13. Petitioner operates a number of residential facilities in the community for disabled adults including five group homes, apartments, and the Baker Center. A variety of support services are made available to the residents including, but not limited to, adult daily living skills training, financial management, social services, behavioral support services, counseling, transportation, physical therapy, speech therapy, occupational therapy, and recreational programs. During 2013 and 2014, approximately 60 disabled individuals were residing in the Baker Center and 97 were living independently in a group home or apartment. *Carney testimony; Pet'r Exs. 1, 2, 4, 6.*
14. Petitioner operates the "Civitan Children's Center," which offers special education, preschool, and daycare services to disabled and non-disabled children aged 6 months to 6 years. It served approximately 110-115 children during 2013 and 2014.

15. Petitioner administers a program entitled “KCARC for Life” which offers services to disabled children and their families from the time they leave the Civitan Children’s Center through completion of high school. The services include visits to public schools and recreational activities such as the Special Olympics.
16. Petitioner administers the “School to Work Transition Program” that allows special needs students in their final two years of high school to spend a portion of the school day learning job skills at a work site located in one of Petitioner’s manufacturing plants. *Carney testimony; Pet’r Ex. 4.*
17. In 1980, Petitioner amended its Articles of Incorporation to add the following additional purpose: “[t]o utilize processing and manufacturing work as a related program activity.” Petitioner added this amendment so that work, employment, and training “could be a real activity in the life of people with disabilities,” thereby expanding its mission.
18. Petitioner subsequently began acquiring manufacturing plants and became an active participant in the Ability One program. This program, formerly known as “JWOD,” is a result of the Javits Wagner O’Day Act passed by Congress in 1971. The purpose of the Act is to create employment opportunities for disabled persons by setting aside certain government contracts for non-profit organizations such as Petitioner. Organizations receiving Ability One contracts are audited every year to ensure that 75% of all direct labor hours are performed by disabled persons. *Carney testimony; Pet’r Exs. 2, 6.*
19. During 2013 and 2014, Petitioner owned five manufacturing plants in Knox County, including the subject property. The plants provided employment opportunities to approximately 150 individuals. Petitioner operated four of the plants and leased one to Duke Energy. The subject property is a facility consisting of approximately 226,000 square feet of office, manufacturing, and warehouse space. Petitioner acquired it in April of 2000 to provide additional room to fulfill the government contracts it secured through the Ability One Program. *Carney testimony; Pet’r Exs. 4, 5.*

20. During 2013 and 2014, Petitioner used the subject property for the following manufacturing operations:

- packaging and shipping powdered milk for the Department of Agriculture and Defense Logistics Agency utilizing 32,000 square feet and employing 12-15 disabled people.
- fulfilling a hand sanitizer contract utilizing 1,000 square feet and employing 4 disabled people.
- performing document destruction utilizing 4,000 square feet and employing 2 disabled people.
- performing pallet assembly utilizing 6,000 square feet and employing 8-10 disabled people.

Carney testimony; Pet'r Ex. 4.

21. In addition to Petitioner's manufacturing operations, it also utilized the subject property to provide disabled individuals with employment training and job placement in the private sector through its "Dove Employment Services" program. This program helps prepare disabled individuals for employment by providing them with training and pairing them with over 40 private employers in the community. During 2013 and 2014, approximately 50-60 disabled individuals were receiving employment training at the subject property. *Carney testimony; Pet'r Ex. 4.*

22. Petitioner also used approximately 13,000 square feet of the subject property as office space for the operation and management of its organization. The central administrative offices for all of Petitioner's programs including the Civitan Children's Center, the Baker Center, and Dove Employment Services are located at the subject property. *Carney testimony; Pet'r Ex. 4.*

23. During 2013, approximately 57,000-58,000 square feet, or approximately 25% of Petitioner's building, was leased to Gemtron, Hoosier Energy, and PCA, which are for-

profit entities. During 2014, approximately 70,000 square feet, or about 30% of Petitioner's building, was leased to Gemtron, Hoosier Energy, and ATS. The remaining building space was used exclusively for Petitioner's incorporated purposes and mission at all times during those years. *Carney testimony.*

24. Petitioner asserts that during 2013, 75% of the building was occupied and used exclusively for exempt purposes at all times throughout the year. *Carney testimony.*
25. Petitioner asserts that during 2014, 70% of the building was occupied and used exclusively for exempt purposes at all times throughout the year. *Carney testimony.*
26. All of the revenues generated at the subject property are used to fund Petitioner's other programs for disabled individuals and their families. Thus, the subject property is an integral component of its overall operation because it makes all of Petitioner's other programs and services possible. *Carney testimony.*

RESPONDENT'S CONTENTIONS

27. Respondent agrees that Petitioner provides a worthwhile and valuable service to the community, but that alone does not qualify this property for an exemption, nor does its 501(c) (3) status. Other than its administrative offices, Petitioner has not offered any evidence concerning the charitable work, programs, or services that are provided at the subject property. *Lane testimony.*
28. Petitioner has provided little information to support the testimony of Mr. Carney regarding the activities conducted at the subject property. Petitioner has not allowed Respondent to conduct a site visit and has not provided copies of contracts or leases related to the specific subject property. Petitioner has also failed to provide the income and expense information in a form that specifically identifies the current uses and charitable activities purportedly taking place. *Lane testimony.*

29. Many of Petitioner’s buildings are located on land that is owned by the county or a local municipality. Knox County has granted a 100% exemption on the majority of Petitioner’s other properties in the county, including its smaller manufacturing plants. While Petitioner’s office workers and administrators work at the subject property daily, it is not a year-round production location and disabled individuals do not work at the subject property daily. However, Petitioner’s tenants do work there daily and also operate a second shift. Thus, the subject property’s main uses are as an office and leasable warehouse space. *Lane testimony.*

ANALYSIS

30. In Indiana, all tangible property is subject to taxation. Ind. Code § 6-1-1-2-1. Nevertheless, Indiana’s legislature has the authority to exempt property from taxation. Ind. Const., Art. 10 §1. The legislature enacted Indiana Code § 6-1.1-10-16(a), which provides in relevant part that “all or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for...charitable purposes.” In addition, the legislature has provided for the exemption of land on which an exempt building is located, and personal property located in an exempt building. Ind. Code § 6-1.1-10-16(c), (e).
31. Because an exemption relieves property from the obligation of bearing its fair share of the cost of government services, exemptions are to be strictly construed against the taxpayer and in favor of the State. *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). The taxpayer therefore always bears the burden of proving that it is entitled to the exemption it seeks. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1259 (Ind. 2002).
32. In order to prove that a property is used for charitable purposes, a taxpayer must demonstrate that (1) through its use of the property, 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 that (2) the charitable institution provides a present benefit to the general public sufficient to justify the loss of tax revenue. *See Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs*, 145 Ind. App. 522, 251 N.E.2d 673, 683 (Ind. Ct. App. 1969); *Foursquare Tabernacle Church of God in Christ v. State Bd. of Tax Comm’rs*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990) (citation omitted).

33. The taxpayer “must not only demonstrate that it owns, occupies, and uses its property for a charitable purpose, but also that the charitable purpose is the “predominant use.” *Indianapolis Osteopathic Hosp.*, 818 N.E.2d at 1014. The “predominant use” test was adopted by the legislature and must be satisfied for a property to qualify for an exemption under Indiana Code § 6-1.1-10. *New Castle Lodge #147*, 765 N.E.2d at 1259. The “predominant use” test is found in Indiana Code § 6-1.1-36.3, which provides in relevant part:

(a) For purposes of this section, property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.

...

(c) If a section of this chapter states one (1) or more purposes for which property must be used or occupied in order to qualify for an exemption, then the exemption applies as follows:

(3) Property that is predominantly used or occupied for [charitable purposes] ...is exempt...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 [charitable 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.

34. “The evaluation of whether property is owned, occupied, and predominantly used for an exempt purpose 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, 15 (Ind. Tax Ct. 2009) (citation omitted). “Thus, each and every exemption case ‘stand[s] on its own facts’ and, ultimately, how the parties present those facts.” *Id.*

35. While Petitioner claimed 100% of the subject property should be exempt, at the hearing Petitioner conceded that the portion of the subject property leased to the various for-profit entities was not eligible for an exemption. The Board accepts Petitioner's concession that at least 25% of the subject property is not exempt for 2013, and at least 30% of the subject property is not exempt for 2014. Thus, the Board must determine whether Petitioner met its burden to show that the space utilized for its administrative offices, manufacturing activities, and any remaining space, or portions thereof, should be exempt.

Administrative Offices

36. Petitioner utilizes approximately 13,000 square feet, or about 6% of the subject property, for the organization's administrative offices. From those offices, Petitioner administers a comprehensive set of programs and services that benefit both disabled individuals, their families, and the community as a whole. These programs and services include, but are not limited to, the following:
- operating residential facilities for disabled adults that offer services such as daily living skills training, financial management, social services, behavioral support services, counseling, transportation, physical therapy, speech therapy, occupational therapy, and recreational programs;
 - operating the "Civitan Children's Center" that offers special education, preschool, and daycare services to disabled and non-disabled children aged 6 months to 6 years;
 - offering "KCARC for Life" that provides site visits to public schools and recreational activities such as the Special Olympics to disabled children and their families;
 - offering the "School to Work Transition Program" that allows special needs students in their final two years of high school to spend a portion of the school day gaining important job skills at a work site located in one of Petitioner's manufacturing plants;

- offering a variety of employment training and employment opportunities for disabled individuals within a manufacturing setting by participating in the Ability One Program; and
 - providing disabled individuals with employment training and job placement in the private sector through its “Dove Employment Services” program.
37. The Board finds these are charitable activities and Petitioners have established that its administrative offices were used for a charitable purpose. But Petitioner must also show that its use of the administrative offices satisfied the “predominant use” test.
38. Petitioner failed to provide specific details with regard to the administrative offices and the staff employed therein. Nevertheless, Mr. Carney testified that the portion of the subject property not leased to the various for-profit entities was used exclusively by Petitioner at all times during the years under appeal. Although this testimony did not specifically reference the office space, as its President, Mr. Carney has direct knowledge of Petitioner’s operations. Thus, while his statement was general in nature, it carries some probative value. Respondent’s testimony that Petitioner’s office workers and administrators work at the subject property “daily” further substantiates Petitioner’s assertion.
39. The Board concludes that the administrative offices were entirely used in furtherance of Petitioner’s charitable purposes. Consequently, the Board finds that the administrative offices (13,000 square feet, or 6% of the available space) are entitled to an exemption for 2013 and 2014.
40. Indiana Code § 6-1.1-10-16(e) generally extends this exemption to personal property if it is owned and used in an exempt manner. But the record contains no probative facts about the personal property and an exemption cannot be based on speculation about what is being exempted.

Manufacturing Activities

41. Petitioner specifically amended its Articles of Incorporation to add “manufacturing work as a related program activity,” because it recognized a need for programs that could help disabled individuals receive the training necessary to enter the workforce. Petitioner expanded its mission to include training and employment opportunities for disabled individuals within a manufacturing setting.
42. Petitioner’s vocational rehabilitation program is geared toward training disabled individuals who wish to obtain employment with other employers in the community. The individuals are trained in a manufacturing setting for occupations such as woodworking, metalworking, painting, and packaging and shipping. Petitioner also offers assessments of disabled individuals’ employable skills, resume development, practice interviews, on-site work trials, and assistance in locating job opportunities through its “Dove Employment Services” program. This program serves as a training and placement agency and places many individuals within Petitioner’s manufacturing facilities and also with regional employers. Additionally, Petitioner offers the “School to Work Transition Program” allowing special needs students in their final two years of high school to spend a portion of the school day working in Petitioner’s manufacturing facilities.
43. Petitioner acquired the subject property to provide additional room to fulfill the government contracts it secured through the Ability One program. Ability One was established to create employment opportunities for disabled persons by setting aside certain government contracts for non-profit agencies that employ them. Petitioner used approximately 43,000 square feet, or about 19% of the subject property, for the following manufacturing operations during the years under appeal:
 - employing 12-15 disabled people to package and ship powdered milk for the Department of Agriculture and Defense Logistics Agency;
 - employing 4 disabled people to fulfill a hand sanitizer contract;
 - employing 2 disabled people to perform document destruction; and

- employing 8-10 disabled people to perform pallet assembly.

44. Mr. Carney testified that all of the revenues generated from the subject property (and therefore from the Ability One contracts) are used to fund Petitioner's other programs and services. Petitioner's manufacturing activities are a fundamental part of its overall charitable mission and they provide funding used by Petitioner to benefit disabled individuals and their families.
45. Petitioner demonstrated that its manufacturing activities are substantially related to its overall charitable purpose and that the space devoted to those activities was used in furtherance of its charitable purpose.
46. Petitioner testified that organizations receiving Ability One contracts are audited every year to ensure that 75% of all direct labor hours are performed by disabled persons, but failed to provide evidence demonstrating the amount of time its staff and disabled employees were actively participating in training and working at the subject property. Petitioner also failed to provide specific details to show the frequency in which it was engaged in these activities. Mr. Carney, however, did testify that the portion of the subject property not leased to various for-profit entities was used exclusively by Petitioner at all times during the years under appeal. For the same reasons discussed above, his testimony has some probative value.
47. While Petitioner did not present the strongest case, the Board concludes that the space devoted to Petitioner's manufacturing activities was used entirely for charitable purposes. Consequently, the Board finds that the portion of the real property used for Petitioner's manufacturing activities (43,000 square feet, or 19% of the available space) was owned, occupied, and used for a charitable purpose. That part is entitled to an exemption for 2013 and 2014.

48. Again, the record contains no probative facts about the personal property that may be in the manufacturing area. We will not grant an exemption based on speculation about what is being exempted.

Remaining Space

49. The leased space, administrative offices, and the space used for manufacturing activities discussed above account for only 50% and 55% of the available space during 2013 and 2014, respectively. Over 100,000 square feet of space remains unaccounted for. Mr. Carney testified that this space was being utilized for storage and as a loading dock. While Petitioner failed to offer many details, Mr. Carney did testify that the remaining space was being utilized for the Ability One contracts. The Board is therefore persuaded that the remaining space is also used in furtherance of Petitioner's charitable purpose.

50. Petitioner again failed to provide specific details regarding the amount of time its staff and disabled employees were actively working in this area. But again, Mr. Carney did testify that the portion of the subject property not leased to various for-profit entities was used exclusively by Petitioner at all times during the years under appeal. And for the same reasons discussed above, his testimony has some probative value.

51. The Board therefore concludes that the remaining space was used entirely for charitable purposes. Consequently, the Board finds that the remaining portion of the real property (113,500 square feet, or 50% of the available space in 2013; and 102,200 square feet, or 45% of the available space in 2014) was owned, occupied, and used for a charitable purpose. Those parts are entitled to an exemption for 2013 and 2014.

52. Again, the record contains no probative facts about the personal property that may be in the manufacturing area. We will not grant an exemption based on speculation about what is being exempted.

CONCLUSION

53. The Board finds that Petitioner's real property is entitled to a 75% exemption for 2013 and a 70% exemption for 2014. As to personal property, however, Petitioner failed to prove what might qualify for an exemption and that part of the claim is denied.

FINAL DETERMINATION

54. Petitioner made a prima facie case that its real property is entitled to a 75% exemption for the 2013 assessment year, and a 70% exemption for 2014 assessment year.

This Final Determination of the above captioned matter is issued by the Board 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>>.