

REPRESENTATIVE FOR PETITIONER: Chad T. Trouten, President

REPRESENTATIVE FOR RESPONDENT: Sarah L. Schreiber, Haller & Collin, PC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Deutschbau, Inc.,)	Petition No.: 02-074-21-2-8-00853-21
)	
Petitioner,)	Parcel Nos.: 48-11-13-203-174.000-003
)	
v.)	County: Allen
)	
Allen County Assessor,)	Assessment Year: 2021
)	
Respondent.)	

June ^{24th}~~27~~, 2024

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:

INTRODUCTION

1. Deutschbau, Inc. appealed the removal of its charitable exemption for an event center and related land in Fort Wayne. It uses the property for the promotion of German culture and music, as well as for social activities. Deutschbau also rents out the property for weddings and private events. We find the property to be 100% taxable because Deutschbau failed to show that it owned, occupied, and predominately used the subject property for charitable purposes and it did not provide evidence of the relative time the property was used for exempt and non-exempt purposes.

PROCEDURAL HISTORY

1. In 2008, Deutschbau filed an exemption application with the Allen County Assessor seeking a 100% charitable exemption for property located at 3355 Elmhurst in Fort Wayne. Deutschbau received a 100% tax exemption until the 2021 assessment year when the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) found the property 100% taxable and removed the exemption.
2. Following the exemption’s removal, Deutschbau timely appealed to the Board. On August 15, 2022, the Assessor filed a Motion for Summary Judgment and Deutschbau did not respond. The Board denied the Assessor’s Motion. On March 25, 2024, Natasha Marie Ivancevich, the Board’s administrative law judge (the “ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property.
3. Chad Trouten, Deutschbau’s President, was sworn and testified under oath.
4. The Petitioner introduced the following exhibits:

Petitioner’s Ex. 1:	Deutschbau’s By-Laws
Petitioner’s Ex. 2:	Maennerchor’s Articles of Incorporation
Petitioner’s Ex. 3:	Maennerchor’s 501(c)(3) Determination Letter
Petitioner’s Ex. 4:	Deutschbau’s Federal Tax Return
Petitioner’s Ex. 5:	Deutschbau’s Balance Sheet
Petitioner’s Ex. 6:	Predominant Use Questionnaire
Petitioner’s Ex. 7:	Deutschbau’s Rental Agreements
5. The Respondent introduced the following evidence¹:

Respondent’s Ex. 6:	Fort Wayne Maennerchor, Inc. Website
Respondent’s Ex. 8:	Deutschbau Articles of Incorporation
Respondent’s Ex. 9:	Deutschbau Reinstatement Articles of Incorporation
Respondent’s Ex. 12:	Motion for Summary Judgment
Respondent’s Ex. 13:	Financial Statements
Respondent’s Ex. 14:	Motion for Summary Judgment Evidence

¹ The Respondent’s offered exhibit 14 and all subparts excluding subpart a, b1, and m.

6. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

FINDINGS OF FACT

7. The subject property consists of a 14-acre wooded lot with two ponds, parking areas, and a two-story barn that includes a performance hall, kitchen, dining area, and bar. *Resp Ex. 6, 14.*
8. The property is owned by Deutschbau Inc., a for-profit corporation and wholly owned subsidiary of Fort Wayne Maennerchor Inc. Maennerchor was established in 1869 and provides free German language lessons and concerts, and promotes the preservation of German culture, heritage, and music. It is a non-profit corporation under Internal Revenue Code 501(c)(3). Deutschbau bought the subject property for Maennerchor's use. Deutschbau's bylaws provide that Maennerchor may use the subject property "in any manner whatsoever that that organization may desire." *Pet'r. Ex. 1-3; Resp Ex. 6, 14; Trouten testimony.*
9. Maennerchor used the subject property for activities such as choir rehearsals, concerts, and fish fries. A fish fry announcement did not include any reference to the promotion of German heritage beyond the sale of German beer (along with domestic beer and other beverages). In addition, Deutschbau rented the property for private events such as weddings. The rental funds were used to offset the expense of maintaining the property. In 2020, Deutschbau was paid approximately \$25,000 in rental income, including some payments from Maennerchor. *Pet'r. Ex. 4-7; Resp't. Ex. 6, 13-14; Trouten testimony.*

ANALYSIS

10. Although tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional power to exempt certain types of property. *Hamilton Cty. Prop. Tax Assessment Bd. of App. 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 in favor of the State. *Indianapolis Osteopathic Hospital, Inc. v Dep't of Local Gov't Fin.*, 808 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). Therefore, a taxpayer bears the burden of proving it is entitled to an exemption. *Id.* at 1014. Every exemption case “stand[s] on its own facts,” and it is the Petitioner’s duty to walk the Board through the analysis. *Oaken-Bucket*, 938 N.E.2d 654, 657 (Ind. 2010) at 657. The determination of whether a property should receive an exemption “for a particular assessment date must be based on the tangible property’s eligibility. . . on that assessment date.” Indiana Code § 6-1.1-11-1.5(b). The assessment date for this appeal is January 1, 2021.

11. All or part of a building is exempt from taxation if it is owned, and exclusively or predominantly used or occupied for education, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c). The term “charitable purpose” must be understood in its broadest constitutional sense. *Knox Cnty. Property Tax Assessment Board of Appeals v Grandview Care, Inc.*, 826 N.E.2d 177, 182 (Ind. Tax Ct. 2005). Courts will generally find a charitable purpose 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.* 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). A property need not be owned, occupied, and used by the same entity to be exempt, but where the owner and the occupant or user are different entities, each must possess its own exempt purpose. *Oaken Bucket*, 938 N.E.2d 654, 657 (Ind. 2010) at 657.

12. Property is predominantly used for one or more stated purposes if it is used for those purposes more than 50% of the time it is used in the year that ends on the assessment date. I.C. § 6-1.1-10-36.3. A property is 100% tax 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. *See Hamilton Cnty. Ass’r v Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017) (Holding that a failure 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 I.C. § 6-1.1-10-36.3).

13. Deutschbau claims the property should receive a 100% charitable exemption because the property is used to promote the heritage of German culture generally and its music specifically. But it provided no explanation of how its activities alleviated human want. Charitable uses have been extended to historic preservation and military history museums. *See College Corner, L.P. v. Dep 't of Loe. Gov 't Fin.*, 840 N.E.2d 905, 910 (Ind. Tax Ct. 2006) (holding that the preservation of historical buildings can be a charitable purpose); *see also McClain Museum, Inc. v. Madison Cty. Assessor*, 134 N.E.3d 1096 (Ind. Tax Ct. 1019) (finding that a museum of military equipment was charitable because it informed the public about military history and heritage and thus the American experience.) But the Tax Court declined to grant a charitable exemption to a museum of miniatures. *Nat'l Ass'n of Miniature Enthusiasts v. State Bd. of Tax Commr's*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
14. Nevertheless, in addition to the promotion of German heritage, the subject property is also used for social activities such as a fish fry. When a property is primarily used for social activities, it cannot receive a charitable exemption. *Indianapolis Elks Bldg. Corp. v. State Board of Tax Comm'rs*, 251 N.E.2d 673, 682 (Ind. Ct. App. 1969). As discussed above, exemptions are strictly construed against the party seeking an exemption. Under the record presented, we cannot find that Deutschbau has shown that its use and ownership of the subject property is more charitable as a whole than it is social or recreational. The Tax Court has repeatedly held that when a property is primarily used for social purposes, even when there is also some charitable activity, that property cannot receive an exemption. *Whitelick Ind. Aerie 3702 Fraternal Order of Eagles, Inc. v.*

Hendricks Cty. Prop. Tax Assessment Bd. of Appeals, 82 N.E.3d 940 (Ind. Tax. Ct. 2017); *Indianapolis Elks* at 682. Many of the events conducted at the subject property appear to be primarily social, rather than for the purpose of cultural preservation. For instance, we cannot find that selling German beer at a fish fry is enough by itself to make a fish fry a charitable activity under *McClain*. And we are unable to determine under the record how much time was devoted to such social activities as opposed to activities more directly focused on the promotion of German culture and heritage. While it is possible that Deutschbau's social activities are also serving its goal of promoting German culture, the evidence presented does not lead us to that conclusion. In addition, as noted above, Deutschbau's bylaws specifically allow Maennerchor to use the subject property however it wants, they do not limit Maennerchor to only using the property for charitable purposes. In sum, while the goal of preserving German culture and music may be laudable, the evidence presented does not meet the standard to receive an exemption as interpreted by the Indiana Tax Court.

15. We also note that the record shows the property is used for some clearly non-exempt purposes, such as being rented out for weddings and private events. As discussed above, when a property is used for both exempt and non-exempt purposes, the party seeking the exemption must provide a comparison of the relative amount of time it is used for each purpose. *Duke*, 69 N.E.3d at 572. Deutschbau failed to provide such evidence, and thus has not made its case that the subject property should be exempt.

CONCLUSION

16. Deutschbau failed to show it owned, occupied, and predominately used the subject property for charitable purposes. Therefore, we find the subject property is 100% taxable for the 2021 assessment year.

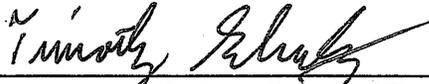
The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



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>>.