



# STATE TAX COMMISSION OF MISSOURI

SUMMERSVILLE PUBLISHING ) Appeal No. 22-90000  
ENTHUSIASTS DBA )  
SUMMERSVILLE BEACON, )  
 ) Parcel No. 230624001012001  
Complainant, )  
 )  
v. )  
 )  
DEBBIE JAMES, ASSESSOR, )  
TEXAS COUNTY, MISSOURI, )  
 )  
Respondent. )

## DECISION AND ORDER

Summersville Publishing Enthusiasts d/b/a Summersville Beacon (Complainant) appeals<sup>1</sup> the Texas County Board of Equalization's (BOE) decision<sup>2</sup> finding the subject

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<sup>1</sup> Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal of this decision. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

<sup>2</sup> While Complainant's Complaint for Review contained handwritten notes concerning personal property owned by Complainant (vehicles), and Complainant offered testimony and Exhibit 3 regarding taxes paid for 2022 for three vehicles owned by Complainant, there is no evidence in the record that Complainant formerly appealed these assessments to the County Board of Equalization or to the County Board of Appeals pursuant to Sections 138.180, 138.430 and 138.460(2). Therefore, the State Tax Commission lacks jurisdiction to review Complainant's claims concerning the assessments for Complainant's personal property. Section 138.430.1.

property is not exempt from ad valorem taxation and that its true value in money (TVM) was \$122,670 as of January 1, 2022. Complainant in its Complainant for Review asserts the subject property is exempt from ad valorem taxation due to charitable purposes. Complainant did not produce clear and unequivocal proof showing the subject property is exempt. The BOE decision is affirmed.

The evidentiary hearing for this appeal was held on March 28, 2023, via Webex. Complainant was represented at hearing by counsel Jodie R. Brumble. Respondent appeared via phone without counsel.

### **FINDINGS OF FACT**

**1. Subject Property.** The subject property is located at 89 Rogers Ave., Summersville, Missouri. The parcel/locator number is 230624001012001. The subject property consists of a 0.98 acre lot improved with a single-family home. No evidence in the record specifically provided the number of bathrooms and bedrooms in the property, but one bedroom is used as an office for both Complainant's operations and tax preparing services of Complainant's witness, Ms. Sharon Vaughn. The property was acquired by Complainant in 2020 for \$75,000 from Duncan Funeral Home LLC D/b/a Blue Island Triad Collective Holdings, Inc. after a flood destroyed Complainant's previous location. Ms. Vaughn testified that she and her husband funded Complainant's purchase of the property.

**2. Respondent and BOE.** Respondent classified a portion of the subject property as residential and a portion as commercial. Respondent determined that as of January 1, 2022, the property was not exempt from ad valorem taxation for charitable purposes. The BOE classified a portion of the subject property as residential and a portion as commercial

and independently also determined the subject property was not exempt. The BOE independently valued the property as of January 1, 2022, at \$122,670.

**3. Complainant's Evidence.** Complainant submitted the following exhibits:

Exhibit	Description	Ruling
1	Summersville Publishing Enthusiasts Public Charity status printout	Offered for Demonstrative Purposes
2	Summersville Publishing Enthusiasts IRS Advanced Ruling Letter of Exemption from Federal Income Tax as a 501(c)(3) organization as of July 10, 2002	Admitted
3	Complainant's 2022 Personal Property Tax Receipt for vehicles	Admitted
4	Complainant's 2022 Real Property Tax Receipt for subject property	Admitted

Complainant witness Sharon Vaughn testified for Complainant. Ms. Vaughn referred to herself as the administrator of Complainant and an editor of the Summersville Beacon, the newspaper circulated by Complainant. Ms. Vaughn testified that Complainant is a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code. She testified that after applying in 2002 it was granted an advanced ruling by the Internal Revenue Service (IRS) (Exhibit 1) in 2006 exempting the organization from paying federal income tax. Ms. Vaughn also testified that the organization has routinely filed Form 990 tax returns with the IRS over the years, and that to her knowledge the federal income tax exemption has not yet been revoked.

Ms. Vaughn stated that Complainant's charitable operations include the circulation of a local newspaper called the Summersville Beacon which is circulated in the following five contiguous counties: Texas, Shannon, Wright, Howell, and Oregon. The businesses in these five counties that advertise in the newspaper receive copies of the paper to place in

their establishments. Free copies of the newspaper are also dropped off at several other businesses and locations around the area where members of the public are able to pick them up if desired. Ms. Vaughn explained that the paper is freely available, but that Complainant currently does have 187 subscribers that pay for the paper. Ms. Vaughn testified that these customers pay \$45 a year for the paper which equals the cost of the postage to mail it to them. The total weekly circulation of the paper averages around 6,000 copies.

Complainant uses the subject property as its center of operations for the paper. Complainant's employees and volunteers draft and edit the paper, take calls from customers, receive advertisement requests and photographs for printing in the paper, and compile and assemble flyers and inserts into the papers after publishing. No publishing occurs at the subject property. Once a complete, edited, electronic version of the paper is finished it is sent to Central Missouri Newspapers in Jefferson City, Missouri where it is published and printed. Complainant has an employee who picks up the physical printed copies in Jefferson City and brings them back to Complainant's property for distribution.

Other than the operations of the paper, Complainant also occasionally allows churches or other groups in the area to host functions and get-togethers at the subject property. Ms. Vaughn also admitted on cross examination that she does personally use the 12 by 12 feet office in the subject to provide for-profit accounting services, including the preparation of income tax returns for individuals, businesses, and other non-profits. Ms. Vaughn stated that she uses the same computer equipment, desk, and workspace area that Complainant uses to edit the paper. Ms. Vaughn testified that she prepares the returns only

from about the middle of January to the middle of April. Ms. Vaughn does not charge her customers that are non-profits or those who work or volunteer for the paper.

**4. Respondent's Evidence.** Respondent did not submit any exhibits. Respondent is the Assessor of Texas County and testified during the hearing.

Ms. James testified that she was present at the BOE hearing where Complainant presented its appeal for the 2022 tax year. Ms. James testified that Ms. Vaughn had requested on Complainant's behalf that the subject property be exempt from property tax based on the operations of the paper, but that no claim had been made regarding the vehicles owned by Complainant. Her understanding based on Ms. Vaughn's statements at the BOE was that the subject property included living quarters (the portion classified as residential) which is the 12 by 12 feet bedroom now being used as an office. Ms. James testified that at the BOE hearing Ms. Vaughn was also asked if the subject was being used exclusively for the paper. Ms. James recalled that Ms. Vaughn responded that she also prepares tax returns for her own customers at that location.

Ms. James, confirming Ms. Vaughn's earlier testimony, testified that her office did receive a sales letter signed by Ms. Vaughn evidencing the sale from Duncan Funeral Home LLC D/b/b Blue Island Triad Collective Holdings, Inc. to Complainant for \$75,000. James cited Section 137.100(5) and asked the Hearing Officer to take judicial notice of that statute. Ms. James admitted on cross examination that she did not record the meeting at the BOE nor was an onsite inspection was performed inside the subject to verify the activities occurring inside the property.

**5. Exemption.** The subject property is not exempt from ad valorem taxation.

## CONCLUSIONS OF LAW

### 1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

### 2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the

credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties." *Id.*

### **3. Complainant's Burden of Proof**

"Tax exemptions are construed strictly against the taxpayer, and any doubt must be resolved in favor of application of the tax." *SEBA, LLC v. Dir. of Revenue*, 611 S.W.3d 303, 313–14 (Mo. banc 2020). Exemptions are "allowed only upon clear and unequivocal proof, and any doubts are resolved against the party claiming it." *Id.* (internal quotation omitted).<sup>3</sup> A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

### **4. Charitable Exemption**

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<sup>3</sup> *See also Am. Polled Hereford Ass'n v. City of Kansas City*, 626 S.W.2d 237, 240 (Mo. banc 1982)(noting the taxpayer bears the burden of establishing a property tax exemption "by unequivocal proof that such release is required by the terms of the statute...."); *City of St. Louis v. State Tax Comm'n*, 524 S.W.2d 839, 845 (Mo. banc 1975)(noting the taxpayer claiming a charitable exemption must make "a clear and convincing showing that the specific activity in question does fall within an accepted category found in the definition").

Complainant asserts the subject property is exempt from taxation pursuant to section 137.100(5) because it is used exclusively for charitable purposes and is not held for private or corporate profit. “Tax exemption statutes are to be strictly but reasonably construed so as not to curtail the purpose and intended scope of the exemption.” *City of St. Louis v. State Tax Comm’n*, 524 S.W.2d 839, 843–44 (Mo. banc 1975). A taxpayer claiming an exemption must produce “clear and unequivocal proof” the exemption applies and “all doubts are resolved against the taxpayer.” *Ben Hur Steel Worx, LLC v. Dir. of Revenue*, 452 S.W.3d 624, 626 (Mo. banc 2015).

Article X, section 6 of the Missouri Constitution provides "all property, real and personal, not held for private or corporate profit and used exclusively . . . for purposes purely charitable . . . may be exempted from taxation by general law."

In pertinent part, section 137.100(5), in pertinent part, exempts from taxation:

All property, real and personal, actually and regularly used exclusively ... for purposes purely charitable, and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes[.]

Determining whether the subject property qualifies for the Section 137.100(5) charitable exemption, requires application of “the three-part test established in *Franciscan Tertiary Province of Missouri, Inc. v. State Tax Commission*, 566 S.W.2d 213, 224 (Mo. banc 1978).” *United Cerebral Palsy Ass’n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 800 (Mo. banc 1990).



“Franciscan first requires that the property be actually and regularly used exclusively for purposes purely charitable as defined in *Salvation Army v. Hoehn*, 354 Mo. 107, 188 S.W.2d 826, 830 (1945).” *United Cerebral Palsy Ass’n*, 789 S.W.2d at 800. “The phrase ‘exclusively used’ has reference to the primary and inherent use as over against a mere secondary and incidental use.” *Salvation Army v. Hoehn*, 354 Mo. 107, 115, 188 S.W.2d 826, 830 (Mo. 1945). “If the incidental use ... does not interrupt the exclusive occupation of the building for [charitable] purposes, but dovetails into or rounds out those purposes,” then the property may be considered to be used exclusively for a charitable purpose. *Id.*

The second part of the Franciscan test requires that the property be owned and operated on a not-for-profit basis. *Franciscan*, 566 S.W.2d at 224. Property is “not held for private or corporate profit” when the profit is incidental to the dominant charitable objective and all profit is devoted to the charitable objectives of the project. *Id.*

The final prong of the Franciscan test requires a showing that the dominant use of the property is for the benefit of an indefinite number of people and must directly or indirectly benefit society generally. *Franciscan*, 566 S.W.2d at 224. The requirement of showing a benefit to “an indefinite number of persons ... is otherwise characterized as a requirement that the humanitarian service be public.” *Evangelical Ret. Homes of Greater St. Louis, Inc. v. State Tax Comm’n*, 669 S.W.2d 548, 554 (Mo. banc 1984) (internal quotation omitted). A benefit may be “public” if it is not available to all and, instead, is directed at groups with specific needs or interests. *Id.* Thus,

Complainant failed to offer clear and unequivocal proof that Complainant's use of the subject property satisfies the prerequisite elements for a charitable exemption.

Complainant Failed to Prove the Subject Property is Owned and Operated on a Not-for-Profit Basis

First, the evidence in the record does not show conclusively that Complainant is organized as a nonprofit corporation in Missouri and that it owned the subject property on a not-for-profit basis. Complainant did not submit any copy of its Articles of Incorporation showing it was properly organized in Missouri as a nonprofit organization, nor did it offer its bylaws in effect as evidence of its charitable purpose(s) and mission. While Complainant offered Exhibit 2 showing that the IRS had granted Complainant a temporary advanced ruling from July 10, 2002, to December 31, 2006, exempting Complainant from federal income tax, Complainant offered no documentary evidence that Complainant possessed such status as a 501(c)(3) organization on January 1, 2022, the valuation date in question. Ms. Vaughn testified that to the best of her knowledge Complainant had maintained exempt status as a 501(c)(3) organization since 2006 and that she had filed 990 tax returns. However, this evidence does not constitute clear and unequivocal proof that Complainant is a non-profit, nor does it prove that it owned the subject property on a not-for-profit basis on January 1, 2022.

Complainant Failed to Prove a Charitable Purpose Which Benefits an Indefinite Number of People and that the Subject Property Was Exclusively Used for Such Charitable Purpose

Another prerequisite for charitable exemption is that the dominant use of the property must be for the benefit of an indefinite number of people, for the purpose, as

expressed in *Salvation Army*, of “relieving their bodies of disease, suffering, or constraint...or by erecting or maintaining public buildings...lessening the burdens of government.” *Salvation Army*, 188 S.W.2d at 830.

The requirement of showing a benefit to "an indefinite number of people" is satisfied when there is a "direct or indirect benefit to society in addition to and as a result of the benefit conferred on the persons directly served by the humanitarian activity." *Franciscan*, 566 S.W.2d at 224. The requirement of showing a benefit to "an indefinite number of persons ... is otherwise characterized as a requirement that the humanitarian service be public." *Evangelical Ret. Homes of Greater St. Louis, Inc. v. State Tax Comm'n*, 669 S.W.2d 548, 554 (Mo. banc 1984) (internal quotation omitted). A benefit may be "public" if it is not available to all and, instead, is directed at groups with specific needs or interests. *Id.* Thus,

[a] charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.

*Salvation Army v. Hoehn*, 188 S.W.2d at 830 (quoting *In re Rahn's Est.*, 291 S.W. 120, 128 (Mo.1926)).

Even if Complainant had proved that it is a non-profit organization owning the subject property on a not-for-profit basis, it did not show that the dominant use of the subject property was for a charitable purpose. Complainant's claimed charitable activities include circulating a newspaper that it provides free at some locations in its geographic

area, especially to establishments that purchase advertising in the paper, and permitting other non-profit such as churches to use the subject property for their functions. Neither Complainant's exhibits nor Ms. Vaughn's testimony provides clear and unequivocal proof establishing that these activities constitute an activity benefiting and an indefinite number of people by "relieving their bodies of disease, suffering, or constraint...or by erecting or maintaining public buildings...lessening the burdens of government." <sup>4</sup>

Last, both Section 137.100(5) and the Franciscan test precedent provide that the property must be exclusively used for a charitable purpose. The evidence submitted by Complainant, including Ms. Vaughn's testimony, establishes that a portion of the property is used at least some of the year for a for-profit business enterprise not in any way affiliated with Complainant's operations – namely, Ms. Vaughn's business preparing tax returns for customers.

### **CONCLUSION AND ORDER**

Complainant failed to meet its burden of proof to present clear and unequivocal evidence to qualify for exemption. Complainant's failure to prove any single element is sufficient for denial of exemption. *See, Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P. D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. 1991).

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<sup>4</sup> *Salvation Army v. Hoehn*, 188 S.W.2d at 830.

Accordingly, the subject property was not exempt for ad valorem assessment purposes as of January 1, 2022. The BOE decision is affirmed.

### **Application for Review**

A party may file an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. *Failure to state specific facts or law upon which the application for review is based will result in summary denial.* Section 138.432.

### **Disputed Taxes**

The Collector of Texas County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED December 15, 2023.

Benjamin C. Slawson  
Senior Hearing Officer  
State Tax Commission

**Certificate of Service**

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on December 15, 2023, to:

Complainant(s) and/or Counsel for Complainant(s), the City Assessor and/or Counsel for Respondent, and City Collector.

Stacy Ingle  
Legal Assistant