

REPRESENTATIVE FOR PETITIONER: Daniel D. Stamper, *pro se*

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Stamper Realty Holdings LLC,	)	Petition:	89-030-18-2-8-00719-18
	)		
Petitioner,	)	Parcel:	89-18-05-220-203.000-030
	)		
v.	)	County:	Wayne
	)		
Wayne County Assessor,	)	Assessment Year:	2018
	)		
Respondent.	)		

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

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March 4, 2019

**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:

**INTRODUCTION**

1. A charitable purpose is one way a property may receive an exemption from property tax, but it requires that the property be owned, occupied, and used for those purposes. A property does not need to be owned, occupied, and used by the same entity to be charitable, but where unity does not exist, each entity must have its own exempt purpose. Stamper Realty Holdings failed to demonstrate that it owned the subject property for an exempt purpose. Thus, we find the subject property to be 100% taxable.

## PROCEDURAL HISTORY

2. Stamper Realty filed a Form 136 with the Wayne County Property Tax Assessment Board of Appeals (“PTABOA”) claiming a 100% exemption on all of the land and improvements. The PTABOA denied the exemption and determined the property to be 100% taxable. Stamper Realty then filed a Form 132 petition with the Board.
3. On December 4, 2018, the Board’s designated Administrative Law Judge (“ALJ”), Timothy Schuster, held a hearing. Neither he nor the Board inspected the property.
4. Dan Stamper, President of Stamper Realty Holdings LLC, represented the company and testified under oath. Brian A. Cusimano represented the Wayne County Assessor.
5. The following exhibits were submitted:
  - Petitioner’s Ex. 1: Stamper Realty Holdings LLC Certificate of Organization and Operating Agreement,
  - Petitioner’s Ex. 2: Lease between Stamper Realty Holdings LLC and the American National Red Cross.
6. The record also includes: (1) all pleadings, briefs, and documents filed in the current appeal, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

## FINDINGS OF FACT

7. The subject property is located at 829 E. Main Street in Richmond. Stamper Realty owns the property and leases 1,840 sq.ft.<sup>1</sup> to the American National Red Cross. Initially, the Red Cross told Stamper they could not afford the \$950/month Stamper was asking to rent the property. Stamper testified that the Red Cross told him he could “get tax relief” because they were a non-profit. Based on that assertion, he agreed to lower the rent to \$750/month. He testified that Stamper Realty intended to “make up the difference” via a property tax exemption which was “part of making the deal work for Red Cross.”

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<sup>1</sup> The lease indicates only the first floor of the building was rented to the Red Cross. The total square footage of the building is not in the record.

*Stamper testimony; Pet'r. Ex. 2.*

8. The written purposes of Stamper Realty are to purchase, own, and operate real estate in and around the City of Richmond. *Stamper testimony; Pet'r. Ex. 1.*

### CONCLUSIONS OF LAW AND ANALYSIS

9. While all tangible property is generally taxable, the legislature has exercised its constitutional authority to create exemptions for specific types of property. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004). A taxpayer bears the burden of proving that its property qualifies for an exemption. *Id.* at 1014.
10. Indiana Code § 6-1.1-10-16(a) provides an exemption for all or part of a building that is owned and exclusively or predominantly used and occupied for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); I.C. § 6-1.1-10-36.3(c); *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Assessor*, 909 N.E.2d 1138, 1141 (Ind. Tax Ct. 2009) *reh'g den.* 914 N.E.2d 13 (Ind. Tax Ct. 2009).
11. In order to qualify for an exemption, a property must be owned for an exempt purpose, occupied for an exempt purpose, and used for an exempt purpose. *Hamilton Cnty. Property Tax Assessment Board of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654 (Ind. 2010). In cases where the owner and the occupant or user are different entities, each entity must possess its own distinct exempt purpose. *Id.* In addition, “more is required” than simply a reduction in rent in order to show that a lessor owns a property for an exempt purpose. *Id.* at 658.
12. Exemption statutes are strictly construed against the taxpayer. *St. Mary's Med. Ctr. of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 280 (Ind. Tax 1989), *aff'd*, 571 N.E.2d 1247 (Ind. 1991). Nonetheless, 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.*

13. Stamper Realty leases the property to the Red Cross at a purported discount of \$200/month. We assume for the purposes of this decision that the American Red Cross uses the subject property for an exempt purpose. As discussed above, in addition to being used and occupied for an exempt purpose, a property must also be owned for an exempt purpose. Stamper Realty owns the subject property, and thus must demonstrate that it has its own exempt purpose separate and distinct from that of the American Red Cross.
14. As the Indiana Supreme Court discusses in *Oaken Bucket*, charging below market rent to a charitable organization may demonstrate an entity's beneficent motives, but by itself that act is insufficient. *Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 658. In this case, Stamper admitted that the rental reduction was given solely based on the expectation of a future exemption from real estate taxes. This shows that Stamper did not have a charitable motivation in giving the rental discount, but rather a business one.
15. In addition, Stamper failed to provide any evidence to support its assertion that the rental rate of \$750/month was actually below market rates. Nor did it provide evidence of the use or characteristics of the rest of the building—information that would be necessary to properly determine an exemption percentage.
16. It is unfortunate that Stamper was apparently misled into believing that giving a rental reduction to the Red Cross automatically qualified the subject property for an exemption. Nevertheless, the Indiana Supreme Court has clearly stated that a reduction in rent does not by itself show that a property is owned for an exempt purpose. Because Stamper did not provide any other evidence of an exempt purpose, we are compelled to find the property 100% taxable for the 2018 assessment year.

**SUMMARY OF FINAL DETERMINATION**

17. Stamper Realty failed to show that it owned the property for an exempt purpose on the January 1, 2018 assessment date. Thus, we find the subject property to be 100% taxable.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.