

REPRESENTATIVES FOR PETITIONER:

William Ramsey, Barrett McNagny LLP  
Joshua Neal, Barrett McNagny LLP

REPRESENTATIVES FOR RESPONDENT:

Mark GiaQuinta, GiaQuinta Law Offices LLC  
Kayte Geist, HallerColvin PC  
Nicholas Brady, Plews Shadley Racher & Braun LLP

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

THE TOMA FOUNDATION, INC.,	)	Petition No.: 02-041-23-2-8-00058-24
	)	
Petitioner,	)	Parcel No.: 02-13-11-301-013.000-041
	)	
v.	)	County: Allen
	)	
ALLEN COUNTY ASSESSOR,	)	Township: Adams
	)	
Respondent.	)	Assessment Year: 2023
	)	

---

**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:

**I. INTRODUCTION**

1. The Toma Foundation, Inc. (“Toma”) operates a restaurant-bar and conducts charitable gaming events. Toma claims the portion of its real property used for charitable gaming is exempt from property taxes based on two theories. First it claims that the charitable gaming statutes shield it from property taxes. Second, it claims that its gaming operations qualify the property for a charitable-purpose exemption under Ind. Code § 6-1.1-10-16(a). We find that Toma misinterprets the gaming statutes and fails to establish a predominantly charitable use in its gaming operations.

## II. PROCEDURAL HISTORY

2. On March 9, 2023, Toma filed an exemption application for its real property. It indicated that it was seeking a charitable-purpose exemption under I.C. § 6-1.1-10-16 for the January 1, 2023, assessment date. Toma claimed that its property should be 100% exempt from property taxation because it was used for charitable gaming.
3. On December 12, 2023, the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) denied Toma’s application and determined the property was 100% taxable. Toma then timely appealed the PTABOA’s determination to us. Toma claimed that the PTABOA did not correctly calculate or apply the predominant-use test and that the property was entitled to at least a partial charitable-purpose exemption under I.C. § 6-1.1-10-16.
4. We set a hearing on the merits for January 21, 2025. Six days before the scheduled hearing, the parties filed their Joint Motion to Vacate Hearing and Request for Briefing Schedule (“Joint Motion”) in which they asked us to vacate the scheduled hearing and decide the appeal on a stipulated record in accordance with 52 IAC 4-6-8(a). On January 21, 2025, we continued the hearing but did not expressly rule on the parties’ request to decide the appeal on a stipulated record. That same day, the parties submitted their Joint Stipulated Record, and they submitted a statement of Joint Stipulated Facts two days later. They then filed briefs according to a revised agreed briefing schedule. As a matter of procedural housekeeping, we now grant the Joint Motion.
5. The stipulated record includes the parties’ Joint Stipulated Facts<sup>1</sup> and the following exhibits:

Exhibit 1	2024 Form 48681 CG-Dist, Charitable Contribution Distribution List 2024
Exhibit 2	The Toma Foundation Balance Sheet, as of Oct. 31, 2024,
Exhibit 3	330 BBQ profit & loss sheet, Jan. 2024 – Oct. 2024,
Exhibit 4	The Toma Foundation profit & loss sheet, Jan. 2024 – Oct. 2024,

---

<sup>1</sup> We refer to any stipulated fact with the citation “*Stip. Facts* at X”.

Exhibit 5	2023 Exempt Org. Return, prepared for The Toma Foundation, Inc.,
Exhibit 6	2023 Form IT-20NP for The Toma Foundation, Inc.,
Exhibit 7	330 BBQ invoice form (blank),
Exhibit 8	Toma balance sheet (as of Dec. 31, 2023),
Exhibit 9	Bylaws of The Toma Foundation, Inc.,
Exhibit 10	Letter from IRS recognizing Circle of Hope Foundation as 501(c)(3) non-profit status,
Exhibit 11	Form 56804 Indiana Gaming Commission Annual Activity License for the Toma Foundation, Inc., effective Nov. 1, 2022, through Oct. 31, 2023,
Exhibit 12	Form 56804 Indiana Gaming Commission Annual Activity License for the Toma Foundation, Inc., effective Nov. 1, 2022, through Oct. 31, 2023,
Exhibit 13	Letter from IRS recognizing The Toma Foundation, Inc. as 501(c)(3) non-profit status,
Exhibit 14	Commercial lease agreement between The Toma Foundation and Circle of Hope Foundation, Inc., dated Sep. 1, 2022,
Exhibit 15	Toma Foundation mission statement,
Exhibit 16	Toma Foundation profit & loss sheet for 2023,
Exhibit 17	Restricted appraisal report for 330 Entrance Drive, dated Jan. 17, 2023,
Exhibit 18	Transcript of Deposition of Matthew Tsuleff with exhibits, dated Nov. 26, 2024,
Exhibit A-B	Documents submitted to PTABOA for 2023 pay 2024 tax year appeal,
Exhibit C	Form 120, Form 132, and Form 136,
Exhibit D	Supporting documents to Form 136,
Exhibit E	Form 11,
Exhibit F	Letter from Mathew Tsuleff,
Exhibit G	Toma Foundation profit & loss and balance sheets for 2021 and 2022,
Exhibit H	W-2s for 2020 – 2022,
Exhibit I	Real Estate Purchase Agreement for 330 Entrance Drive,
Exhibit J	2023 Property Record Card (“PRC”) for 330 Entrance Drive,
Exhibit K	Real estate mortgage for 330 Entrance Drive, signed Apr. 21, 2022,
Exhibit L	Installment promissory note with payment schedule,
Exhibit M	Aerial photographs of subject property,
Exhibit N	Floor plan of subject property,
Exhibit O	Transcript of Matthew Tsuleff deposition with exhibits,
Exhibit P	Retail market report for 2021, prepared by Zacher Company,
Exhibit Q	Predominant use worksheet,
Exhibit R	Restricted appraisal report for 330 Entrance Drive, dated Jan. 17, 2023,
Exhibit S	Supporting information to Form 136,

Exhibit T	Bylaws of Circle of Hope Foundation, Inc.,
Exhibit U <sup>2</sup>	Toma Foundation financial documents,
Exhibit V	Articles of Incorporation for Toma Foundation, Inc.,
Exhibit W	Bylaws of Toma Foundation, Inc.,
Exhibit X	2024 Form 48681 CG-Dist, Charitable Contribution Distribution List for Toma Foundation, Inc.,
Exhibit Y	Certificate of Assumed Business Name of Toma Foundation, Inc., dated Feb. 12, 2021,
Exhibit Z	Commercial lease agreement between The Toma Foundation and Circle of Hope Foundation, Inc., dated Sep. 1, 2022,
Exhibit AA	Certificate of Incorporation and Articles of Incorporation for Circle of Hope Foundation, Inc.,
Exhibit BB	Website photographs of 330 Bar and Grill interior,
Exhibit CC	Ordinance No. Z-21-12, amending Chapter 157: New Haven Unified Development Ordinance of the City of New Haven, Indiana,
Exhibit DD	Respondent's first set of interrogatories and requests for production of documents to petitioner the Toma Foundation, Inc.,
Exhibit EE	Petitioner's responses to Respondent's first set of interrogatories and requests for production of documents,
Exhibit FF	Petitioner's documents produced in response to requests for production of documents,
Exhibit GG	Toma Foundation income and expense sheets, itemized donation sheets, and PRCs.

6. The record also includes the following: (1) all petitions, briefs, and other documents filed in this appeal, and (2) all orders and notices issued by the Board or ALJ.

### III. FINDINGS OF FACT

7. The subject property is located at 330 Entrance Drive in New Haven. It contains a 12,340-square-foot building that is divided into multiple rooms, including a 4,032-square-foot area referred to as the "bingo hall" and a 4,436 square-foot area that contains a restaurant-bar and kitchen. It also has an 80-seat reception hall, meeting spaces, two offices, hallways, and storage areas. There are restrooms in both the bar and the center of the building. The property also contains two pole barns used for storage and maintenance. *Ex. D; Ex. O at 26-33; Exs. J, N.*

---

<sup>2</sup> In its table of exhibits, the Assessor listed Exhibit U, which it identified as "Toma Foundation Financial Document." The documents submitted as the stipulated record, however, do not include an Exhibit U.

8. Various members of the Tsuleff family, including Matthew Tsuleff, his brother Tom, and their parents Pete and Rita, have been in the restaurant business since the late 1990s. In 2008, Matthew and Rita opened a restaurant in Fort Wayne named Cocktails. *See Ex. F at 1.*
9. In June 2013, Matthew incorporated Toma as a not-for-profit public benefit corporation. Matthew also serves as its president. Toma is organized for charitable purposes, and its mission is:

[T]o provide the necessary tools for children with learning disabilities to excel as a student. [Toma] strives to help provide direction thru [sic] tutoring, technologies and other resources for these students to have academic success.

The IRS has granted Toma an exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. *Exs. 13, 15, V-W.*
10. Toma obtained a charitable gaming license and began operating gaming events under the assumed name of Harmony Bingo in November 2017. Although the record does not contain specific license information predating the period from November 1, 2022, to October 31, 2023, the information we do have shows Toma was licensed to hold bingo, raffle, and pull-tab events on Sundays, Wednesdays, and Thursdays. *Exs. F at 1; Ex. 11; Ex. O at 12; see also, Stip. Facts at ¶ 17.*
11. In October 2020, 330 Entrance Drive, LLC, which is owned by Pete and Rita, bought the subject property for the family to run a restaurant-bar and gaming events. In January 2021, Matthew and Rita sold Cocktails and used the proceeds to help set up a restaurant-bar at the property. The parties refer to that establishment alternately as 330 Bar & Grill and 330 BBQ. For consistency's sake, we will refer to the restaurant-bar as the "Bar & Grill." The Bar & Grill opened its doors on April 5, 2021. *Ex. O at 85.*
12. The record is muddled about who owns and operates the Bar & Grill. Matthew alternately testified (1) that Toma operates it under the assumed name 330 Bar & Grill, and (2) that a separate "subchapter S" corporation (330 Bar & Grill, Inc.) operates it. The

record contains no organizational documents for 330 Bar & Grill, Inc. But Toma filed a certificate of assumed business name for 330 Barbeque before the Bar & Grill opened, and Toma reports the Bar & Grill's revenue as unrelated business income on its federal tax returns. The Stipulated Facts do not resolve this conflicting evidence. They instead simply indicate that "[t]he 330 Bar & Grill operates a bar and restaurant on the premises rent free." We find that the weight of the evidence shows that Toma operates the Bar & Grill. *Exs. O at 11-13, F at 2, FF at 113-22, Y; Stip. Facts at ¶ 19.*

13. In September 2021, Toma moved its gaming events to the subject property from a nearby location on Minnich Road. *Exs. F at 2, O at 85.*
14. On April 8, 2022, Toma bought the subject property from 330 Entrance Drive, LLC. Toma gave 330 Entrance Drive, LLC a promissory note and mortgage to finance the purchase. Toma paid the mortgage solely through its gaming proceeds from Harmony Bingo. *Ex. A-B at 22; Exs G, L; Ex. O at 9-10, 57-58.*
15. On September 1, 2022, Circle of Hope ("COH"), an Indiana nonprofit corporation organized in April 2021, entered a lease with Toma to use the following portions of the subject property to operate bingo games: the bingo hall, parking lot, restroom facilities, and hallways. The lease allows COH to operate games from 3 p.m. to 10 p.m. on Tuesdays and Fridays, and from 10 a.m. to 5 p.m. on Saturdays. COH has its own gaming license<sup>3</sup> and is run by Tom. Its board of directors consists exclusively of Tsuleff family members, including Matthew's sons. According to COH's bylaws, its primary purpose is "providing resources, support, and relief to individuals who have family members or other loved ones suffering from mental illness including dementia." Like Toma, COH has a Section 501(c)(3) exemption from federal income taxation. *Stip. Facts at 1; Ex. 10; Ex. O at 47-49, 55-56; Exs. T, AA.*

---

<sup>3</sup> Although the record does not contain a copy of COH's chartable gaming license, Matthew referred to Toma and COH having separate licenses when he testified that individuals could not be operators on two licenses. *Ex. O at 56.*

16. Harmony Bingo and COH used the bingo hall to run their gaming events. While Toma did not offer usage logs, there is evidence of only three other events having taken place in the bingo hall: a political fundraiser for New Haven's mayor; a "poker run" hosted by the Muscular Dystrophy Association; and a "purse bingo" event where the Fraternal Order of Police gave away Coach purses as prizes instead of money. *Ex. O at 23-34, 36-37.*
17. Attendees at gaming events can order food and drinks from the Bar & Grill. There is a window between the Bar & Grill area and the bingo hall where they can pick up food orders. But if they want to order or drink alcoholic beverages, they must do so in the bar. Rita uses one of the offices and Matthew uses the other one. Matthew referred to Rita's office as the 330 Bar & Grill office and to his office as the Harmony Bingo office, and he testified that the operations were separate. Because Matthew manages both operations, however, we are not persuaded that his office was used solely in connection with gaming activities. Toma also uses 1,850 square feet of its storage area in connection with its bingo activities. *Ex. A-B at 24; Ex. O at 33, 38, 85-86, 133.*
18. Although Toma receives all the income from both the Bar & Grill and Harmony Bingo, it keeps separate books for the two operations. Toma does not employ people to operate gaming events. But Toma employs several people to work at the Bar & Grill, including Matthew, who manages that operation. Matthew's salary from Toma is his sole income source. Employees' wages and salaries are reflected as expenses of the Bar & Grill. *Ex. G; Ex. O at 18-19, 55, 76.*
19. Under I.C. § 4-32.3-5-4, a qualified organization that receives at least 90% of its gross receipts from charitable gaming must donate to other qualified organizations 60% of its gross charitable gaming receipts less prize payouts. Toma's revenue from the Bar & Grill and the lease payments from COH allow it to avoid operation of the 90/60 rule, because its gaming receipts are less than 90% of its total receipts. Before Toma bought the subject property, however, it relied on donations from Rita and Tom to avoid the 90/60 rule. If Toma were to donate 60% of its gross gaming receipts less prize payouts, it would not have enough money left to cover its other expenses. By avoiding the 90/60

rule, however, Matthew believes that Toma does not “have to give a penny” on its gaming receipts. Toma also lawfully donates to COH to help COH avoid the 90/60 rule. The record does not show when Toma made its first donation to COH. *Ex. O at 80-84; Stip. Facts at ¶ 20; see also, I.C. § 4-32.3-5-4.*

20. For the accounting period running from September 2021 to August 2022, Toma had \$548,023 in gross gaming revenue less prize payouts.<sup>4</sup> It reported donating \$108,350, or 19.8% of that revenue to “bona fide charitable organizations” under I.C. § 4-32.3-2-4.

The following organizations received donations from Toma during that period:

- St. John the Baptist
- Bishop Luers
- Combat Veterans Motorcycle Assn. 14-6, Inc.
- 3 Rivers Yoga Foundation
- The Shepherd’s House
- Learn Resource Center
- Bedrock Youth, Inc.
- Paul’s Place: Support for Families
- Coach Mike EGTS Foundation, Inc.
- The Muscular Dystrophy Association

*Ex. O at 142-43, 154-55; Stip. Facts at ¶ 22.*

21. Toma offered varying degrees of information about some of those organizations. For others it offered no information. The organizations include educational institutions (St. John the Baptist and Bishop Luers) that have programs for students with disabilities, as well as organizations that support troubled youth, families, and veterans. Toma donated to 3 Rivers Yoga Foundation because it held a large public class to promote awareness of yoga’s health benefits. Matthew has attended classes at 3 Rivers Yoga, and Kathy Price, who books events for Toma and volunteers as an operator for Harmony Bingo’s gaming events, teaches classes at 3 Rivers Yoga. *Ex. O at 92-93, 97-110.*

---

<sup>4</sup> \$4,026,524 (gross gaming income) - \$3,478,501 (prize payouts) = \$548,023 (total gross gaming revenue less prize payouts).



22. Toma, however, “is not claiming and has no evidence that all recipients” of its donations “are themselves charitable as defined by Ind. Code § 6-1.1-10-16.” Bishop Luers and St. John the Baptist have been granted educational-purpose exemptions under that statute, but they have not been granted charitable-purpose exemptions. The record does not show whether either organization applied for a charitable-purpose exemption, however. *Stip. Facts at ¶¶ 4-7, 22.*
23. While COH had a charitable gaming license, the parties did not offer any meaningful evidence about COH’s operations or its charitable donations. *Ex. O at 48, 56.*
24. The parties stipulate that the activities in the Bar & Grill do not qualify as exempt, nor do the activities in the meeting or events rooms. They further stipulate that “the use of the area used and occupied by Toma [to] run bingo games does not, in and of itself, relieve the government of a burden[,] and the act of holding bingo games is not, in and of itself, a charitable activity under Ind. Code § 6-1.1-10-16(a).” *Stip. Facts at ¶¶10-12, 15.*
25. We find that Toma predominantly uses the bingo hall as a recreational activity intended to attract customers to the restaurant. And Toma’s donations of restaurant revenue to Harmony Bingo and COH are not charitable at all. In fact, they have the opposite purpose: ensuring Harmony and COH do not “have to give a penny” to charities under the gaming statute. This is to ensure the solvency of the restaurant rather than ensuring that the funds generated through the gaming operations go to charitable organizations.
26. As explained in more detail below, we find that Toma failed to prove by a preponderance of the evidence that any part of the subject property was used predominantly for charitable purposes.

#### **IV. CONCLUSIONS OF LAW AND ANALYSIS**

27. Although Toma claimed only a charitable-purpose exemption under I.C. § 6-1.1-10-16(a) on its exemption application and appeal petition, it now raises an additional claim: that Indiana’s charitable gaming statutes shield it from property taxation. The Assessor does

not argue that Toma has waived that claim. We will therefore address it before moving on to Toma's charitable-purpose claim under the general exemption statute.

**A. Indiana's charitable-gaming statutes do not preempt its property-taxation statutes or otherwise prohibit the assessment or taxation of real property.**

28. Gambling is illegal in Indiana pursuant to I.C. § 35-45-5. But that statute does not apply to permissible events conducted by qualified organizations in accordance with Indiana's statutes governing bingo events, charity game nights, door prize events, raffle events, and festivals ("charitable gaming events"). *See, e.g.*, I.C. §§ 4-32.3-1-1; 4-32.3-2-31; 4-32.3-1-1; 4-32.3-5-1. Subject to limited exceptions, an entity must be licensed by the Indiana Gaming Commission to conduct bingo or other charitable gaming events.
29. Toma argues that two sections from the charitable-gaming statutes shield it and other licensed qualified entities from property taxes: I.C. §§ 4-32.3-1-4 and -5. The first section provides that "[l]ocal taxes, regardless of type, may not be imposed upon the operations of the commission under this article or upon the sale of bingo cards, bingo boards, bingo sheets, bingo pads, pull tabs, punchboards, or tip boards under this article." I.C. § 4-32.3-1-4. The second provides, in relevant part:
- Local government authority concerning the following is preempted by the state under this article and IC 4-30<sup>5</sup>:
- (1) All matters relating to the operation of bingo events, casino game nights, or raffles;
- (2) All matters relating to the possession, transportation, advertising, sale, manufacture, printing, storing, or distribution of pull tabs, punchboards, or tip boards.
- I.C. § 4-32.3-1-5(a).
30. According to Toma, because property taxes are local taxes, the "broad" language in those sections exempts qualified bingo and pull-tab operations from property taxes. *Pet'r Post-Hearing Br. at 5-7*. The Assessor disagrees, arguing, among other things, that property

---

<sup>5</sup> Article 30 covers the Indiana State Lottery.

taxes are not taxes “on the operation of the [gaming] commission” and therefore are not barred by I.C. § 4-32.3-1-4. *Ass’r Br. in Support of Final Determination at 11-12.*

31. We agree with the Assessor. On its face, the first section bars only “local taxes imposed *on the operations of the [gaming] commission*” or on “*the sale of*” specified items used in charitable gaming. I.C. § 4-32.3-1-4 (emphasis added). Property taxes are levied on real property, not business operations or sales transactions. *See* I.C. § 6-1.1-2-1 (“Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year.”).<sup>6</sup> Because the property tax does not tax Toma’s gaming operations (neither revenue nor sales of gaming paraphernalia), the charitable gaming statutes have no application here. Moreover, the plain language of the charitable gaming statutes does not create an express property tax exemption for real estate used occupied by charitable gaming operations, and we will not contort the statutes to create one.
32. Similarly, the second section only preempts local authority in matters relating to the “operation of” charitable gaming events or the “possession, transportation, advertising, sale, manufacture, printing, storing, or distribution” of specified items used in charitable gaming. This statute plainly prohibits local units of government from promulgating local regulations on charitable gaming operations. A uniform property tax levy is not a regulation governing charitable gaming operations because it does not create any rules regarding the operation of charity gaming.

**B. Toma is not entitled to an exemption under I.C. § 6-1.1-10-16(a) because it failed to prove that any part of the subject property was predominantly used for charitable purposes.**

33. While tangible property in Indiana is generally taxable, the Legislature has exercised its constitutional authority to exempt certain types of property. *Hamilton Cty. Prop. Tax Bd. of App. v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). Because

---

<sup>6</sup> In narrowly defined instances, the property tax statutes make someone other than the owner of tangible property responsible for the taxes assessed on the property. *See* I.C. § 6-1.1-2-4.

exemptions relieve properties from bearing their fair share of the cost of government services, they are strictly construed against taxpayers. A taxpayer therefore has the burden of proving by a preponderance of the evidence that its property qualifies for an exemption. *Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); I.C. § 6-1.1-15-4(j) (providing that we must base our findings on a preponderance of the evidence).

34. Under Indiana's general exemption statute, all or part of a building is exempt from taxation if it is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes. I.C. § 6-1.1-10-16(a); § 6-1.1-10-36.3(c). 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).
35. To qualify, however, a building must be occupied or used either exclusively or predominantly for an exempt purpose. I.C. § 6-1.1-10-36.3(b)-(c). Property is predominantly used for one or more stated purposes if it is used for those purposes more than 50% of the time that it is used in the year ending on the assessment date. I.C. § 6-1.1-10-36.3(a). Because the assessment date at issue in this appeal is January 1, 2023, we look at the property's use during the 2022 calendar year.
36. 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 Cty. Ass'r v. Duke*, 69 N.E.3d 567, 572 (Ind. Tax Ct. 2017) (“[F]ailure 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 Indiana Code § 6-1.1-10-36.3.”).
37. The predominant-use test applies separately to “(A) each part of the property used or occupied; and (B) each part of the property not used or occupied; for one (1) or more exempt purposes . . . during the time the property is used or occupied.” I.C. § 6-1.1-10-36.3(b); I.C. § 6-1.1-11-3(c)(5). Thus, for example, where some parts of a building are

used exclusively for exempt purposes, but others are used for both exempt and non-exempt purposes, the areas used exclusively for exempt purposes will be entitled to a 100% exemption, while the taxpayer must offer evidence showing that exempt purposes predominated in the other areas. *McClain Museum, Inc. v. Madison Cty. Ass'r*, 134 N.E.3d 1096, 1104-05 (Ind. Tax Ct. 2019).

38. A property qualifies for a charitable-purpose exemption “*only* when a taxpayer provides evidence . . . that shows (1) relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general[,] and (2) a benefit sufficient to justify the loss of tax revenue inures to the public through its acts.” *St. Mary’s Bldg. Corp. v. Redman*, 135 N.E.3d 681, 689 (Ind. Tax Ct. 2019) (emphasis in original). The statute requires the showing of a charitable purpose to ensure that the benefit the exemption confers “both relieves the government of a cost that it would otherwise bear and does not primarily serve a commercial profit motive.” *Id.* at 685 (quoting *Hamilton Cty. Ass’r v. SPD Realty, LLC*, 9 N.E.3d 773, 775 (Ind. Tax Ct. 2014)).
39. The parties stipulate that the Bar & Grill, events room, and meeting room were not used for exempt activities. And Toma offered no usage logs to apportion exempt and non-exempt uses for areas, such as the restrooms in the middle of the building and hallways, that were used for both Toma’s gaming and restaurant operations. So even if we were to view Toma’s gaming activities as a charitable use, Toma has not shown that it was the predominant use for those areas.
40. That leaves three areas in dispute: the bingo hall, the related storage area, and Matthew’s office. Toma claims it used these areas exclusively for charitable purposes by hosting charitable gaming events and donating portions of the proceeds to other charitable organizations. The Assessor counters that Toma’s actions in hosting bingo games and donating some of the proceeds relieved neither human want nor a government burden, noting that several of the organizations to which Toma has donated do not receive

charitable-purpose exemptions under the general exemption statute, even if they receive religious-purpose or educational-purpose exemptions.

41. We start with the premise that merely because bingo is authorized under the statutes as “charitable gaming,” does not mean that bingo is a charitable activity for the purpose of property tax exemption. The parties stipulate that the act of holding bingo games is not, in and of itself, a charitable activity under the exemption statute. And the Tax Court has distinguished gambling activities as recreational rather than a charitable use. *See Fraternal Order of Eagles #3988, Inc. v. Morgan Cty. Prop. Tax Assessment Bd. of App.*, 5 N.E.3d 1195, 1202 (Ind. Tax Ct. 2014) (“[T]he administrative record shows that Eagles used its property both for a variety of social and recreational purposes (*e.g.*, *gambling*, *drinking*, *dancing*, *karaoke*, *pool/dart tournaments* and *general relaxation*) and for charitable purposes (*e.g.*, *fundraisers and donations.*”)) (emphasis added). We conclude that there are no inherently charitable activities, i.e. relief of human want, taking place at either the restaurant or the bingo hall.
42. This is not to suggest that a facility predominantly used for raising funds to donate to other charitable operations could not be exempt under I.C. § 6-1.1-10-16(a). While charitable giving might serve as evidence to support a claimed charitable use, the statutory test is the property’s predominant use—not the distribution of income for charitable purposes. *State Bd. of Tax Comm’rs v. New Castle Lodge #147, Loyal Order of Moose, Inc.*, 765 N.E.2d 1257, 1263 (Ind. 2002). In order to prevail here, Toma would be required to show that the predominant use of the bingo hall, gaming, is to raise funds for charitable purposes.
43. But that is not what the facts show. First, Toma operates the entire facility, restaurant and bingo hall, as one entity. Toma’s use of the subject property—including the bingo hall and related areas—is intertwined with, and supportive of, the Tsuleff family’s business: operating restaurants. Matthew’s salary from Toma is his only source of income. And while Toma internally keeps separate books for the Bar & Grill and Harmony Bingo, the two operations are functionally connected: Harmony’s gaming

activities drive business for the Bar & Grill. Gaming patrons order food from the restaurant and drinks from the bar. There is even a pick-up window for them to place orders and receive their food, although they must order and drink alcoholic beverages in the bar. Finally, Toma pays the property's mortgage solely with its charitable gaming revenue.

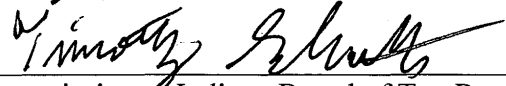
44. In sum, the vast majority of the proceeds from the gaming operations are used to maintain the restaurant's solvency, not charitable donations. In Matthew's own words, Toma does not "have to give a penny" on its gaming receipts. Indeed, it donated only 19.8% of its gaming revenue less prize payouts for the September 2021 to August 2022 accounting period. While we have enough information to conclude that some of Toma's donees might have charitable, religious, or educational purposes within the meaning of I.C. § 6-1.1-10-16(a), we have little or no information about others. And the information we do have about 3 Rivers Yoga Foundation tends to show that it does not have an exempt purpose. More importantly, Toma offered no evidence about who received donations from COH, assuming COH, which like Toma was not subject to the 90/60 rule, even made donations. And COH used the bingo hall from September 2022 through the end of the year.
45. Thus, even if Toma's donations are relevant, they do not suffice to show that it predominantly used any portion of the subject property for charitable purposes.

## V. CONCLUSION

46. Contrary to Toma's assertions, nothing in Indiana's charitable gaming statutes shields the subject property from ad valorem taxation. And Toma's gaming operations, which themselves are social and recreational activities, were intertwined with Toma's operation of a restaurant-bar. The mere fact that Toma donated some of the proceeds from its gaming operations to organizations that might have charitable purposes does not suffice to show that any part of the property was predominantly used for charitable purposes. Toma therefore failed to prove it was entitled to an exemption for the subject property. We find for the Assessor and order no change.

DATE: SEP. 26, 2015

  
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 of 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>.