



STATE TAX COMMISSION OF MISSOURI

STANLEY M HERZOG)	Appeal No. 21-32092
CHARITABLE FOUNDATION,)	Parcel/locator No(s): 05-301-00-01-005-01
)	
)	
Complainant(s),)	
)	
v.)	
)	
TRACY BALDWIN, ASSESSOR,)	
CLAY COUNTY, MISSOURI,)	
Respondent.)	

ORDER REVERSING **HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW**

HOLDING

On August 26, 2022, State Tax Commission (STC) Senior Hearing Officer Erica Gage (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Clay County Board of Equalization (BOE) and finding the subject property was not exempt from ad valorem taxation as of January 1, 2021. Stanley M. Herzog Charitable Foundation (Complainant) subsequently filed a timely Application for Review of the Decision of the Hearing Officer. Tracy Baldwin, Assessor, Clay County, Missouri, (Respondent) filed a Response to Complainant’s Application for Review.

We REVERSE the Decision of the Hearing Officer. Segments of the Hearing Officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The record reveals that the subject property is located at 105 NW 188th St, Smithville, in Clay County, Missouri. The parcel/locator number is 05-301-00-01-005-01. The subject property consists of a 7.9988 acre lot. Complainant is organized as a Missouri not-for-profit organization and is exempt from income taxation under Section 501(C)3 of the Internal Revenue Code. Complainant is exempt from paying sales and use taxes in Missouri. Complainant purchased the subject property in 2020. The subject property was vacant land split from a larger parcel owned by a different exempt entity when Complainant purchased it.

On March 18, 2021, Complainant filed an application for exemption from property taxes for the subject property with Respondent on the basis that the Complainant was a charity and the subject property was being used regularly and exclusively for charitable purposes as of January 1, 2021. Complainant declared that its purpose was to "provide funds to support Christ-centered, non-denominational, Protestant Christian Schools." Complainant declared that the actual use of the subject property was as the location of Complainant's headquarters. The specific uses of the property eventually also would be as a training facility and headquarters to train teachers, school administrators and workers, and short-term residential facilities. On January 1, 2021, Complainant's headquarters still were under construction on the subject property. A letter dated March 19, 2021, accompanied Complainant's application for exemption. The letter stated in part that the

“construction process is ongoing at the moment and no detailed timeline can be provided due to the current COVID-19 pandemic which is causing delays in the delivery of construction materials.”

Respondent subsequently denied Complainant’s request for exemption of the subject property as of January 1, 2021. Complainant appealed to the BOE, which also denied Complainant’s request for exemption of the subject property as of January 1, 2021.

Complainant timely filed an appeal with the STC claiming that the subject property was exempt from ad valorem property taxation pursuant to Article X, Section 6 of the Missouri Constitution and Section 137.100¹ for tax year 2021 because Complainant was a not-for-profit organization that owned and operated the property for a charitable purpose. The parties waived an evidentiary hearing and submitted the appeal on the record of evidence and exhibits and the written briefs of the parties. In its opening written brief before the Hearing Officer, Complainant stated that “the ultimate issue is whether or not the subject property was used for an exempt purpose on January 1, 2021. More specifically, the issue is whether or not the construction of Complainant’s headquarters, while not yet complete, qualifies under Missouri law as tax exempt status.” The Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law affirming the BOE’s determination that the subject property was not exempt from ad valorem real property taxes as of January 1, 2021.

¹ All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

Complainant filed a timely Application for Review. The STC thereafter issued its Order allowing the Application for Review and granting Respondent time to file a response. Respondent filed a response.

CONCLUSIONS OF LAW

Complainant's Point on Review

Complainant asserts the Hearing Officer's Decision should be reversed and the subject property should be exempt from ad valorem taxation as of January 1, 2021, because Complainant's evidence established that all three elements of the *Franciscan* test were met. This Commission agrees.

Standard of Review

A party subject to a decision and order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). "The extent of that review extends to credibility as well as questions of fact." *Lebanon Properties I*, 66 S.W.3d at 770. The

Commission “is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to.” *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

Commission’s Ruling

For the reasons that follow, the Commission finds Complainant’s arguments to be persuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer’s Decision, the Application for Review of Complainant, and Respondent’s Response reverses the hearing officer’s Decision and finds the subject property was exempt as of January 1, 2021.

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE’s assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” *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. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

The hearing officer is the fact finder and the relative weight to be accorded any relevant factor in a particular case is for the hearing officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

Article X, Section 6, of the Missouri Constitution sets forth property exempt from ad valorem taxation. It states, in part:

All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; *and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and*

horticultural societies, or for veterans' organizations may be exempted from taxation by general law.

(Emphasis added.)

The Constitution authorizes the legislature to enact exemptions from taxation. Section 137.100 expressly lists properties qualifying for exemptions from taxation for state, county or local purposes, including, in relevant part:

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or 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

(Emphasis added.)

Taxation of property is the rule and exemption from taxation is the exception. *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 799 (Mo. banc 1990). Tax exemptions are not favored in the law and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 844 (Mo. banc 1987); *State ex rel. Union Electric Co. v. Goldberg*, 578 S.W.2d 921, 923 (Mo. banc 1979). A property owner who claims the exemption bears a substantial burden to prove that his property falls within the exempted class. *United Cerebral Palsy Ass'n of Greater Kansas City*, 789 S.W.2d at 799.

Section 137.100(5) provides that real and personal property actually and regularly used for purely charitable purposes is exempt from taxation for state, county, or local

purposes. The Missouri Supreme Court set forth the test for exemptions in *Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213 (Mo. banc 1978).

In order to qualify for an exemption based upon charitable use of the property, it must be established that:

- 1) The property is dedicated unconditionally to the charitable activity;
- 2) The property is owned and operated on a non-for-profit basis; and
- 3) The dominant use of the property is for the benefit of an indefinite number of people and directly or indirectly benefits society.

In *Franciscan*, the Missouri Supreme Court established the criteria for determining whether a property is exempt. The criteria have been restated and reinforced in subsequent cases such as *Pentecostal Church of God v. Hughlett*, 737 S.W.2d 728 (Mo. banc 1987) and *Senior Citizens Bootheel Services, Inc. v. Dover*, 811 S.W.2d 35 (Mo. App. W.D. 1991).

With regard to the first and second elements of the *Franciscan* test, the record before us in this case established that the parties did not dispute the subject property was dedicated unconditionally to a charitable activity and that the subject property was owned and operated on a not-for-profit basis. The parties disputed the third element of the *Franciscan* test, i.e., whether the dominant use of the subject property was for the benefit of an indefinite number of people and directly or indirectly benefits society. The Hearing Officer specifically found that the subject property did not satisfy the third element because

Complainant's awards of funds to further Christian education did not benefit an indefinite number of people.² We disagree with this finding.

The evidence in the record established that Complainant's charitable purpose is to advance Christian faith based education through the provision of funding in the form of grants, scholarships, awards, training, and other resources, all of which are available to all persons regardless of their denominational or religious affiliation. The evidence in the record also established that Complainant had awarded funds to "various Christian church schools that are not Protestant, including those of the Catholic, Lutheran, and other Christian faiths . . . even students who are not of Christian faith, but wish to attend a Christian school" The evidence further established that Complainant did not limit its awards of funds to only certain schools, individuals, or specific categories of persons but instead offered the opportunity to receive awards to anyone, an indefinite number of people, seeking a Christian faith based education. Unquestionably, providing resources for individuals, groups, and schools for the purpose of furthering education either directly or indirectly benefits society. Complainant's dominant use of the subject property as a physical headquarters to facilitate the provision of funding in the form of grants, scholarships, awards, training, and other resources was tailored to Complainant's implementation of its charitable purpose.

² The Hearing Officer also found that Complainant was not entitled to exemption on the basis of "educational purpose" because Complainant provided support for schools rather than providing schools. Given our determination that Complainant met its burden of proof establishing the subject property qualified for exemption on the basis of "charitable purpose," we find it unnecessary to analyze whether the subject property qualified for exemption on the basis of "educational purpose."

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, in these appeals, Complainant had the burden of rebutting the correctness of the BOE's determination. We find that the substantial and persuasive evidence in the record established the BOE presumption was rebutted and that the subject property should have been deemed exempt as of January 1, 2021.

ORDER

The Decision of the Hearing Officer is REVERSED. The subject property was exempt as of January 1, 2021.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED June 30, 2023.
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 30th day of June, 2023, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Stacy M. Ingle
Legal Assistant



STATE TAX COMMISSION OF MISSOURI

STANLEY M HERZOG) Appeal No. 21-32092
CHARITABLE FOUNDATION,) Parcel/locator No(s): 05-301-00-01-005-01
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Complainant(s),)
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v.)
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TRACY BALDWIN, ASSESSOR,)
CLAY COUNTY, MISSOURI,)
Respondent.)

DECISION AND ORDER

Stanley M Herzog Charitable Foundation (Complainant) (hereinafter “Foundation”) appeals the Clay County Board of Equalization's (BOE) decision finding the subject residential property is not exempt from ad valorem taxation and that its true value in money (TVM) was \$348,400 as of January 1, 2021. Complainant asserts the subject property is exempt from ad valorem taxation due to educational and charitable purposes. Complainant did not produce substantial and persuasive evidence showing the subject property is exempt. The BOE decision is AFFIRMED.³ The parties waived their opportunity for an

³ Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

evidentiary hearing and agreed to submit the appeals on the record.⁴ Complainant, represented by counsel, Jerome Brant, and Respondent, represented by counsel, Lucas Wallingford, each submitted their respective evidence for appeal on the record. In addition to exhibits, Complainant and Respondent timely submitted briefs and Complainant submitted a responsive brief, all of which are incorporated into the record.

FINDINGS OF FACT

1. Subject Property. The subject property is located at 105 NW 188th St, Smithville, in Clay County, Missouri. The parcel/locator number is 05-301-00-01-005-01.

The subject property consists of a 7.9988 acre lot, which on January 1, 2021, was under construction for the headquarters of the Foundation. The subject property was purchased by Complainant in May 2020. The specific uses of the property will be as a training facility and headquarters to train teachers, school administrators and workers, and short-term residential facilities.

2. Respondent and BOE. Respondent classified the subject property as commercial and determined the TVM on January 1, 2021, was \$348,400. Complainant appealed Respondent's 2021 assessment and claimed a charitable and educational exemption. The BOE classified the subject property as commercial and independently determined the TVM on January 1, 2021, was \$348,400.

⁴ Section 138.431.5 provides the "hearing officer, after affording the parties reasonable opportunity for fair hearing, shall issue a decision and order affirming, modifying, or reversing the determination of the BOE, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious."

3. Complainant's Evidence. Complainant submitted Exhibits A through AA and Written Direct Testimony (WDT) of Darrell Jones. All exhibits were admitted into evidence and are summarized as follows:

Exhibit	Description
A	Commercial Construction Contract A201-2007
B	Mailer for subject property construction project
C	Gastinger Walker letter conception design for construction proposal of subject property
D	Nonprofit Analytics form
E	RSC Evaluation
F	Nonprofit Analytics Instructions
G	Grant Application
H	Grant announcement dated August 4, 2021
I	Vision Guidebook
J	Subject Property Deed
K	Email from Shannon Galloway to Barbara O'Riley dated May 13, 2021
L	Email from Shannon Galloway to Lucas Wallingford dated May 17, 2021
M	Clay County Real Estate Tax Statement for subject property year 2021
N	Tax payment receipt for subject property year 2021
O	Articles of Incorporation
P	Certificate of Incorporation
Q	Certificate of Amendment
R	Articles of Amendment
S	Bylaws
T	Internal Revenue Service Form 1023, Application for Recognition of Exemption
U	Internal Revenue Service, Return of Private Foundation for 2019
V	Internal Revenue Service Return of Private Foundation for 2020
W	2021 Letter for Application for Recognition of Exemption
X	Missouri State Sales Tax Exemption
Y	Commercial Construction Contract B133-2019
Z	Gastinger Walker letter, dated July 1, 2020 for construction proposal of subject property

AA	Grants Scholarships and Awards Summary for 2020 – present date
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Complainant submitted the WDT of Darrell Jones, who serves as President of the Stanley M Herzog Charitable Foundation. Mr. Jones testified the Foundation is a 501(c)(3) nonprofit whose “purpose is to advance the K-12 Christian Education in the USA”. (WDT and Exhibit I & S). Mr. Jones testified the Foundation purchased the subject property in order to “carry out the Foundation’s purpose and [serve] as its headquarters; this will include hosting training events, generating both online audio and/or video content for professional development and community education” and will not be used for investment, profit, or rented for income. (WDT at 3). Complainant’s submitted the Foundation’s organizational documents, federal tax exempt status and contracts for construction. (Exhibits A-I and O-AA). The Vision Guidebook explains the subject property will be a national epicenter for the support and growth of Christian K-12 education in the United States and a constant hub of activity for visitors from all reaches of the U.S. as well as a home base for the Board of Directors and Staff carrying out the daily mission and programs of the Foundation. (Exhibit I). Complainant also submitted correspondence with Clay County Assessor’s office and Clay County tax information for the subject property. (Exhibits J – N).

4. Respondent's Evidence. Respondent submitted Exhibit 1 through 18 and WDT of Shannon Galloway.

Exhibit	Description
1	Property Record Card
2	Clay County Land Market Summary 2021

3	Assessors Manual Ch. 2 Classification Exemption Appeals
4	Missouri Charitable Property Tax Exemption Handout
5	Application for Exemption
6	IRS application for Exemption
7	BOE letter
8	Complainants Answers to Respondent's First Interrogatories
9	Complainant's Response to Respondent's First Request for Production of Documents
10	Construction Contract
11	Mailer for Subject Property Construction Project
12	Gastinger Walker Letter conception design for construction proposal of subject property
13	Nonprofit Analytics Form
14	Nonprofit Analytics Instructions
15	RSC Evaluation
16	Grant Application
17	Organizational Questionnaire
18	Vision Guidebook

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).

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). "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 839 (Mo. banc 1977).

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).⁵ 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

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.*

⁵ *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").

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).

In pertinent part, section 137.100(5) 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.* Complainant's evidence does determine that the property will be used exclusively for charitable purposes as headquarters of the Foundation, therefore this portion of the *Franciscan* test is met by clear and unequivocal evidence.

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.* Complainant's evidence does determine that the property is not held for private or corporate profit used only as the Foundation's meeting space, therefore this portion of the *Franciscan* test is met by clear and unequivocal evidence.

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. Respondent argues in their post hearing brief that Complainant cannot claim exemption under this prong due because "Complainant will restrict its benefits to solely those "K-12 Christian Schools" that (WDT of Darrell Jones, p. 2) it privately chooses to fund" (Respondent's Brief at 19). Complainant argues their organization is for the benefit of those schools and individuals who apply, who could be an indefinite number, regardless of their faith or lack thereof, wishing to attend a Christian school and that through the support they provide, they indirectly benefit society generally. (Complainant's Response Brief at 9).

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 826, 830 (Mo. banc 1945) (quoting *In re Rahn's Est.*, 291 S.W. 120, 128 (Mo.1926)).

The record shows the educational benefits of the donations made by Complainant are available only to those who apply and then those whom Complainant chooses to benefit. Complainant asserts that their monetary donations establish a benefit to an indefinite number of people because any child can attend a private Christian school despite their personal religious beliefs. While it is true that the numbers of children educated is mathematically indefinite, Complainant's burden of proving a benefit to an indefinite number of people entails a showing that the alleged educational service is “public.” *Evangelical Ret. Homes*, 669 S.W.2d at 554. To the extent the financial support Complainant provides is available only to certain populations, a property is not used exclusively for purposes purely charitable. *Frisco Emp. Hosp. Ass'n v. State Tax Comm'n*, 381 S.W.2d 772, 779 (Mo. 1964). Consequently, standing alone, the fact that any person

may benefit from Christian education does not establish that Complainant is providing a benefit characterized as “public.”

Consequently, the subject property is not exempt from ad valorem taxation for tax year 2021.

School and Colleges Exemption

Complainant asserts the subject property is exempt from taxation pursuant to section 137.100(5) because it is used exclusively for schools and colleges and is not held for private or corporate profit.

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

All property, real and personal, actually and regularly used exclusively ... for schools and colleges ... 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[.]

Section 137.100(5) requires a taxpayer to prove the property is: (1) actually, regularly, and exclusively used for schools and colleges; and (2) not held for private or corporate profit.

Complainant stated that “the organization does not anticipate operating any schools. However, supporting Christ-centered, non-denominational, Protestant Christian schools is the primary function of the organization.” (Exhibit T). Property is "used exclusively" for an exempt purpose when that purpose is "the primary and inherent use as over against a mere secondary and incidental use." *Cent. States Christian Endeavors Ass'n v. Nelson*, 898 S.W.2d 547, 549 (Mo. banc 1995). A secondary or incidental non-educational use does

not preclude a finding the property is used exclusively as a school or college if such use "does not interrupt the exclusive occupation" of the property for an exempt purpose and instead "dovetails into or rounds out that purpose[.]" *Id*; see also *Midwest Bible & Missionary Inst. v. Sestric*, 260 S.W.2d 25, 30 (Mo. 1953) (holding a building was "used exclusively" for school purposes because the faculty housing at issue was part of the "entire integrated system of the" school's mission).

The evidence has established the property is used for non-profit purposes, but as its primary and inherent use is not in the operation of a school, but merely in support of Christian schools, there was not substantial and persuasive evidence presented to qualify the subject property for the educational exemption.

CONCLUSION

Complainant failed to meet its burden of proof to present substantial and persuasive 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). Accordingly, the subject property was not exempt for ad valorem assessment purposes as of January 1, 2021.

ORDER

The BOE's decision is affirmed. The taxable TVM of the subject property on January 1, 2021, was \$348,400.

Application for Review

A party may file with the Commission 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, 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 Clay County, as well as 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 said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED August 26, 2022.
STATE TAX COMMISSION OF MISSOURI

Erica M. Gage
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 August 26th, 2022, to:

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

Noah Shepard
Legal Coordinator