



STATE TAX COMMISSION OF MISSOURI

MERCY HEALTH,)
)
Complainant,)
) Appeal No. 19-34015
v.) Parcel No. 19-4.0-18.0-0-001-015
)
ROBERT BOYER, ASSESSOR,)
JEFFERSON COUNTY, MISSOURI,)
)
Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On August 26, 2022, a State Tax Commission (STC) hearing officer (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Jefferson County Board of Equalization (BOE) and finding that the subject property was exempt from *ad valorem* taxation as of January 1, 2019, pursuant to Section 137.100(5). Robert Boyer, Assessor, Jefferson County, Missouri, (Respondent) subsequently timely filed an Application for Review of the Decision of the Hearing Officer. Mercy Health (Complainant) timely filed a response.

We AFFIRM 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 a commercial property is commonly known as the Jefferson County Cancer Center and is located at 1350 U.S. Highway 61 in Festus, Missouri. The subject property consists of a 2.33-acre lot improved with an approximately 20,370-square-foot medical office building. The record owner of subject property is Mercy Health East Communities (MHEC), a Missouri non-profit corporation. Complainant is both the "Corporate Member" and "sole member" of MHEC. MHEC is a wholly-owned subsidiary of Complainant. Complainant and MHEC are both organized exclusively for charitable purposes. MHEC controls Mercy Hospital Jefferson, which operates the subject property, the Jefferson Count Cancer Center.

Complainant's bylaws provide the "general purpose of the Corporation shall be to extend the religious apostolate and charitable services of Mercy Health Ministry." (Ex. L at 2)¹ The MHEC bylaws similarly provide the corporation "shall, itself, operate exclusively for charitable, religious, educational, and scientific purposes[.]" (Ex. H at 3) MHEC "shall operate ... to serve the mission of [Mercy Health Ministries], in its charitable, apostolate and health services ... to witness Christ's concern for the care of the sick and injured ... and ... to enhance the quality of life and benefit the residents of the communities served by" Complainant. (*Id.* at 3)

¹ All citations to corporate documents refer to the page number on the submitted Exhibit.

The substantial and persuasive evidence in the record established that Mercy Hospital Jefferson leases a portion of the subject property to Mercy Clinic pursuant to an Intercompany Agreement (ICA). *See* Ex. M. The evidence further established that the ICA was used for compliance with federal law, which prohibits physicians from referring care to entities with which the physician has a financial relationship. *See* Ex. R. The evidence established that rent payments under the ICA are an internal charge for accounting purposes and that all occupants of the subject property are departments of Mercy Health. The evidence also established that Complainant is a non-profit corporation and does not distribute any profits to any person or entity; any excess revenue is reinvested into Complainant's facilities, capital improvements, or any other non-profit use that supports its ministries.

On June 17, 2019, MHEC submitted a Tax Exempt Status Application with the Jefferson County Assessor's Office in which it requested a 100% exemption from real property and/or personal property taxes for the subject property. *See* Exhibit G, p. 3. In its application, MHEC explained that the subject property "is a cancer center. Activities include cancer treatment, such as chemo therapy and radiation, counseling services, and other related health services." *Id.*, p. 4. MHEC explained that "[t]he property provides essential medical services, which improves the morale, health, and well-being of the general public." *Id.*

On August 8, 2019, Respondent determined that 25% of the subject property's improvements would be assessed while the remaining 75% of the improvements, as well

as the land, would be exempt. *See* Ex. O. Respondent issued a letter to Complainant explaining the determination:

This decision was made based on the lease agreement between Mercy Hospital Jefferson and Mercy Clinic Oncology and Hematology. Income received from the lease of the property makes this portion of the Cancer Center taxable.

See Ex. P.

MHEC appealed Respondent's assessment to the BOE. The BOE determined the subject property was 75% exempt and 25% taxable, resulting in an appraised value of \$1,141,000 and an assessed value of \$365,200.

Complainant timely filed an appeal with the STC claiming 100% of the subject property was exempt from *ad valorem* property taxation pursuant to Article X, Section 6 of the Missouri Constitution and Section 137.100² for tax year 2019 because Complainant was a not-for-profit organization that owned and operated the property on a non-profit basis for a charitable purpose. Following an evidentiary hearing, the Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law setting aside the BOE's determination and finding that the subject property was exempt from *ad valorem* real property taxes as of January 1, 2019.

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

² All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

CONCLUSIONS OF LAW

Respondent's Points on Review

Respondent asserts the Hearing Officer's Decision should be set aside because:

- (1) The Hearing Officer erred in finding that Complainant's appeal should not be dismissed because Complainant is not the owner of the subject property and, therefore, lacked standing to appeal; and
- (2) Even if the Commission finds the appeal should not be dismissed, the Hearing Officer erred in finding that the subject property should be 100% exempt and not 75% exempt from *ad valorem* property taxation as of January 1, 2019, because Complainant's evidence failed to establish all three elements of the *Franciscan* test, i.e., the subject property's leases with separate corporate entities, who pay rent to MHEC, are for-profit entities, and Complainant failed to present evidence to show that such profits were used for charitable purposes.

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 Respondent’s arguments to be unpersuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer’s Decision and the Application for Review of Complainant, affirms the Hearing Officer’s Decision.

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).

Motion to Dismiss

The record reflects that Complainant is a Missouri non-profit corporation. Complainant is both the "Corporate Member" and "sole member" of MHEC. (Ex. H at 1, 4) MHEC is a wholly-owned subsidiary of Complainant. Complainant and MHEC are both organized exclusively for charitable purposes. In concluding that Complainant had standing in this appeal, the Hearing Officer examined at length the facts in *Herky, LLC v. Holman*, 277 S.W.3d 702 (Mo. App. E.D. 2008), as compared to the facts presented in the instant case and specifically found:

Similar to the Developers in *Herky*, Complainant "retained an interest in the litigation" and stands to "enjoy the benefits of a successful appeal" by obtaining a reduced tax burden on its wholly-owned subsidiary and, by

extension, itself.³ Complainant is authorized to prosecute the underlying appeal.

Standing is a question of law. *Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). “Parties seeking relief ‘bear the burden of establishing that they have standing.’ ” *St. Louis Ass'n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 622 (Mo. banc 2011), quoting *Manzara*, 343 S.W.3d at 659. Standing essentially means the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote. *St. Louis Ass'n of Realtors*, 354 S.W.3d at 622-23. “To assert standing successfully, a plaintiff must have a legally protectable interest.” *Id.* at 623. “A legally protectable interest exists only if the plaintiff is affected directly and adversely by the challenged action or if the plaintiff’s interest is conferred statutorily.” *Id.*

The Missouri Supreme Court has held:

Standing is a jurisdictional matter antecedent to the right to relief . . . It asks whether the persons seeking relief have a right to do so . . . Where, as here, a question is raised about a party's standing, courts have a duty to determine the question of their jurisdiction before reaching substantive issues, for if a party lacks standing, the court must dismiss the case because it does not have jurisdiction of the substantive issues presented. Lack of standing cannot be waived.

³ Respondent emphasizes the fact Complainant and MHEC are separate corporations with separate legal existence. (Resp. Mem. in Supp. at 2, 4-5) The fact Complainant and MHEC are separate corporate entities is not conclusive as to whether Complainant is a real party in interest. The real party in interest analysis presupposes the existence of distinct parties and provides a mechanism for determining which party is entitled to prosecute the appeal. Thus, the purpose of the analysis is "to enable those who are interested in the subject matter of the action and entitled to the benefits of the litigation to be those who maintain the action." *Herky*, 277 S.W.3d at 704.

Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. banc 2002).

Here, the Hearing Officer correctly denied Respondent's motion to dismiss.

Complainant had standing to appeal the BOE's decision regarding exemption because Complainant was the real party in interest. Complainant, as the sole member of and parent organization to MHEC, was directly affected by the determination that 25% of the subject property was taxable. Complainant had a legally protectable interest in whether the subject property was partially exempt or wholly exempt.

Exemption

Article X, Section 6, of the Missouri Constitution sets forth qualifying property exempt from *ad valorem* property 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

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 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).

In this case, with regard to the first element of the *Franciscan* test, the Hearing Officer properly found that the substantial and persuasive evidence established that the subject property is used as a cancer treatment facility dedicated unconditionally to the charitable activity of providing medical care to cancer patients. As to the subject property's leases with separate corporate entities who pay rent to MHEC, the Hearing Officer found:

The fact Complainant executed lease agreements with other *nonprofit* corporations does not necessarily preclude a charitable exemption. Instead, "the requirements of [Section 137.100(5)] are met if the property's use is purely charitable, irrespective of the number of charities using the property, and no private or corporate profit is intended." *United Cerebral Palsy Ass'n*, 789 S.W.2d at 801. . . .

Unlike a lease to an unaffiliated tenant or an expressly for-profit, commercial lease, the ICA is an agreement between Complainant and its affiliated, wholly-owned, *nonprofit* subsidiaries. The leases created by the ICA are designed to satisfy an exception to a federal statute regulating physician referrals to entities with which the physician has a financial relationship. Viewed in the context of the fact Complainant and its subsidiaries are organized exclusively for charitable purposes and in fact provide those services at the subject property, the ICA serves to facilitate Complainant's charitable mission by allowing referrals to other physicians within Complainant's nonprofit corporate umbrella. The ICA does not interrupt Complainant's actual, regular, and exclusive use of the subject property for charitable purposes.

See Decision at p. 25-26 (emphasis added).

We agree with these findings; the record supports the conclusion that the subject property's use as a cancer treatment facility is indeed charitable. In other words, Complainant's use of the property is *not* for a commercial, profits-driven purpose even though Complainant leases portions of the subject property to other nonprofit entities.

With regard to the second element of the Franciscan test, i.e., whether the subject property was owned and operated on a not-for-profit basis, the evidence established that as of January 1, 2019, the entire subject property was owned by a not-for-profit organization and operated on a not-for-profit basis. Respondent argues there is evidence in the record of profit earned by MHEC. The Hearing Officer found:

Respondent briefly testified some of the subject property was used as a gift shop. The existence of a gift shop does not necessarily negate the claimed exemption. Whether a gift shop, book store, or similar use is exempt or non-exempt is a fact-specific inquiry utilizing the three elements of the *Franciscan* test. *Sunday Sch. Bd. of S. Baptist Convention v. Mitchell*, 658 S.W.2d 1, 6-7 (Mo. banc 1983) (holding a religious bookstore was not exempt because the facts did not satisfy the Franciscan test). Aside from Respondent's brief testimony the subject property included a gift shop, there is no evidence the gift shop was inconsistent with Complainant's use of the property for charitable purposes.

We agree with these findings. The record supports the Hearing Officer's finding that there is substantial and persuasive evidence of not-for-profit ownership and operation of the subject property.

With regard to the third element of the *Franciscan* test, the Hearing Officer properly found that the substantial and persuasive evidence established that the dominant use of the subject property is as a medical facility used to provide medical care to the public. There is no evidence in the record showing these facilities are reserved to members of an

exclusive, non-public group or association.

Given the evidence in the record, we agree with the Hearing Officer's findings and conclusions. The Hearing Officer found that Complainant presented substantial and persuasive evidence establishing the subject property was exempt as of January 1, 2019. The record supports the Hearing Officer's findings. The Commission finds that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in setting aside the BOE's determination and finding the subject property exempt as of January 1, 2019.

ORDER

The Decision of the Hearing Officer is AFFIRMED. The Decision of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, in this final decision of the Commission.

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 Jefferson 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 August 11, 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 11th day of August, 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

MERCY HEALTH,)
)
 Complainant,)
) Appeal No. 19-34015
 v.) Parcel No. 19-4.0-18.0-0-001-015
)
 ROBERT BOYER, ASSESSOR,)
 JEFFERSON COUNTY, MISSOURI,)
)
 Respondent.)

DECISION AND ORDER

Mercy Health (Complainant) appeals the Jefferson County Board of Equalization's (BOE) decision finding the appraised value of the subject commercial property was \$1,141,400, with an assessed value of \$365,200. Complainant asserts the subject property is exempt from taxation. Respondent filed a motion to dismiss asserting the appeal should be dismissed because Complainant is not the real party in interest. Alternatively, Respondent asserts the subject property is partially exempt. Respondent's motion to dismiss is overruled. The BOE decision is set aside. The subject property is exempt from taxation.⁴

⁴ The evidentiary hearing was conducted by a former STC hearing officer. The appeal was reassigned to the undersigned hearing officer for a decision and order. Section 138.431.2.

Complainant is represented by counsel Apollo Carey. Respondent is represented by counsel Floyd Norrick.

FINDINGS OF FACT

1. The Subject Property. The subject commercial property is commonly known as the Jefferson County Cancer Center and is located at 1350 U.S. Highway 61 in Festus, Missouri. The subject property consists of a 2.33-acre lot improved with an approximately 20,370-square-foot medical office building. The record owner of subject property is Mercy Health East Communities (MHEC), a Missouri non-profit corporation.

2. Complainant. Complainant is a Missouri non-profit corporation. Complainant is both the "Corporate Member" and "sole member" of MHEC. (Ex. H at 1, 4) MHEC is a wholly-owned subsidiary of Complainant. Complainant and MHEC are both organized exclusively for charitable purposes.

Complainant's bylaws provide the "general purpose of the Corporation shall be to extend the religious apostolate and charitable services of Mercy Health Ministry." (Ex. L at 2)⁵ The MHEC bylaws similarly provide the corporation "shall, itself, operate exclusively for charitable, religious, educational, and scientific purposes[.]" (Ex. H at 3) MHEC "shall operate ... to serve the mission of [Mercy Health Ministries], in its charitable, apostolate and health services ... to witness Christ's concern for the care of the sick and injured ... and ... to enhance the quality of life and benefit the residents of the communities served by" Complainant. (Id. at 3)

⁵ All citations to corporate documents refer to the page number on the submitted Exhibit.

3. Assessment and Valuation. Respondent determined the subject property was not exempt. Respondent determined the subject's appraised value as January 1, 2019, was \$4,565,700, with an assessed value of \$1,461,100. MHEC appealed Respondent's assessment to the BOE.

The BOE determined the subject property was 75 percent exempt, resulting in an appraised value of \$1,141,000 and an assessed value of \$365,200. Complainant filed the underlying appeal to the STC.

3. Complainant's Evidence. Complainant introduced Exhibits C, D, H, L, M, O, P, Q, and R. Jill McCart, Complainant's Vice President of Accounting and Reporting, testified regarding Complainant's Exhibits. McCart testified MHEC is a wholly-owned subsidiary of Complainant.

Respondent objected to Exhibits C, D, L, and Q because those documents relate to Complainant, which is not the record owner of the subject property. The hearing officer admitted the exhibits into evidence. Complainant's exhibits are summarized as follows:

Exhibit C	Mercy Health 2016 IRS Form 990 "Return of Organization Exempt from Income Tax"
Exhibit D	Mercy Health 2017 IRS Form 990
Exhibit H	MHEC bylaws
Exhibit L	Mercy Health bylaws
Exhibit M	Intercompany Agreement (ICA) for premises consisting of "4,509 sq. ft" within the "20,372 sq. ft. medical office building" on the subject property. Mercy Hospital Jefferson is the "Landlord" and Mercy Clinic Oncology and Hematology is the "Tenant." The lease runs from February 1, 2018, through January 1, 2023, and establishes base rents ranging from \$11,084.63 per month in Year 1 to \$11,997.70 per month in Year 5.

Exhibit O	Letter from Respondent to the Lewis Rice law firm confirming Respondent agreed the subject property was 75% tax-exempt. Respondent explained the decision to tax 25% of the subject property "was made based on the lease agreement between Mercy Hospital Jefferson and Mercy Clinic Oncology and Hematology."
Exhibit P	Missouri Secretary of State Registration of Fictitious Name for Mercy Clinic Oncology and Hematology.
Exhibit Q	Missouri Secretary of State Articles of Amendment establishing "Mercy Hospital South" as the new name for St. Anthony's Medical Center.
Exhibit R	42 U.S.C. section 1395nn regarding "Limitation on certain physician referrals," referred to as the "Stark Law." 42 U.S.C. section 1395nn(e)(1)(A) provides lease payments "shall not be considered a compensation arrangement" prohibiting referrals to a related entity when the lease is written, has a term of at least one year, is used exclusively by the lessee, and the space does not exceed reasonable needs for legitimate business.

The ICA shows Mercy Hospital Jefferson is the "Landlord" and Mercy Clinic Oncology and Hematology is the "Tenant." (Ex. M, Reference Page) Mercy Hospital Jefferson is a "Related Tax-Exempt Organization" for Complainant. (Ex. C at 58; Ex. D at 58) MHEC is the "direct controlling entity" of Mercy Hospital Jefferson. (Id.) Mercy Hospital Jefferson is controlled by MHEC, which is Complainant's wholly-owned subsidiary.

Mercy Clinic Oncology and Hematology is the business name registered to Mercy Hospital South. (Ex. P) In 2018, St. Anthony's Medical Center was renamed Mercy Hospital South. (Ex. Q) St. Anthony's Medical Center was a tax-exempt organization controlled by MHEC. (Ex. D at 61) McCart's testimony and Complainant's Exhibits show

MHEC controls both parties to the ICA and that MHEC, in turn, is Complainant's wholly-owned subsidiary.

McCart testified the ICA was executed to comply with the physician referral limitations in the Stark Law. The ICA creates lease arrangements to comply with statutory prohibitions on physician referrals to entities with which the physician has a "financial relationship." (Ex. R at 1) McCart testified the ICA does not alter the fact both Mercy Hospital Jefferson and Mercy Clinic Oncology and Hematology are nonprofit corporations wholly owned and controlled by Complainant and its subsidiaries.

5. Respondent's Evidence. Respondent introduced Exhibits 1 through 7. Complainant did not object. Respondent's Exhibits are summarized as follows:

Exhibit 1	Missouri Secretary of State records showing MHEC is a Missouri nonprofit corporation.
Exhibit 2	Missouri Secretary of State records showing Complainant is a Missouri nonprofit corporation.
Exhibit 3	MHEC application for tax exemption filed with Respondent.
Exhibit 4	BOE decision changing the appraised value of the subject property to \$1,141,400 from Respondent's value of \$4,565,700; parcel information report from Respondent' office showing the subject property consists of an approximately 2.33 acre lot improved with a building housing approximately 22,000 square feet of "medical office" space.
Exhibit 5	MHEC complaint for review of assessment filed with STC alleging overvaluation and religious and charitable exemption; attached letter in which Respondent notes "we have determined that twenty-five percent (25%) of the improvement will be assessed ... based on the lease agreement between Mercy Hospital Jefferson and Mercy Clinic Oncology and Hematology." Respondent asserts "[i]ncome received from the lease of the

	property makes this portion of the Cancer Center taxable." The remaining 75% is exempt.
Exhibit 6	MHEC BOE appeal form
Exhibit 7	Intercompany Agreement

Respondent testified the ICA shows a portion of the subject property was not used for nonprofit, charitable purposes because Mercy Clinic Oncology and Hematology was paying rent on 4,509 square feet. Respondent also testified approximately 25% of the building space was a gift shop.

Prior to the evidentiary hearing, Respondent filed a motion to dismiss. Respondent asserted MHEC owns the subject property and, consequently, that Complainant is not authorized to prosecute the appeal. The hearing officer denied the motion, but noted "it remains a question of fact as to whether Mercy Health (as compared to Mercy Health East Communities) has a cognizable interest regarding the ad valorem taxation of the subject parcel." Complainant renewed the motion to dismiss at the evidentiary hearing. The hearing officer indicated the issue would be resolved in the decision and order.

6. Exemption. The subject property is tax-exempt.

CONCLUSIONS OF LAW

1. Respondent's Motion to Dismiss is Overruled. Respondent filed a motion to dismiss Complainant's appeal asserting Complainant is not the "owner of real property" authorized to appeal the assessment to the STC pursuant to Section 138.430.1. Respondent argues the dispositive issue is whether "Mercy Health East Communities or Mercy Health is the real party in interest" pursuant to Rule 52.01. (Resp. Mem. in Supp. at 2)

Complainant asserts the Rule 52.01 "real party in interest doctrine is fundamental" and that "whether Mercy Health is the legal owner of the real estate at issue ... is nothing more than a red herring" employed by Respondent to avoid the merits. (Compl. Response at 1-2) Complainant analogizes this case to *Herky LLC v. Holman*, 277 S.W.3d 702 (Mo. App. E.D. 2008).

In *Herky*, two entities (Developers) sold multiple residential properties in June 2005. Developers filed STC appeals challenging the 2005 assessments against those properties. The STC concluded Developers were not real parties in interest because they no longer owned the properties and therefore lacked standing to appeal the assessments. *Herky*, 277 S.W.3d at 703. The STC also relied on Section 138.430.1, which authorizes appeals by the "owner" of the assessed real property. The circuit court entered a judgment affirming the STC's decision. The court of appeals reversed the judgment. *Id.* at 707.

The court's holding was premised on the proposition "Rule 52.01 requires a civil action to be prosecuted in the name of the real party in interest." *Herky*, 277 S.W.3d at 704.⁶ The critical fact underlying the court's holding was proration agreements with the

⁶ *Herky* is binding precedent, but reliance on Rule 52.01 is questionable. First, the Rules of Civil Procedure "apply to administrative proceedings only when specifically authorized by statute." *State ex rel. Rosenberg v. Jarrett*, 233 S.W.3d 757, 762 (Mo. App. W.D. 2007). No statute or agency regulation authorizes the application of Rule 52.01 to STC proceedings.

Second, the plain language of Rule 52.01 applies to "civil actions," not executive branch administrative agency proceedings. "A civil action is commenced by filing a petition with the court." Rule 53.01. Thus, courts consistently distinguish a "civil action" in court from an administrative contested case proceeding. *See eg., Div. of Emp. Sec. v. Cusumano*, 809 S.W.2d 113, 115 (Mo. App. E.D. 1991) (holding rules regarding personal service did not apply to an administrative proceeding because it "did not become an action pending before a circuit judge until ... the Division filed its request for execution"); *Morris*

new owners making Developers responsible for property taxes accrued from January 2005 through June 2005. *Id.* The court held Developers were real parties in interest entitled to file an STC appeal because:

v. Karl Bissinger, Inc., 272 S.W.3d 441, 443 n.1 (Mo. App. E.D. 2008) (holding the Rules of Civil Procedure applied because the case involved "a civil action filed in circuit court alleging violations of the Missouri Human Rights Act" rather than an "administrative proceeding" filed with an administrative agency"). Likewise, the Missouri Administrative Procedure Act repeatedly draws the same distinction. *See* Sections 538.025 and 536.085 (defining the term "prevails" as obtaining "a favorable order, decision, judgment or dismissal in a civil action or agency proceeding"); Section 536.070(8) (providing privilege rules apply to agency proceedings "to the same extent that they are now or may hereafter be in civil actions"); Section 536.073.1 ("[i]n any contested case before an agency created by the constitution or state statute, any party may take and use depositions in the same manner ... as is or may hereafter be provided for with respect to the taking and using of depositions in civil actions in the circuit court"); Section 536.077 (providing subpoenas in agency proceedings "shall extend to all parts of the state, and shall be served and returned as in civil actions in the circuit court"); Section 587.087.1 (authorizing, in limited circumstances, attorney's fees for a "party who prevails in an agency proceeding or civil action arising therefrom"); Section 536.095 (authorizing administrative agencies to apply to a circuit court for an order of contempt when "any person acts or refuses to act in such manner that a contempt of court would have been committed if the case were a civil action before a circuit court").

Finally, Section 138.430.1 authorizes appeals by the "owner," not the "owner or the real party interest." The plain language of Section 138.430.1 should be dispositive and negate the need to import the inapplicable "real party in interest" provision in Rule 52.01 to aid statutory construction. *See Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (holding that when the plain language of a statute is unambiguous, there should be no "resort to any statutory construction in interpreting the statute"). To the extent the word "owner" is ambiguous, that ambiguity should be resolved with reference to legislative intent inferred from associated statutes rather than by importing an inapplicable procedural rule adopted by a separate branch of government. *See S.M.H. v. Schmitt*, 618 S.W.3d 531, 534 (Mo. banc 2021) (statutory ambiguity should be resolved by reference to "statutes involving similar or related subject matter when the statutes illuminate the meaning of the statute being construed.") By its terms, Rule 52.01 does not apply to STC appeals.

Although the Developers were not the legal property owners when they filed their appeal, they were nonetheless the real parties in interest under the facts of this case because they retained an interest in the litigation by virtue of the proration agreements. Thus, they stood to enjoy the benefits of a successful appeal.

*Id.*⁷

Similar to the Developers in *Herky*, Complainant "retained an interest in the litigation" and stands to "enjoy the benefits of a successful appeal" by obtaining a reduced tax burden on its wholly-owned subsidiary and, by extension, itself.⁸ Complainant is authorized to prosecute the underlying appeal. Respondent's motion to dismiss is overruled.

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). "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).

⁷ In dicta, the court further noted that although "outside the scope this appeal ... the ownership timeline in this case supports the Developers contention that they are the real parties in interest. The Developers owned the property in January 2005, and also on the reassessment date." *Herky*, 277 S.W.3d at 705. Here, there is no indication Complainant was the record owner as of January 1, 2019. Thus, to the extent ownership as of the valuation date is a factor, that factor does not aid Complainant's claim it is the real party in interest.

⁸ Respondent emphasizes the fact Complainant and MHEC are separate corporations with separate legal existence. (Resp. Mem. in Supp. at 2, 4-5) The fact Complainant and MHEC are separate corporate entities is not conclusive as to whether Complainant is a real party in interest. The real party in interest analysis presupposes the existence of distinct parties and provides a mechanism for determining which party is entitled to prosecute the appeal. Thus, the purpose of the analysis is "to enable those who are interested in the subject matter of the action and entitled to the benefits of the litigation to be those who maintain the action." *Herky*, 277 S.W.3d at 704.

3. Charitable Exemptions. 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." Consistent with this constitutional provision, Section 137.100(5) exempts from taxation:

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[.]

"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).⁹

To obtain a charitable exemption, the taxpayer must show the property: (1) is "owned and operated on a not-for-profit basis so that there can be no profit, presently or prospectively, to individuals or corporations;" (2) "dedicated unconditionally to the charitable activity" per the definition of "charity" set forth in *Salvation Army v. Hoehn*, 188

⁹ 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").

S.W.2d 826, 830 (Mo. banc 1945); and (3) that "the dominant use of the property must be for the benefit of an indefinite number of people" and directly or indirectly benefits society generally. *Sunday School Bd. of the Southern Baptist Conv. v. Mitchell*, 658 S.W.2d 1, 5 (Mo. banc 1983) (citing *Franciscan Tertiary Province of Missouri. Inc. v. State Tax Comm'n*, 566 S.W.2d 213 (Mo. banc 1978)).

While tax exemptions are "determined by the facts of each case." *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 800 (Mo. banc 1990), Missouri courts have routinely affirmed decisions granting charitable exemptions to nonprofit healthcare facilities.¹⁰ The substantial and persuasive evidence in the record shows Complainant's use of the subject property satisfies each prerequisite for a charitable exemption.

Actual, Regular, and Exclusive Use for Charitable Purposes

Complainant's evidence shows the subject property is owned by MHEC and used as a cancer treatment facility. MHEC "shall operate ... to serve the mission of [Mercy Health

¹⁰ See eg., *State ex rel. Alexian Bros. Hosp. v. Powers*, 74 Mo. 476 (Mo. 1881) (issuing writ of mandamus ordering St. Louis City assessor to remove nonprofit hospital from assessment roll); *Cnty. Mem'l Hosp. v. City of Moberly*, 422 S.W.2d 290, 297 (Mo. 1967) (granting exempt status because the hospital was not used to make profit but to generate income devoted to "the charitable purpose of operating a hospital for the benefit of all who come to its doors whether as pay or indigent patients"); *Jackson Cnty. v. State Tax Comm'n*, 521 S.W.2d 378, 385 (Mo. banc 1975) (three nonprofit hospitals qualified for tax-exempt status).

Ministries], in its charitable, apostolate and health services ... to witness Christ's concern for the care of the sick and injured ... and ... to enhance the quality of life and benefit the residents of the communities served by" Complainant. (*Id.* at 3) The substantial and persuasive evidence in the record shows the subject is actually, regularly, and exclusively used for charitable purposes.

The analysis is not changed by the fact the ICA required Complainant's wholly-owned, nonprofit subsidiaries to make rent payments. The fact Complainant executed lease agreements with other nonprofit corporations does not necessarily preclude a charitable exemption. Instead, "the requirements of [Section 137.100(5)] are met if the property's use is purely charitable, irrespective of the number of charities using the property, and no private or corporate profit is intended." *United Cerebral Palsy Ass'n*, 789 S.W.2d at 801. When a tax-exempt entity leases property to an unaffiliated tenant and thereby interrupts the exclusive use of the property for charitable or religious purposes, the property is no longer actually, regularly, and exclusively used for charitable purposes. *See St. Louis Gospel Center v. Prose*, 280 S.W.2d 827, 830 (Mo. 1955) (holding a lease to a tenant unaffiliated with a religious organization was a commercial relationship interrupting exclusive use of religious purposes); *Tri-State Osteopathic Hosp. Ass'n v. Blakeley*, 898 S.W.2d 693, 695-96 (Mo. App. S.D. 1995) (holding a clinic owned by nonprofit was not exempt because a lease to a physician provided for the "division of profits" as "incentive compensation," thus showing the property was leased on a "for profit basis").

Unlike a lease to an unaffiliated tenant or an expressly for-profit, commercial lease, the ICA is an agreement between Complainant and its affiliated, wholly-owned, nonprofit

subsidiaries. The leases created by the ICA are designed to satisfy an exception to a federal statute regulating physician referrals to entities with which the physician has a financial relationship. Viewed in the context of the fact Complainant and its subsidiaries are organized exclusively for charitable purposes and in fact provide those services at the subject property, the ICA serves to facilitate Complainant's charitable mission by allowing referrals to other physicians within Complainant's nonprofit corporate umbrella. The ICA does not interrupt Complainant's actual, regular, and exclusive use of the subject property for charitable purposes.

The Subject Property is Owned and Operated on a Not-for-Profit Basis

The substantial and persuasive evidence in the record shows Complainant and MHEC are nonprofit corporations. Both are organized exclusively for charitable purposes. The subject property is not put to any commercial, for-profit use.

Respondent briefly testified some of the subject property was used as a gift shop. The existence of a gift shop does not necessarily negate the claimed exemption. Whether a gift shop, book store, or similar use is exempt or non-exempt is a fact-specific inquiry utilizing the three elements of the *Franciscan* test. *Sunday Sch. Bd. of S. Baptist Convention v. Mitchell*, 658 S.W.2d 1, 6-7 (Mo. banc 1983) (holding a religious bookstore was not exempt because the facts did not satisfy the Franciscan test). Aside from Respondent's brief testimony the subject property included a gift shop, there is no evidence the gift shop was inconsistent with Complainant's use of the property for charitable purposes. Complainant produced substantial and persuasive evidence the subject property was used for nonprofit, charitable purposes. Respondent's brief testimony the property

included a gift shop does not rebut that fact.

Dominant Use for the Benefit of an Indefinite Number of People

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.

Hoehn, 188 S.W.2d at 830 (internal quotation omitted).

The substantial and persuasive evidence in the record shows the dominant use of the subject property is as a medical facility used to provide medical care to the public. There is no evidence showing these facilities are reserved to members of an exclusive, non-public group or association.

CONCLUSION AND ORDER

The BOE's decision set aside. The substantial and persuasive evidence in the record shows Complainant's use of the subject property satisfies each prerequisite for a charitable exemption. The subject property is exempt from taxation pursuant to Section 137.100(5).

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 Jefferson 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 August 26, 2022.

Eric S. Peterson
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 26, 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