

Indiana Super Heroes Must Pay . . . Property Tax

Dentons SALT Insights

Grow | Protect | Operate | Finance

KEY CONTACTS

Mark Loyd
Jeff Bennett
Brad Hasler
Bailey Roese
Stephanie Bruns

In a recent decision, *Hall of Heroes Super Hero Museum, Inc. v. Elkhart County Assessor* (Ind. Bd. of Tax Rev. January 7, 2022), the Indiana Board of Tax Review (“Indiana Board”) denied a museum’s 2020 claim for property tax exemption for education and/or charitable purposes. The Hall of Heroes Super Hero Museum, Inc. (the “Museum”) is dedicated to preserving the 80-year history of superheroes in comics, toys, art, film and animation. The Museum is a not-for-profit corporation, and although it did charge admission fees, it also provided free passes to libraries, schools and local charities. It also conducted educational programs and promoted literacy by supporting a summer reading program, and many of such programs were either free or offered at reduced fees.

The evidence indicated that the Museum did not provide classes on a weekly basis, and it was estimated that classes were only taught during approximately 25% of the time that the museum was open during the 2019 and 2020.

All or part of a building is exempt if it is owned, and exclusively or predominantly used or occupied for educational, literacy, scientific, religious or charitable purposes. IC 6-1.1-10-16(a) and IC 6-1.1-10-36.3(c). Property is predominantly used for a stated purpose if it is used for such purpose more than 50% of the time that it is used in the year that ends on the assessment date. IC 6-1.1-10-36.3. Where a property is not exclusively used for an exempt purpose, the taxpayer must offer evidence comparing the relative distribution of time between the exempt and non-exempt purposes. (Citation omitted).

The evidence showed that the Museum did not hold any classes during 2019, and held classes only approximately 25% of the time through 2020. The Indiana Board therefore concluded that the Museum did not predominantly use the museum for educational purposes during the time in question. Thus, it did not qualify for the educational exemption.

The Museum also claimed an exemption for charitable purposes, which requires evidence of relief of human want, manifested by obvious charitable acts, as well as an expectation that sufficient benefit will inure to the public from such use as to justify the loss of tax revenue. (Citation omitted). In support of its claim, the Museum pointed to *McClain Museum, Inc., vs. Madison County Ass'r.*, 134 N.E.3rd 1096 (Ind. Tax Ct. 2019) in which a museum devoted to honoring America's military history was found to justify such an exemption.

However, the Indiana Board found that the Museum's case was more akin to recreational and hobby activities, and as such was not shown to qualify for a charitable use exemption.

The Indiana Board thus found the Museum's property to be 100% taxable for property tax purposes.

This case shows that nonprofit status alone may not be enough to qualify for a property tax exemption; in many states, including Indiana, not-for-profit organizations are not guaranteed an exemption from property tax. Consider getting assistance in analyzing the relevant facts and circumstances that may be necessary to secure an exemption in Indiana.



STATE AND LOCAL TAX TEAM



Mark A. Loyd
Chair, Tax Department
mark.loyd@dentons.com



Bailey Roese
Partner
bailey.roese@dentons.com



Brett J. Miller
Partner
brett.miller@dentons.com



Stephanie Bruns
Senior Managing Associate
stephanie.bruns@dentons.com



Jeffrey T. Bennett
Partner
jeff.bennett@dentons.com



Brad Hasler
Partner
bradley.hasler@dentons.com



Kelli A. Wikoff
Partner
kelli.wikoff@dentons.com



Kimberly M. Nolte
Associate
kimberly.nolte@dentons.com



Gary R. Thorup
Shareholder
gary.thorup@dentons.com



Eric Smith
Of Counsel
eric.smith@dentons.com



Ronald Aulbach
Shareholder
ronald.aulbach@dentons.com



Sarah Franklin
Shareholder
sarah.franklin@dentons.com



Michael Gilmer
Special Counsel
michael.gilmer@dentons.com



Sidney Jackson
Associate
sidney.jackson@dentons.com

© 2022 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for Legal Notices.

CSBrand-84197 Dentons SALT Insights Indiana Super Heroes Must Pay - Property Tax-02 — 21/03/2022