

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>COLORADO GARDEN SHOW, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 50332</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 26, 2009, Sondra W. Mercier and James R. Meurer presiding. Petitioner was represented by Denise D. Hoffman, Esq. Respondent was represented by Robert H. Dodd, Esq. On June 25, 2009, Karen E. Hart was added to the Board panel to review the evidence and transcript at the request of the Board Members who heard the case. Petitioner is protesting Respondent’s denial of property tax exemption for tax years 2006, 2007, and 2008 for the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**959 South Kipling Parkway Lakewood, Colorado
(Jefferson County Schedule No. 110416; PTA File No. 30-02092-01)**

The real estate that is the subject of this hearing consists of a 4,300 square foot office building located at 959 South Kipling Parkway in the City of Lakewood. This building is single-story with a stucco exterior and has a lot size of approximately three-quarters of an acre. Site improvements consist of landscaping and paving. Petitioner constructed the building in 2005 and currently occupies 3,051 square feet or 71% of the structure. The balance of the building is leased to a tenant. The portion of the building occupied by Petitioner consists of office space and is used for administrative purposes, as well as committee and board meetings.

Petitioner is a non-profit organization that provides horticultural related grants and scholarships. Petitioner produces the Colorado Garden & Home Show, the state's oldest garden and

home show which attracts more than 60,000 visitors annually. A portion of the proceeds raised from the show supports horticultural and related activities throughout Colorado through grants for tree and plant material purchases, school landscape improvements, community gardens, and educational and research programs. In addition, Petitioner provides scholarships for college students who are studying areas such as floriculture, horticultural, turfgrass management, landscape design, or land management. Based on the March 31, 2006 financial statements, Petitioner had total assets of \$3,003,002 and net assets of \$2,433,441. Total revenues from the Colorado Garden & Home Show were \$2,271,693 and expenses were \$1,215,250. To date, Petitioner has awarded more than \$2.5 million for grants and scholarships throughout the state and currently has a reserve fund of approximately \$3.2 million dollars, a portion of which could be used to fund charitable undertakings subject to approval by the board of Colorado Garden Show, Inc.

According to the Amended and Restated Articles of Incorporation, Petitioner:

[I]s organized and shall be operated exclusively for public, charitable or educational purposes In furtherance of such purposes, it may promote, establish, conduct and maintain activities on its own behalf or it may contribute to or otherwise assist other corporations, organizations and institutions carrying on such activities. More particularly and in further of the purposes . . . the Corporation shall provide education and research in the fields of horticulture and gardening, including the sponsoring of an annual garden show; and the betterment of the conditions of persons engaged in horticulture.

Relative to property tax exemption, all property, both real and personal, is subject to property taxation unless specifically exempted by law. Colo. Const. art X; Section 39-1-102(16), C.R.S. The “established rule is that the presumption is against tax exemption, and the burden is on the one claiming the exemption to establish clearly his right thereto.” *United Presbyterian Assoc. v. Bd. of County Comm’rs*, 167 Colo. 485, 496, 448 P.2d 967 (Colo. 1968).

The Colorado Constitution states, “Property, real and personal, that is used solely and exclusively . . . for strictly charitable purposes . . . shall be exempt from taxation, unless otherwise provided by general law.” Colo. Const. art. X, § 5.

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

United Presbyterian, supra, 167 Colo. at 495-96, quoting *Jackson v. Phillips*, 96 Mass. (14 Allen) 539.

In terms of a property tax exemption for the subject property, Petitioner argues its corporation is organized as a 501(c)(3) and is a charitable organization. Petitioner further argues

that the corporation's main purpose is to provide grants scholarships, as well as educational seminars and presentations related to horticulture. Petitioner only awards funds to non-profit organizations in the State of Colorado and the funding for these charitable purposes is derived from the proceeds received from the sponsorships of the annual Colorado Garden & Home Show. Petitioner further argues that they "lessen the burdens of government" by providing municipalities funding for gardens and landscaping. Given the above, Petitioner contends that they should be entitled to an exemption from ad valorem real estate taxes for the 71% of the building that they occupy.

Respondent argues that although Petitioner may in some respects be a charitable organization, the Colorado Garden & Home Show is a commercial venture or trade show rather than a charitable event. Respondent further argues that the fees generated from the show are remunerative and the surplus is not entirely devoted to charitable purposes. Respondent contends that it is the use of the property that determines the right to exemption, and the primary use of the subject property is to produce the commercial event. Respondent disputes that Petitioner exists primarily to lessen the burden of government.

"Eligibility for exemption is determined by examining the use to which the property is put, not the character of the owner." *West Brandt Found., Inc. v. Carper*, 652 P.2d 564, 567 (Colo. 1982).

After a review of the organizational documents, financial statements, and operations, the Board finds that Petitioner's grants and scholarships do benefit an indefinite number of persons by bringing their minds under the influence of education and by assisting them to establish themselves in life. The Board also finds, but to a lesser extent, that the grants assist government by providing funding for public landscaping and educational displays. The Board also acknowledges that Petitioner is a 501(c)(3) corporation with a mission directed towards eleemosynary purposes; however, the fact that Petitioner is exempt from state and federal income taxation as a non-profit organization is not in itself dispositive of its claim for property tax exemption. *West Brandt, supra*, 652 P.2d at 567.

The Board does not consider the Colorado Garden & Home Show to be a fundraising event. Petitioner's own documentation, IRS Form 1023, indicates that a "fundraising program does NOT exist." The Board does acknowledge that some of the funds raised by the Show are used to fund its grants and scholarships.

The Board concludes that the Colorado Garden & Home Show demonstrates the characteristics of a commercial venture that primarily promotes for-profit businesses and not a charitable event. Based on exhibits presented at the hearing, the Colorado Garden & Home Show is publicized as "a marketing and sales machine" with an estimated \$22 million in incremental commerce resulting from the show. Additional promotional language states:

The 50-year old non-profit organization utilizes more floor space, (400,000 square feet), attracts larger audiences (62,500 paid adults), has more exhibitors, (sold out nine months in advance to 650 companies) and invests more in advertising, (\$220,000 paid plus \$233,000 promotional), dwarfing its next closest competitor.

The notoriety and benefit of association of this annual event provides its sponsors with tremendous reach, impact and exposure to reaching and selling to their target customers.

In addition, Petitioner's witness, Mr. Andrew Pierce, Colorado Garden Show, Inc. board member, was asked under direct, "Does the board and/or the show committee view the consumer show as one of the charitable activities that the Garden Show carries out?" Mr. Pierce replied, "Not the actual show, the benefits from the financial side is the charitable part that comes into it, that in turn funds the grants and scholarships."

The Application for Exemption of Property filed by Petitioner specifically states that "our day to day activities are working on the production of that [Colorado Garden & Home Show] event." Considering this statement, as well as testimony during the hearing, the Board concludes that, proportionally speaking, the majority of time spent in the building by the executive director and the staff is directed towards the production of the show. Given that the Board has determined that the Colorado Garden & Home Show is a commercial venture rather than a charitable event, the actual use of the subject property supports a commercial use rather than a solely and exclusively charitable activity.

As noted, the courts have held that the firmly established rule is that the presumption is against the exemption, and the burden is on the one claiming the exemption. Considering this burden and for the reasons stated above, the Board concludes that Petitioner did not present sufficient probative evidence and testimony to prove that the subject property meets the qualifications for real property tax exemption for tax years 2006, 2007, and 2008. The Board applauds the efforts of Petitioner relative to the scholarships and grants it provides to the people of Colorado; however, determines that the subject property is not *used solely and exclusively* for strictly charitable purposes and is therefore not entitled to exemption from real estate tax.

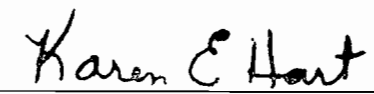
ORDER:

The petition is denied.

BOARD OF ASSESSMENT APPEALS



James R. Meurer



Karen E. Hart

DISSENTING:

To determine whether the subject is entitled to exemption from real property tax, I applied a two step test. First, it was necessary to determine whether the works of Petitioner are strictly charitable:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

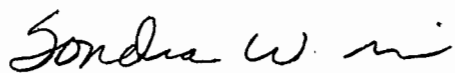
United Presbyterian, supra, 167 Colo. at 495-96, quoting *Jackson v. Phillips*, 96 Mass. (14 Allen) 539.

After a review of the testimony and exhibits, I concluded that Petitioner’s grants and scholarships do benefit an indefinite number of persons by “erecting or maintaining public buildings or works” through the community grant programs and “bringing their minds under the influence of education and by assisting them to establish themselves in life” through scholarship programs. I also found, but to a lesser extent, that the grants lessen the burdens of government by funding public works.

The second test was to determine whether the use of the building was solely and exclusively for strictly charitable purposes, as required by the Colorado Constitution. “Property, real and personal, that is used solely and exclusively . . . for strictly charitable purposes . . . shall be exempt from taxation, unless otherwise provided by general law.” Colo. Const. art. X, § 5.

I found no evidence in testimony or exhibits that indicated any use of the building did not go towards the charitable works of Petitioner. I was convinced that the production of the Colorado Garden & Home Show represented the primary use of the building and that the remaining use of the building was for administration of the funds, grants and scholarships. While Board Members Meurer and Hart indicate that they do “not consider the Colorado Garden & Home Show to be a fundraising event,” I found no evidence in testimony or exhibits that indicated that the profits generated by the event were generated for any non-charitable use. I found no legal support suggesting that the method of funding the charitable works is determinative regarding the exempt status under the Colorado Constitution.

I concluded that the works of Petitioner are *strictly charitable* and that the subject property is *used solely and exclusively* for strictly charitable purposes, as required by the Colorado Constitution and defined by case law; and, is entitled to exemption from real property tax.



Sondra W. Mercier

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

Section 39-2-117(6), C.R.S.

DATED and MAILED this 15th day of October 2009.



I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Heather Flannery