

Taxpayer's Motion for Summary Judgment

Taxpayer BCC's Motion for Summary Judgment focuses on the language of the denial letter from the DOR and asserts that the DOR created criteria for the tax exemption that are not in the statute. The heading of the denial letter read: "Reason for Denial: Chambers of Commerce have not been provided an exemption under the exemption statutes 15-6-201, MCA or 15-6-209, MCA." Taxpayer claims that the DOR denied its application because there was no express language exempting Chambers of Commerce, that this constitutes a discriminatory requirement not in the code and an unlawful expansion of the DOR's authority. The BCC further argues that the DOR cannot now change its reasons for denial by asserting that the BCC does not meet the criteria in the statute because doing so would deny BCC adequate notice of the grounds for denial. The BCC asserts that it qualifies for the exemption under the plain language of the statute.

This Board rejects that tortured reading of the denial letter. The plain reading of the letter, in conjunction with the statutory language referred to in the heading of the denial letter, makes clear that organizations such as Chambers of Commerce are not included in the definition because the Chambers generally do not function as community service organizations. Chambers of Commerce primarily serve the business purposes of the Chamber members.

The BCC has had full notice of the requirements of the exemption statute cited above, and they were addressed by the BCC in its application. As evidenced by Taxpayer's initial application for exemption and by their filings before this Board, the issue is whether they are a nonprofit community service organization that primarily furnishes facilities without charge for community events and BCC had ample opportunity to fully address the issue in its pleadings. *See* Appellant's Response to DOR's Motion for Summary Judgment. We find no lack of notice in the facts before us and we reject the BCC's motion for summary judgment.

DOR's Motion for Summary Judgment

The DOR's Motion for Summary Judgment asserts that the BCC fails to meet the two requirements for the exemption, i.e., it is not a nonprofit community service organization nor does the BCC "primarily furnish facilities without charge." Further, the DOR states that BCC receives rent for a portion of the facility which disqualifies it under §15-6-209(5), MCA.

The DOR asserts that the BCC serves the business interests of its members and is not a community service organization. The DOR points out that the stated mission of the BCC, in its own language, is "to develop a strong business climate and vibrant economy by serving the community in a leadership role, thereby enhancing the quality of life." BCC Application for Exemption, Feb. 23, 2012; BCC 2010 Federal Tax Return of Organization Exempt from Income Tax; BCC Appellant's Response to DOR's Motion for Summary Judgment, Dec. 18, 2012. We agree. While there is no statutory definition of the term "community service organization," the community service the BCC claims to provide is actually in the service of its business members in the Billings area and, thus, the BCC does not meet the plain meaning of the statutory term. Service to the community is incidental to their primary goal of serving the business members of the Chamber. The uncontested facts demonstrate that BCC may allow the public in its facilities and meetings, but the primary purpose of the organization, according to its own government filings, is the advancement of the commercial interest of its members. The Visitor's Center provides information about area businesses for tourists and visitors and the BCC holds regular meetings of various interest groups in the business community.

Furthermore, the DOR asserts the BCC is not an organization that primarily furnishes free facilities to the public, the second part of the statutory test. The DOR points out that while the BCC website references the availability of over 750,000 square feet of meeting space in Billings, none of those meeting spaces are in the BCC

facility. There is no mention of such availability in any of the BCC's literature submitted in this case or BCC's social media submitted to the Board, and the DOR asserts that the meetings that do take place, even if open to the public, are primarily in furtherance of the BCC's business mission. Even taking into account the BCC response stating it allows many local groups to meet in its facilities, the BCC fails to demonstrate that it is an organization that primarily furnishes facilities without charge. The facts instead show that many BCC meetings occur in the BCC building and that some community meetings also occur, presumably free of cost. *See* Macintyre Affidavit.

The BCC responds that "53% of the Chamber's building is primarily furnished without charge." Appellant's Response to DOR's Motion for Summary Judgment, p. 2. In support of this, Appellant submitted floor plans totaling up the space such as lobbies, rest rooms and meeting areas that are open to the public. The BCC points out that they have tourist pamphlets, a children's play area, bronze statues and a stuffed mountain goat as well as Native American artifacts in the visitor center area, "akin to what one would find in a museum." The language of the statute, however, clearly refers to an exempt organization as one that primarily furnishes facilities without charge to the public. The statutory word "primarily" does not refer to the percentage use of the facility itself but whether the organization is one that primarily exists to provide free facilities to the public. We reject the suggested test set forth by the BCC based on the percent of the facility open to the public and the presence of artifacts and stuffed wild animals¹. Such a test would fail to distinguish a homeless shelter, for example, from a shopping mall or even a typical Montana tavern. We find that the uncontested facts, even taken in the light most favorable to the Taxpayer, show that BCC does not meet the plain-meaning definition of a community service organization

¹ We distinguish *Anaconda Chamber of Commerce v. Department of Revenue*, Mont. Tax App. Bd. (1983) which involved a Chamber building containing an entire separate museum which the Board held to be partially qualified for the exemption. The portion used for Chamber business was not exempt as the Chamber itself did "not qualify for [a] tax exemption under any provision of Montana law."

according to its own mission statement and is not, according to its own published materials, an organization that primarily offers facilities to the public for free.

Finally, the DOR points out that the BCC rents space to the Southeast Tourism Region Office and, thus, violates the final provision of §15-6-209(5), MCA. As we have concluded that the Billing Chamber of Commerce does not qualify for the exemption, we do not need to reach this issue.

We affirm the DOR's denial of the exemption.

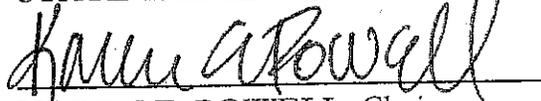
ORDER

Upon review of the facts, exhibits, and the arguments of the parties, the Department of Revenue's Motion for Summary Judgment is granted, and the decision of the DOR denying exemption on the subject property for tax year 2012 is affirmed.

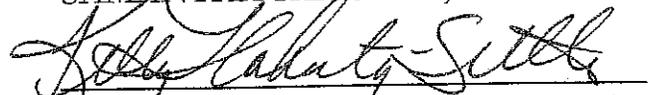
Dated this 2nd day of January, 2012³.

(S E A L)

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member


KELLY FLAHERTY-SETTLE, Member

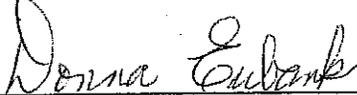
NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-70-111, MCA, and 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ~~2nd~~ ^{January} day of ~~December~~, 2012, ³
the foregoing Order of the Board was served on the parties hereto by depositing a copy
thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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