

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>TINKERMILL,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR.</b></p>	<p>Docket No.: 75472</p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on October 31, 2019, Diane M. DeVries and Samuel M. Forsyth presiding. Petitioner was represented by Cara Lawrence, Esq. and Martha Tirney, Esq. Respondent was represented by Robert H. Dodd, Esq. and Jessica E. Ross, Esq. Petitioner is protesting the Property Tax Administrator’s denial of Petitioner’s application for a tax exemption for tax years 2017-2018.

**EXHIBITS**

Petitioner’s Exhibits Q, R, S, T, U, V, X, Y, Z, and AA, and Respondent’s Exhibits A through P were admitted into evidence.

**PROPERTY DESCRIPTION**

**1840 Delaware Place  
Longmont, CO 80501**

Petitioner in this matter is a Colorado 501(c)(3) nonprofit corporation known as TinkerMill. The subject of this appeal is a 12,123-square-foot warehouse building owned by TinkerMill. TinkerMill rents out portions of the warehouse to an auto mechanic company, a newspaper, and a variety of individuals who rent office, studio, and storage space (the rented-out portions of the warehouse are excluded from this appeal). TinkerMill occupies the remaining portion of the warehouse for non-profit uses allocated between electronics, textiles, glassworks, wood shop, machine shop, welding, blacksmithing, meeting areas, storage and offices.

TinkerMill's organizational purpose and mission statement is as follows: "TinkerMill is a place where like-minded people interested in art, technology, science, and business can collaborate on creative projects, share tools, learn, teach, make things, prototype new ideas, products and services, start ventures, meet new people, and share knowledge." TinkerMill argues that the subject property (portions of the warehouse occupied by TinkerMill's non-profit organization) is exempt from property taxation under Colorado Constitution and Section 39-3-108(1)(a), C.R.S. as it is owned and used for strictly charitable purposes and not used for private gain or corporate profit.

### **PETITIONER'S PRESENTATION**

Mr. Ron Thomas, Executive Director and sole employee of TinkerMill, testified on behalf of Petitioner. Mr. Thomas stated that TinkerMill is a makerspace facility that provides space "for anyone to make anything," including, but not limited to, textiles, electronics, metal products, wood products, glass products, pottery, robotics, etc.

Mr. Thomas described that a membership can be obtained at TinkerMill by completing a membership request form and submitting a membership fee. TinkerMill's membership is comprised of students, artists, professionals, retirees, individuals who are unemployed and/or homeless. The individual membership fee is \$50 per month and \$25 "starving student/artist" memberships are available for those who cannot afford the standard membership fee. With certain limited exceptions (furlough, government shutdowns, and occasionally for individuals that are between jobs), the membership fees are not waived. Membership fees cover maintenance, operation of the space, mortgage, salary, utilities, insurance, building maintenance and upgrades, shop equipment and materials.

Mr. Thomas stated that anyone, including non-members, could enter and enjoy the use of TinkerMill's facilities without a fee. With the exception of certain equipment that is dangerous to use or is expensive and easily damaged, non-members enjoy access to all of the TinkerMill's equipment. Non-members may gain access to the dangerous and expensive/easily damaged equipment after becoming members and receiving training on how to operate such equipment. According to Mr. Thomas, the membership requirement enables TinkerMill to ensure that everyone receives appropriate training before using the equipment.

All those entering TinkerMill facility are required to sign waivers on their first visit. During tax years 2016 and 2017, approximately 3,200 waivers were signed. In 2017, TinkerMill had 450 paying members and 600 paying members in 2018. Of the paying members, approximately 10% are active members, meaning that they use the makerspace on a consistent basis.

Mr. Thomas described types of classes offered at TinkerMill. The general public can attend classes and a majority of the classes are free. There are about 100-120 classes offered per month. In 2017 - 2018, approximately 1,100 individuals paid to attend a class at TinkerMill. Out of the 1,100 class attendees, about 250 were non-members. Class fees range from \$1 to \$150. A typical class fee is \$20. Members enjoy reduced class fees. The instructors are independent contractors who teach classes on a volunteer basis. The price of the classes is about 1/10th of the cost to get the same class elsewhere.

TinkerMill engages in fundraisers. There are cash boxes provided for donations throughout the space. The donations are used to purchase supplies and for maintenance and upkeep of the facilities and equipment. TinkerMill also receives many in-kind donations as well. In 2016, TinkerMill received a \$50,000 grant from the Office of Economic Development and International Trade and a \$60,000 grant from the City of Longmont. TinkerMill used the grants to purchase equipment for the facility.

According to Mr. Thomas, TinkerMill alleviates burdens of the government by providing job training to unemployed and those who wish to better themselves. In addition, homeless people use TinkerMill's showers and laundry facilities.

On cross-examination, Mr. Thomas reiterated that TinkerMill does not have an official fee waiver policy. According to TinkerMill's 2017 Profit and Loss statement, dues are the major source of TinkerMill's income, totaling \$200,668 in 2017. Other sources of income include various donations, organizational grants and class fees. Mr. Thomas testified that TinkerMill uses any surplus income towards the mortgage loan and to create a three-month reserve.

Brian Bagley, Mayor of the City of Longmont, Colorado, testified as Petitioner's second witness. According to Mr. Bagley, TinkerMill benefits the community of Longmont. TinkerMill is a place of learning that fosters local business development.

According to TinkerMill, it is entitled to a charitable exemption because it provides a gift to an unlimited number of people by allowing the general public to access its facilities at no cost as well as providing free and low cost classes to everyone wishing to learn and better themselves. TinkerMill does not operate for profit and there are no dividends to distribute. Any profit from TinkerMill's operation is invested in TinkerMill's equipment, facilities, upkeep and reserves. Further, TinkerMill contends that it lessens the burden on the government by providing job training, assisting the unemployed and contributing to the economic/community development to the City of Longmont, Boulder County and the State of Colorado.

### **RESPONDENT'S PRESENTATION**

Respondent presented the testimony of Lindsay Jackson Casey, Property Tax Specialist, Division of Property Taxation (DPT). Ms. Jackson Casey testified that she examined TinkerMill's application for exemption, membership agreement form, financial statements, bylaws, articles of organization, website, and brochure and communicated with the ownership of TinkerMill. Ms. Jackson Casey also personally visited the subject property.

Ms. Jackson Casey determined that TinkerMill is operated and organized primarily for the benefit of its members. After reviewing TinkerMill's membership agreement, Ms. Jackson Casey concluded that non-members are not permitted to use TinkerMill's facilities. TinkerMill does not waive fees for those who cannot afford the membership fee. From her review of the FAQs from TinkerMill's Wiki page, Ms. Jackson Casey determined that non-members pay a higher price for classes and that non-members can attend and observe the classes but cannot use materials or equipment. In her opinion, there was a significant difference between members and non-members

with respect to what TinkerMill has to offer. In addition, as evidenced by the content of TinkerMill's membership agreement form and its website, TinkerMill does not hold itself out to the public as an entity that allows participation in its facilities and classes free of charge and open to everyone.

On cross-examination, Ms. Jackson Casey testified that she denied exemption to TinkerMill because TinkerMill was a membership-based organization. According to Ms. Jackson Casey, by definition, a membership is not a gift because membership fees are required. Instead of providing a gift to the general public, TinkerMill operates on a *quid pro quo* basis, whereas TinkerMill's members pay membership fees and, in exchange, paying members enjoy TinkerMill's facilities to the full extent. Therefore, according to Ms. Jackson Casey, as a membership-based organization, TinkerMill is not a charitable organization.

Respondent called Mr. Stan Gueldenzopf, Manager of Exemptions, Department of Property Taxation, as Respondent's second witness. Mr. Gueldenzopf testified to the process that DPT follows in reviewing applications for exemptions. Mr. Gueldenzopf stated that he reviewed and agreed with the recommendation of Ms. Jackson Casey in denying TinkerMill's application for exemption. The primary reason for the denial was the determination that TinkerMill operates for the benefit of its members.

### **BURDEN OF PROOF**

The burden is on the taxpayer who claims an exemption to clearly establish the right to such exemption. *Security Life & Accident Co. v. Heckers*, 495 P.2d 225, 226 (Colo. 1972).

The determination as to whether property is used for strictly charitable purposes must be made on a case-by-case basis to determine whether such use satisfies the statutory and constitutional requirements. *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338, 347 (Colo. 1997); see also Section 39-3-101, C.R.S. ("The general assembly recognizes that only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado constitution.")

Eligibility for exemption is determined by examining the use to which the property is put, not the character of the owner. *W. Brandt Found., Inc. v. Carper*, 652 P.2d 564, 567 (Colo. 1982). However, the character of the owner may often illuminate the purposes for which the property is used and need not be excluded from consideration. *Id.* at 567-68. Courts strictly construe whether the purpose is charitable. *Id.* However, when the purpose is clearly charitable, the means used to achieve that end will be liberally construed as a use for a charitable purpose. *Id.* at 568.

### **APPLICABLE LEGAL AUTHORITIES**

The state's ability to exempt personal and real property from taxes is derived from the Colorado Constitution: "Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes ... shall be exempt from taxation, unless otherwise provided by general law." Colo. Const. art. X, § 5; see also Section 39-3-108(1)(a), C.R.S. that provides as follows:

- (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if:

- (a) Such property is nonresidential . . . .

An exemption for a charitable organization is predicated in part upon the fact that the service it provides lessens the burdens upon government to perform certain services. Section 39-3-101, C.R.S., *Legislative declaration – presumption of charitable purpose*, states in relevant part:

[T]he general assembly hereby finds, declares, and determines that the uses of property which are set forth in this part 1 as uses for charitable purposes benefit the people of Colorado and lessen the burden of government by performing services which government would otherwise be required to perform. (Emphasis added).

In line with the legislative declaration stated in Section 39-3-101, the Colorado judiciary has embraced the following definition of a strictly charitable purpose:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with the 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. See *United Presbyterian Association et al. v. Jefferson County Board of Commissioners*, 167 Colo. 485, 448 P.2d 967 (1968)(emphasis added).

Thus, for a property to be used for strictly charitable purposes, it must provide a gift for the benefit of an indefinite number of people. *Children's Hospital Colorado v. PTA*, 2018 COA 91, ¶ 51. The gift must lessen the burdens of the government. *Id.* (Emphasis added). It is the applicant's burden to demonstrate that the use of the property relieves a government function and inures to the benefit of the public. *Id.*

In its rules, the Department of Local Affairs, Division of Property Taxation, defined "lessening the burdens of government" as follows:

"Lessening the burdens of government" will be determined by whether the charitable work, if not being done by a private person, would have to be undertaken at public expense." 8 Code Colo. Regs. 1304-2.

Similarly in *Huddleston v. PTA*, 940 P.2d 338, 344 (Colo. App. 1997), the court explained that "one justification for exempting charitable enterprises from taxation is that they perform functions which tax-supported governmental entities would otherwise be required to perform...".

See also *Kemp v. Pillar of Fire*, 27 P.2d 1036, 1038 (Colo. 1933) (“If the plaintiff did not carry on this educational and charitable work, it would have to be carried on by the public at the expense of the taxpayers, and doubtless that expense would exceed the taxes that the plaintiff is relieved from paying ...”).

### THE BOARD’S FINDINGS

In light of the facts presented by TinkerMill at the hearing, it is beyond dispute that TinkerMill’s use of the subject property does confer a benefit to the community. Consistent with TinkerMill’s organizational purpose and mission statement, TinkerMill provides a place for community members from various walks of life to collaborate on creative projects, share tools, learn, teach, make things, prototype new ideas, products and services, start ventures, meet new people, and share knowledge. Furthermore, TinkerMill does not operate for corporate gain or profit; there are no dividends to distribute; and any surplus is invested into TinkerMill’s facilities, upkeep of those facilities, and to create a reserve fund for future similar expenses. The Board also finds that TinkerMill is not a *quid pro quo* organization, where the organization’s benefits extend exclusively to its paying members. Quite the opposite, the evidence presented at hearing was undisputed that non-members also enjoy the use of TinkerMill’s facility and classes.

On the other hand, the Board finds the following factors weigh against a finding that TinkerMill provides a gift that is charitable:

- (1) TinkerMill holds itself out to the general public primarily as a membership-based organization. This is evidenced by the information contained in TinkerMill’s membership agreement form as well as TinkerMill’s web presence that is centered primarily around the benefits associated with becoming TinkerMill’s paid member. The Board questions whether an “indefinite number of persons” could enjoy the gift that TinkerMill offers to the community because they simply do not know about it.
- (2) The Board is not convinced that the use of the subject facilities lessens the burdens of the government. The Board finds that TinkerMill’s use of the subject property, namely, providing a place to collaborate on creative projects, share tools, learn, teach, make things, prototype new ideas, products and services, start ventures, meet new people, and share knowledge, is not a responsibility of government such that it would have to be carried on by government at taxpayer expense in the absence of TinkerMill’s activities. Similarly, nothing in the facts presented by TinkerMill suggests that TinkerMill’s job training or other programs are a primary responsibility of the government or that the government would be forced to assume these activities in the absence of TinkerMill’s contribution.
- (3) Moreover, TinkerMill did not provide sufficient evidence to convince the Board that the relief that TinkerMill provides to the government by assisting the unemployed and homeless through job training is anything other than incidental. Although the Board heard the testimony that at least one homeless individual regularly uses TinkerMill’s facilities, overall, the Board is not convinced that the benefit to the public occasioned by TinkerMill performing a public function in assisting the unemployed and homeless would offset the loss of property tax revenues should exemption be granted.

Petitioner did not clearly establish its entitlement to an exemption from property taxation.

**ORDER**

The petition is DENIED.

**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-nine days after the date of the service of the final order entered).

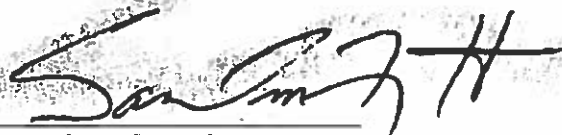
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced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

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

**DATED and MAILED** this 31<sup>st</sup> day of January, 2020.

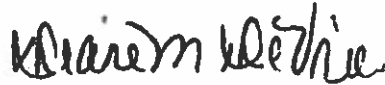
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



Samuel M. Forsyth

Concurring Board Member:



Diane M. DeVries,  
*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*

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

  
Jacqueline Lim