

**BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION**

WORLD WAR II THEATRE, INC.

Petitioner

versus

DOCKET NO. L01363

**NORMAN WHITE, CHIEF FINANCIAL OFFICER
AND DIRECTOR OF FINANCE,
CITY OF NEW ORLEANS;
ERROLL G. WILLIAMS, ASSESSOR, ORLEANS PARISH;
AND LAWRENCE E. CHEHARDY,
CHAIRMAN, LOUISIANA TAX COMMISSION**

Respondents

ORDER AND REASONS

This matter came before the Board for hearing on September 14, 2023, with Local Tax Judge Cade R. Cole presiding. Present before the Board were Robert S. Angelico, Cheryl M. Kornick, and Tyler D. Trew, attorneys for World War II Theatre, Inc. (“WWII Theatre”), Reese F. Williamson and Henry F. Dahlen, attorneys for Erroll G. Williams, Assessor, Orleans Parish (“Assessor”), and James H. Gilbert, attorney for Intervenor Orleans Parish Schoolboard (“Schoolboard”). Respondents Norman White, in his Capacity as the Director of the Department of Finance of the City of New Orleans (“City”) and Lawrence E. Chehardy, Chairman, Louisiana Tax Commission (“LTC”) waived appearance at the hearing. At the conclusion of the hearing, the Board took the matter under advisement. The Board now rules as follows:

Findings of Fact

Petitioner WWII Theatre is a 501(c)(3) nonprofit corporation. WWII Theatre constructed, owns, and operates the personal and real property comprising the Higgins Hotel and Conference Center located at 1000 Magazine Street in the City of New Orleans (“Hotel”). The Hotel is located across the street from the National World War II Museum (the “Museum”). The Museum is operated by The National World

War II Museum, Inc. (“MI”). MI is also a 501(c)(3) nonprofit corporation and the sole corporate shareholder of WWII Theatre.

The Assessor issued 2022 Personal Property Tax Bill No. 102102511P in the amount of \$183,596.99 and 2022 Real Property Tax Bill No. 102103307 in the amount of \$370,425.44 (collectively the “Assessments”) to WWII Theatre. In its Petition, WWII Theatre claims that the Hotel is property of a charitable institution exempt from *ad valorem* property tax under La. Const. art. VII, Section 21(B) (“Section 21(B)”). The Assessor disagrees because the Hotel is used, at least in part, for commercial purposes.

At the hearing, Steven Watson, President of WWII Theatre and President and CEO of MI, testified that the commercial activity at the Hotel supports the Museum’s mission. Mr. Watson stated that WWII Theatre was created to support the educational, charitable, and social purpose of MI. Mr. Watson’s testimony is consistent with the statements of purpose in WWII Theatre’s original Articles of Incorporation and the Amended Articles of Incorporation. The purpose of MI is to: “tell[] the story of the American experience in the war that changed the world – why it was fought, how it was won, and what it means today – so that all generations will understand the price of freedom and be inspired by what they learn.”¹

The Hotel is a component of the substantial growth and development of the Museum and its surrounding campus that have occurred during Mr. Watson’s tenure. Initially, the Museum opened as the D-day Museum. By the time of the hearing, the Museum’s campus included: pavilions with exhibits that are open to the public; the Boeing Center where aircraft and vehicles are kept; a research library; the Solomon Victory Theater; the Hall of Democracy, which hosts a media center and the Institute for the Study of War and Democracy; archives; staff areas; collections; a restoration pavilion; offices; a parking garage; a central plant; and the Hotel. The collective

¹ Taxpayer Exhibit 6, at 9.

envelope of the campus is now about seven or eight acres in size. Development of an additional archives and restoration center is ongoing.

The original concept for the Hotel envisioned a conference center operated by an entity called the Center for the Study of the American Spirit. As planned, the conference center would have been located where the Solomon Victory Theater is now. Not long after the Museum opened, however, MI realized that this was not feasible. In the early years, the Museum needed to focus on raising substantial capital while proving that it could become a national cultural attraction. Thus, plans for the Hotel were put on hold for several years.

When MI was able to return to its plans, it had to determine how to organize and operate the Hotel. MI first considered leasing the ground to a private entity but that proved impractical. Then, MI formed a for-profit subsidiary, Flying Tigers Properties, L.L.C. (“Flying Tigers”), with the intent to partner with a private developer. This approach also had to be abandoned. Mr. Watson testified that, in his view, MI could not devise an economically viable plan for a private partnership that would not potentially impair the use of the Hotel to support of the Museum. In particular, use of the Hotel to make a profit would have competed with the use of the Hotel to host Museum-related groups and events. Thus, MI ultimately chose to execute a merger by which WWII Theatre acquired Flying Tigers. In conjunction with the merger, Article II of WWII Theatre’s Articles of Incorporation was amended² to state:

This corporation is organized, and it shall be operated exclusively for, charitable and educational purposes for the benefit of The National World War II Museum, Inc., a Louisiana nonprofit corporation, including, without limitation, to construct and operate on or adjacent to the campus of The National World War II Museum a theatre, hotel, conference center, and/or a U.S.O. themed canteen and restaurant.

Mr. Watson testified that MI retained control of the construction and design of the Hotel. Mr. Watson claimed MI was thereby able to employ architecture and themes in the design that would have been too costly for a profit-driven enterprise. By way of example, Mr. Watson stated that MI chose to make the conference center much larger than would be normal for a similarly-sized hotel.

The Assessor offered countervailing testimony from Dr. Charles Neyrey, an expert in architecture and design. In Dr. Neyrey's opinion, the use of space in the Hotel is similar to the use of space in similarly-sized hotels in the area. Dr. Neyrey explained that it is typical for hotels in New Orleans to have extra space for hosting events. Dr. Neyrey also opined that the space dedicated to Hotel use to far outweigh the space dedicated for Museum use.

Mr. Watson testified that the design of the Hotel supports the Museum. The photographs in the record show that the Hotel shares aesthetic elements with some World War II era buildings. However, Dr. Neyrey stated that the Hotel has elements of Art-Deco design. According to Dr. Neyrey, Art-Deco is not exclusively associated with World War II era buildings, nor was it the only prevalent aesthetic of the time.

Mr. Watson also testified that the Hotel supports the Museum because it contains displays with reproductions of historical artifacts and art. The contents of these displays are selected by Col. Peter Crean. Col. Crean is MI's Vice-President of educational access. He has high-level responsibility for exhibits, curators, archives, and research. The display items and art complement the theme of the Hotel and reflect the overall mission of the Museum and its campus. However, the parties stipulated that the Hotel is not a museum. In addition, the Assessor's expert witness on the subject of museums, Dr. Haitham Eid, testified that the displays are not presented or maintained in the same way that they would be in a museum. Thus, the displays make only an indirect contribution to the Museum's mission.

Mr. Watson testified that guests can access museum-related content on a special television channel in their Hotel rooms. The channel plays a selection of videos

on a 30-minute loop that includes a video on the Museum's mission as well as information about recently added Museum exhibits. There is also a video with a short historical piece on Andrew Higgins and why the Hotel is named after him. In addition, the channel provides a live feed of academic symposia or conferences hosted at the Hotel.

The Hotel's website advertises package deals that bundle room reservations with admission to the Museum. However, that is not all that WWII Theatre advertises. The Hotel's website contains advertisements for: onsite bars and restaurants; rental space for weddings and private events; and catering services. Advertisements for event hosting and catering were also printed in magazines. One print advertisement states that the Hotel is "poised" to become the city's premier wedding venue. Nevertheless, Mr. Watson gave credible testimony that WWII Theatre did not intend to break into the market for hosting weddings. Furthermore, hosting weddings and private events was a relatively minor source of Hotel revenue.

Although Hotel guests are not required to visit the Museum, some Hotel reservations are related to the Museum. One indicator of the relationship is when a guest reserves a room in a package deal for a Hotel room and admission to the Museum. Group reservations from historical societies and veterans' groups are also related to the Museum. Finally, WWII Theatre also has a practice of asking individual guests why they are visiting during check-in. Guests that say they are visiting the Museum are treated as Museum-related. There was testimony that the physical connexion was needed to facilitate visits of elderly veterans who are provided rooms as part of the Museum's programs.

Some revenue from the Hotel is not directly related to the Museum. At the hearing, the Assessor introduced a document entitled "Mission Related Hotel

Revenue by Department.”³ There is a category of revenue on the document labeled “Outlets.” Mr. Watson stated that this category probably⁴ refers to revenue from the bars, restaurants, and shops in the Hotel. Mr. Watson admitted that the Outlets are open to the public and could be visited by anyone walking in off the street. Further, it is not possible for WWII Theatre to segregate Outlet revenue between guests and non-guests. However, Petitioner avers the Outlets are indirectly related to the Museum because they are amenities necessary for hosting Museum-related events and symposia. In addition, the Outlets represent a relatively minor source of Hotel income. The Assessor’s evidence shows that from July 2020 to June 2021, the Outlets accounted for \$629,546.00 out of a total of \$6,720,242.00 of Hotel revenue, or less than 10%.

WWII Theatre reports some income as Unrelated Business Taxable Income (“UBTI”) on its Form 990 federal tax returns. WWII Theatre’s reported UBTI includes revenue from: weddings; corporate parties; private group reservations; individual guests who do not identify the Museum as their reason for visiting; and the Outlets. The Form 990’s were introduced into the record. The return for the tax period of July 1, 2019, and ending June 30, 2020, shows \$1,964,982.00 of UBTI. Total revenues before expenses for that period amounted to \$5,409,785.00. The return for the tax period of July 1, 2020 and ending June 30, 2021, shows \$1,864,557.00 of UBTI. Total revenues before expenses for that period amounted to \$7,985,731.00. Therefore in the 2020 fiscal year, UBTI made up roughly 36% of all revenue. In the 2021 fiscal year, UBTI made up roughly 23% of all revenue. Thus, during the Tax Periods at issue, the large majority of revenue was related to WWII Theatre’s support of the Museum’s mission. Moreover, Mr. Watson’s testimony credibly established that the UBTI is merely incidental to the amenities needed for the Hotel to support the Museum.

³ Assessor Trial Exhibit 54.

⁴ Although Mr. Watson did not prepare the document, he was familiar with underlying facts relied upon in its creations.

Notably, the Hotel has not made a profit in three and a half years. This testimony appears to be corroborated by the losses shown on the Form 990's. MI bears the ultimate financial responsibility for the Hotel's losses. Mr. Watson explained that this means that the Hotel needs to be financially sustainable. However, he also testified that the preeminent use of the Hotel will be to support the Museum even if doing so is not profitable.

At the hearing, Mr. Watson clarified a statement he made in his deposition in which he said that the Hotel was intended to grow the Museum's endowment. The endowment exists to support the educational, charitable, and social mission of the Museum. The endowment is used to fund scholarships, positions, and exhibits. The point that Mr. Watson was making in his deposition was that endowment fundraising is critical to sustaining the Museum. More importantly, his testimony established that the Hotel was not intended to be a source of funding for the endowment.

Mr. Watson described how the Hotel benefits the Museum. The Museum has a number of group programs and is the largest client of the Hotel. WWII Theatre provides group bookings for the Museum at below-market rates. Also, WWII Theatre does not charge the Museum for use of the conference center. This is convenient for the Museum when it hosts events such as its International World War II Conference, the largest conference of its kind, with over 35 speakers from around the world and 500 attendees over the course of three days. In addition, the Hotel allows the Museum to provide educational residency programs. These residency programs include training for teachers and college faculty. Other Museum-related programs, events, and symposia also benefit from the convenient location of the Hotel and discounted group rates. Further still, the Hotel has allowed the Museum to host: the

Congressional Medal of Honor Society and their families free of charge; bi-annual gatherings of the American War Orphans Network; and veteran reunion groups.⁵

Discussion

The Board discussed the applicable law in its reasons for denying the cross-motions for summary judgment. *WWII Theatre, Inc. v. White*, BTA Docket No. L01363 (La. Bd. Tax App. 03/08/23). The Exemption is tied to the charitable entity that owns the property. *Hotel Dieu v. Williams*, 403 So.2d 1255, 1258-59 (La. Ct. App. 1981). However, the exemption does not apply to property that is used for “commercial purposes unrelated to the exempt purposes” of the charitable entity. *See id.* at 1259. The existence or non-existence of the relationship between commercial use and exempt purpose is what is at issue in this case.

In its *Reasons for Judgment on Cross Motions for Summary Judgment*, the Board reviewed Louisiana cases interpreting Section 21(B). As illustrated by *Hotel Dieu*, commercial use of a property can provide convenience and benefits and thereby facilitate the accomplishment of an entity’s exempt purpose. As the Board previously noted, the evidence shows that the Hotel is a convenience and a benefit to the Museum. The Hotel is right across the street from the Museum. The Museum is the Hotel’s biggest customer. WWII Theatre provides services to the Museum at below-market rates. As the Board stated before, all of these factors weigh in WWII Theatre’s favor.

However, the Board identified reported UBTI as a reason for denying summary judgment. 26 C.F.R. § 1513-1(d)(2) provides:

Trade or business is related to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income); and it is substantially related, for purposes of section 513, only if the causal relationship is a substantial one.

⁵ According to Mr. Watson, World War II veterans’ reunion groups still exist and are now run by veterans’ children and grandchildren.

Thus, WWII Theatre represented to the IRS that it had income that was either unrelated to its exempt purpose or not substantially related to the exempt purpose. However, Section 21(B) does not require a substantial relationship. On summary judgment, the Board was obligated to construe the information on the Form 990's as admission of the absence of any relationship. Although that inference was contradicted by other evidence, the contradiction was an unresolved issue of material fact precluded the Board from granting summary judgment in WWII Theatre's favor. The Board reasoned that resolving that contradiction would require a credibility determination.

Mr. Watson provided credible testimony to establish that the Outlets are necessary amenities. Further, the Board finds Mr. Watson's testimony that the relationship with the Museum drives some business from private groups to be credible and un-contradicted by the evidence in the record. In addition, the Board notes that the Museum reports some revenue that is related to the Museum as UBTI out of an abundance of caution. Moreover, the Hotel primarily serves to support the Museum by allowing it to host influential academic symposia, significant cultural gatherings, and educational residency programs. The Hotel provides these benefits to the Museum at below-market rates or free of charge.

Mr. Watson's explanation of the development and continued growth of the Museum's campus demonstrates that MI is building a unique educational, cultural, and social institution. The Museum needs to attract and host academic symposia and cultural gatherings. The Hotel and its amenities make this possible. The Museum also needs to influence the teaching of World War II history on a national scale. The Hotel enables MI to do this by providing residency programs to train educators. MI took an approach that allowed it to keep control over the design and use of the Hotel. The success of this approach is shown by the import of the events hosted and the academic influence that the Museum has achieved with the use of the Hotel.

For the foregoing reasons, the Board will rule in favor of WWII Theatre. WWII Theatre constructed and continues to operate the Hotel in support of the Museum's mission. The Museum and its surrounding campus are working to accomplish their mission by becoming a cultural, educational, and social institution. The Hotel provides convenient, discounted services to the Museum, is used primarily by the Museum, and is run in a way that prioritizes supporting Museum's mission. The Hotel and its amenities are essential to attracting and hosting cultural gatherings and academic symposia.

Therefore, **IT IS HEREBY ORDERED** that WWII Theatre is entitled to a full refund of the payments under protest of the Assessments with interest as provided for by law.

IT IS FURTHER ORDERED that on or before JANUARY 15, 2024, the parties shall submit a joint proposed Judgment accordance with this Order and Reasons and the parties' agreed-upon calculation of the refund and interest.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment, that any party or parties may submit a proposed Judgment and Memoranda on or before JANUARY 25, 2024. A party or parties may file a response to the proposed Judgment and Memoranda of another party or parties on or before FEBRUARY 1, 2024.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

SIGNED AT BATON ROUGE, LOUISIANA, THIS 13TH DAY OF DECEMBER, 2023.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE