

**PT 07-4**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket # 05-PT-0027</b>
<b>v.</b>	)	<b>PIN 14-34-480-028</b>
	)	<b>Tax Year 2005</b>
<b>COMMUNITY PLAYERS THEATRE</b>	)	
	)	
<b>Applicant</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Tim Leighton of Leighton & Mobley LLC for Community Players Theatre.

Synopsis:

Community Players Theatre (hereinafter “applicant”) applied for a property tax exemption for the year 2005 for a parcel of property that is located in McLean County. The County Board of Review recommended that the exemption be denied, and the Department of Revenue (“Department”) affirmed the Board’s decision.<sup>1</sup> The applicant alleges that the property qualifies for an exemption under section 15-65 of the Property

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<sup>1</sup> The applicant previously applied for an exemption for the year 1999. After an administrative hearing, the exemption was denied. (Docket #00-PT-0035)

Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department contends that the applicant has met neither the ownership nor the use requirement for the charitable exemption because the applicant is operated as an entertainment business. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved in favor of the applicant.

FINDINGS OF FACT:

1. The property at issue is owned by the applicant and is located at 201 Robinhood Lane in Bloomington. It contains a two-story building with a basement. The square footage of the ground area is approximately 8,976. (Dept. Ex. #1; Tr. pp. 27-28)
2. The applicant uses the building for community theatre. The building has a stage, and it has seating capacity of 275. It also has a lobby with a box office and public restrooms. Behind the stage is an area for sets, props, and storage. There is also a "green room" immediately off the stage that is used by the actors before going on stage, and a small kitchen area that serves as a meeting room. The basement is used for dressing rooms. (Tr. pp. 27-28, 32)
3. The applicant was formed in 1923 to perform live dramatic works. It currently performs at least six theatrical productions a year. (Tr. p. 18)
4. The applicant is an Illinois not-for-profit corporation. (Dept. Ex. #1)
5. The applicant's constitution states that it is organized and shall be operated exclusively for charitable and educational purposes. It also states that the purpose

and objective of the organization shall be the following: “(A) the study of the art of theatre through the promotion and presentation of such plays and dramatic works as may be deemed worthy and suitable; (B) the encouragement of original dramatic work; (C) a stimulation of interest in and an appreciation for the dramatic arts in the community; and (D) extending the opportunity for all ages regardless of their ability to pay to experience a theatrical production.” (App. Ex. #1.1)

6. The applicant is a membership organization that has two types of memberships: (1) general membership, which includes all season ticket holders, and (2) voting membership, which is available to all individuals who have been actively involved in any capacity in at least one production over the last five seasons. (App. Ex. #2.1; Tr. p. 21)
7. The benefit to being a general member is that the cost of a season ticket provides a slight reduction from the cost of regular tickets. The applicant uses the general membership to establish a mailing list. (Tr. pp. 23-24)
8. Anyone, including ushers and house management, may be a voting member. The applicant does not require a participation fee for being involved in productions, and anyone may participate in a production. (Tr. pp. 24, 79)
9. The bylaws state that all voting members shall have a vote in the election of the Board of Governors (“Board”), and only voting members 18 years of age and over shall serve on the Board. There are currently 11 members on the Board. (App. Ex. #2.1, 4.1)

10. The benefits to being a voting member are having the opportunity to serve on the Board and being able to hold the Board accountable for its performance. (Tr. p. 23)
11. The bylaws state that the Board shall establish the dues for each class of membership annually, and anyone wishing to be a member and not able to afford the dues can be granted a charitable membership. (App. Ex. #2.1)
12. The membership dues are currently \$10 for voting members. The dues are used to print a bimonthly newsletter for the members. Extra copies of the newsletter are printed and placed in the lobby for patrons. It is also given to cast members, regardless of whether they are voting members. (Tr. p. 22)
13. The applicant had 54 voting members who paid dues for the 2004-2005 season. The applicant had dues left over from that season so it waived the dues for all of the voting members for the 2005-2006 season. (Tr. p. 22)
14. No one has currently asked for waiver of the membership dues. (Tr. p. 22)
15. Copies of the applicant's constitution and bylaws are located in the green room and are available for people to review them. (Tr. p. 23)
16. The Board's duties include approving the selection of plays to be produced and to contract for their production. The Board also approves producers and directors for each production. (App. Ex. #2.1-2)
17. The applicant's fiscal year is June 1 through May 31. (App. Ex. #1.3)

18. During both the 2004-2005 season and the 2005-2006 season, a season ticket allowed a patron to see two musicals and three plays between September and May.2 (App. Ex. #5.1-4)
19. An additional musical and play were performed during each season but were not included in the season ticket. During the 2004-2005 season, the additional musical was “The Music Man,”<sup>3</sup> and the play was “Scrooge.” During the 2005-2006 season, the additional musical was “The Wizard of Oz” and the play was a murder mystery dinner, “An Evening to Die For.”<sup>4</sup> (App. Ex. #5.1-4; Tr. pp. 30, 45)
20. A season ticket purchased before May 16, 2004 or May 23, 2005 was \$60; after that date it was \$63. The season ticket price was reduced for seniors (over 55) and students (age 7 through college for the 2004-2005 season and age 16 through college for the 2005-2006 season). (App. Ex. #5)
21. For the 2004-2005 season, the single admission ticket price for musicals was \$15, and for plays it was \$12. For children (6 and under), the price was \$6 and \$5 respectively. For seniors and students, it was \$13 and \$10 respectively. For the 2005-2006 season, the prices were the same except that the age for children was

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2 For the 2004-2005 season, the two musicals were “Camelot” and “Chicago,” and the three plays were “Charley’s Aunt,” “Cat on a Hot Tin Roof,” and “The Curious Savage.” (App. Ex. #5.2) For the 2005-2006 season, the two musicals were “Sweeney Todd” and “Oklahoma!” and the three plays were “Cheaper by the Dozen,” “Deadwood Dick,” and “The Desperate Hours.” (App. Ex. #5.4)

3 “The Music Man” was a fundraiser in July 2004 for which each ticket was \$15. (App. Ex. #10.3)

4 The murder mystery dinner was a fundraiser in August 2005 for which each ticket was \$40, and it was performed only one night. It was performed at a local hotel conference center, not on the applicant’s property. (App. Ex. #5.3; Tr. p. 30)

changed to 15 and under, and students were age 16 through college. (App. Ex. #5)

22. The 2004-2005 season brochure states “Wednesday & Thursday Senior/Student Special. Musicals \$11, Plays \$8.” During the 2005-2006 season the Wednesday performances were eliminated, and the brochure states “Thursday Senior/Student Special. Musicals \$11, Plays \$8.” (App. Ex. #5)

23. Both brochures state as follows:

**“Pay What You Can” Preview Performances**

General Admission seating is available on a first-come, first-serve basis with the doors opening at 6:30 p.m. and the performance starting at 7:30 p.m. (App. Ex. #5)

24. For each production during both the 2004-2005 and 2005-2006 season, the brochures indicate that a preview performance was on the Thursday night prior to the show opening.<sup>5</sup> The regular performances began the next night and were usually performed over three separate weekends. For example, for “The Music Man,” the brochure indicates as follows: “Performances: July 9-11, 14-18, 22-25, 2004; Preview July 8.” (App. Ex. #5)

25. The applicant began offering a preview performance for each production in January 2004. (Tr. p. 32)

26. The brochures for both seasons include the following:

Community Players has always been committed to making theatre accessible to every individual in the community. The “Pay What You Can” Preview Performance has been added to ensure that financial constraints do not preclude people from experiencing the excitement of live theatre. (App. Ex. #5.2, 5.4)

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<sup>5</sup> The murder mystery dinner was the only production that did not have a preview performance. (App. Ex. #5.3)

27. Next to the dates for the performances in each brochure, the applicant indicates the dates for the auditions. (App. Ex. #5)
28. The brochures include the applicant's website, [www.communityplayers.org](http://www.communityplayers.org). (App. Ex. #5)
29. The applicant provided advertisements for each performance in the local newspaper. Each advertisement included the dates for the regular performances and also indicated the date for the "Special 'Pay What You Can' Preview." (App. Ex. #6)
30. The applicant advertised the July 2005 performances of "The Wizard of Oz" and the "Pay What You Can" preview performance on the tray liners for the local McDonald's. (App. Ex. #6.5)
31. At the preview performance, ushers are available to help the patrons find their seats, and programs are provided. Free refreshments are served at intermission, as they are at the regular performances. The preview performance is not considered a dress rehearsal because an audience is not allowed for a dress rehearsal. The applicant is required to pay for production rights when there is an audience. During the preview performance, the director does not stop the production to make corrections; it is performed like a regular performance. (Tr. pp. 32-33, 70)
32. During calendar year 2005, the applicant had six preview performances during which a total of 837 people attended. The cost equivalent of the tickets for that

number of people was \$10,722.6 The applicant collected \$2,601.81 in donations from the performances, which left a cost of \$8,120.19. (App. Ex. #7.1)

33. In addition to the free admission allowed at the preview performances, the applicant allows patrons to attend the other performances without paying if they go to the box office and ask to see the show for free and if seats are available. (App. Ex. #10; Tr. pp. 33-34, 43-44)

34. Anyone who would like to usher a program may arrive 45 minutes prior to curtain time to usher and is allowed to stay and watch the program for free. (Dept. Ex. #2, p. 13; Tr. p. 33)

35. In March 2004, the applicant sent a letter to the local educators informing them that it was having three performances of “Charlotte’s Web” on Friday, May 14, 2004 at 9:00 a.m., 11:00 a.m., and 1:00 p.m. The letter included the following:

All seats for these performances are just \$6.00; however, we have a special deal just for this show. For each 15 tickets you purchase, you will receive one complimentary adult ticket to be used by an adult chaperone during the school show. Student Scholarship Tickets are available to students currently enrolled in the Federal Hot Lunch Program, or those for whom admission may present a financial challenge.

When you have made the reservation for your class, you will receive a packet containing pertinent theater information, including audience expectations, bus parking instructions, seating charts, and, to help you prepare your students for the performance, an optional **pre-performance Study Guide** that will include suggested activities and study points appropriate for all grade-levels. (emphasis in original, App. Ex. #9.1)

36. A similar letter was sent in September 2004 informing local educators of three performances of “Scrooge” on Friday, December 3, 2004 at 9:00 a.m., 11:00 a.m.,

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6 The cost equivalent is based on the average ticket price for each performance. (App. Ex. #7.1)

and 1:00 p.m. The letter included the same paragraphs regarding the cost of the seats and the pre-performance Study Guide. (App. Ex. #9.2)

37. The pre-performance Study Guide is a lesson plan for the teachers that includes information about the story as well as information regarding live theatre. A question and answer session for the children follows each performance. (Tr. pp. 39-40)

38. For the three school performances of “Charlotte’s Web,” the applicant had a total of 343 patrons, and 53 of these patrons did not pay for their tickets. This was approximately 15% of the tickets. (App. Ex. #10.2)

39. For the three school performances of “Scrooge,” the applicant had a total of 659 patrons, and 118 of these patrons did not pay for their tickets. This was approximately 18% of the tickets. (App. Ex. #10.4)

40. During calendar year 2005, the applicant performed six different plays or musicals with the following number of performances: six previews and 64 regular performances.<sup>7</sup> In addition to the 837 patrons who attended the preview performances, the applicant provided 149 no cost tickets to other performances.<sup>8</sup> The applicant received payment for 10,443 tickets. The total number of no cost tickets (986) was approximately 9% of the total tickets (11,429) provided during the year. (App. Ex. #10.4-6)

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<sup>7</sup> These numbers do not include the murder mystery dinner.

<sup>8</sup> The 149 “no cost” tickets include ushers and people who went to the theatre and expressed an interest in seeing the production at no cost. (Tr. pp. 43-44)

41. During calendar year 2005, the number of tickets that the applicant provided at a reduced rate (i.e., tickets for seniors, students, and children) was 5,511.9 This was approximately 48% of the total tickets (11,429) provided during the year. (App. Ex. #10.1)
42. The applicant's average attendance for musicals during 2004 and 2005 was 177, and for plays it was 153. (App. Ex. #10.1-6)
43. During calendar year 2005, the applicant gave 18 single admission tickets to schools and charities for various fundraising events.<sup>10</sup> The ticket price for these tickets was \$13 for a total of \$234 worth of tickets. During the same year, the applicant gave 34 season tickets to charities. The ticket price for these tickets was \$60 for a total cost of \$2,040. The combined total cost for single admission tickets and season tickets given to charity during 2005 was \$2,274. (App. Ex. #3)
44. According to the Cash Flow statement of the audited financial statements for the fiscal year ending May 31, 2005, the applicant's total "inflows" were \$182,529.14. This included \$53,020 from season ticket sales and \$87,686.39 from regular ticket sales for a total of \$140,706.39 from ticket sales. This is approximately 77% of the total inflows. (App. Ex. #11.4, 12.1)
45. The inflows included Contributions of \$16,613.13, Grant income of \$9,200, Fundraising income of \$5,398.70, and income from Concessions of \$1,803.44.<sup>11</sup>

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<sup>9</sup> This number does not include the season tickets for adults.

<sup>10</sup> Some examples of the charities include Central Illinois Spina Bifida Association, Alzheimer's Association, Christ Lutheran Church, and McLean County Arthritis Foundation. (App. Ex. #3)

<sup>11</sup> The contributions received during the "pay what you can" previews are included in ticket sales and not fundraising income. (Tr. p. 74)

These contributions total \$33,015.27 and are approximately 18% of the total inflows. (Tr. p. 48; App. Ex. #11.4, 12.1)

46. The applicant's total "outflows" for fiscal year ending May 31, 2005 were \$185,132.43, resulting in a deficit of \$2,603.29. The outflows included the following expenses:

Advertising	\$ 24,744.10
Box Office Salaries	7,075.18
Box Office Taxes	1,160.85
Capital Improvements <sup>12</sup>	21,953.54
Depreciation	26,972.00
Honorariums <sup>13</sup>	5,025.00
House and Grounds	6,624.12
Insurance	6,834.00
Interest Expense	9,044.93
Production Expense <sup>14</sup>	14,369.94
Postage	1,179.92
Printing	10,357.35
Property Taxes	7,963.92
Royalties	18,661.80
Utilities	15,996.56
Other Expense	<u>7,169.22</u>

Total \$ 185,132.43 (App. Ex. #11.5-7, 12.1)

47. The applicant had a deficit of \$19,151.19 for fiscal year ending May 31, 2004. (App. Ex. #12.1)

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12 Capital Improvements included expenses for the lighting system, water pipes that needed to be replaced, the box office system that needed to be replaced. (Tr. pp. 50-51)

13 Honorariums are a standard amount given to the director, producer, and certain members of the production team for each production. During the 2004-2005 season, \$150 was paid to each of the directors, choreographers and music directors. The remaining honorariums were less than \$150. (App. Ex. #13.2; Tr. p. 54)

14 Production expense includes the cost of sets, costumes, props, etc. (Tr. p. 50)

48. On December 7, 2004, the applicant entered into a Premises Use Agreement with an organization known as Karen Bair Music, which used the premises for a benefit concert for The Baby Fold.<sup>15</sup> The agreement was for the use of the premises for one day, December 18, 2004, for a fee of \$50 that was used by the applicant to buy ticket stock to print tickets. The applicant did not lease the premises during 2005. (Dept. Ex. #2; Tr. p. 69)
49. The applicant does not have any capital stock, shareholders or dividends. (Tr. pp. 46-47, 62)
50. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #2; Tr. p. 18)
51. The applicant is exempt from the retailers' occupation tax and use tax pursuant to a determination made by the Department in March 2005. (Dept. Ex. #2; Tr. p. 19)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

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<sup>15</sup> The Baby Fold is a multi-service agency that provides residential, special education, child welfare, and family support services to children and families in central Illinois. (Dept. Ex. #2)

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. \* \* \*. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1<sup>st</sup> Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, and earns no profits or dividends; (3) whether the organization derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (4) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (5) whether the primary purpose for which the property is used, not any secondary or incidental

purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2<sup>nd</sup> Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The Department contends that the applicant is not a charity because it operates like other businesses in the entertainment industry. The Department argues that its purpose is to allow people who want to get involved in the industry to participate at a low cost in order to get experience so that they can develop their talents then move on to other more lucrative positions. The Department states that most of the applicant's revenue is payment for services, and the primary use of the property is not for charitable purposes. The Department believes that the property is primarily used as a business.

The applicant contends that it meets the factors in Methodist Old Peoples Home, *supra*. The applicant claims that it benefits an indefinite number of people and stimulates

critical thinking, improves quality of life, promotes the understanding of others, fosters pride in the community, and contributes to the education and development of children. The applicant argues that the money it receives is used to further its purposes and objectives. It also argues that it places no obstacles in the way of anyone who would use its benefits, and the primary use of the property is charitable.

A public forum for art and art education may qualify for an exemption if it satisfies the guidelines in Methodist Old Peoples Home, *supra*. See Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068-1069 (1<sup>st</sup> Dist. 2000); Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 464 (2<sup>nd</sup> Dist. 1990) (primary use of property was to foster appreciation of the arts through concerts and other artistic events). The evidence in this case supports a finding that the applicant is a charitable organization that uses the property primarily for charitable purposes. The applicant benefits an indefinite number of people through both its open membership policy and its free performances. Anyone who has been involved in a production may become a member, and anyone is allowed to participate in the productions. A participation fee is not required. The brochures include the dates that everyone can show up to audition for a production. The applicant has a policy of waiving the \$10 membership fee for anyone who cannot pay it, and the fee was waived for all the members for the 2004-2005 season. The benefit to becoming a member is minimal; a voting member has the opportunity to serve on the Board and hold the Board accountable for its performance. In addition, everyone has access to the applicant's performances through the "pay what you can" preview performances.

The applicant has no capital, capital stock or shareholders and earns no profits or dividends. Although most of the applicant's income is from ticket sales and not from public and private charity, the failure to meet this factor does not necessarily require a conclusion that the organization is not charitable. The court in Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652 (1<sup>st</sup> Dist. 1992) noted the following:

A careful reading of the cases indicates that while the source of funds is listed as a characteristic of a charitable organization, each concerns itself primarily with discovery of the facts relative to the use to which the funds are put. \* \* \* [A] better view is that where it is established that the funds and property are devoted to public purposes, the source of the funds is not the sole determinant factor. Lutheran General Health Care, 231 Ill. App. 3d at 663-664, quoting American College of Surgeons v. Korzen, 36 Ill. 2d 340 (1967).

The court continued by stating the fact that an organization charges people who are able to pay does not preclude an exemption if no profit is made and the amounts received are applied in furthering the organization's charitable purpose. Lutheran General Health Care, 231 Ill. App. 3d at 664. The applicant in the present case meets these requirements. The income that the applicant receives from the ticket sales is not sufficient to cover its operating expenses, and all the money that it receives is applied towards furthering the charitable mission.

The applicant also dispenses charity to everyone who needs and applies for it. The membership fee is waived for those who cannot pay it, and notice of the waiver is included in the bylaws. The applicant also allows anyone who is unable to pay for a performance to see it for free. The "pay what you can" preview performance allows everyone to see the show regardless of their ability to pay, and it removes the obstacle of having to ask to see it for free. The applicant extensively advertises the preview

performance. Notice of the preview is included in all of the advertisements for the regular performances in both the newspaper and the brochures. The letters that the applicant sends to the local educators concerning the school performances includes a statement that tickets are available for those students who may be unable to pay for them. The brochures also include the statement that the applicant is committed to making theatre accessible to every individual in the community and that the preview performance was added to ensure that financial constraints do not preclude people from experiencing live theatre. The applicant does not place any obstacles in the way of those seeking its charitable benefits, and the applicant does not provide gain or profit in a private sense to any person connected with it.

Finally, the primary purpose for which the property is used is charitable. The applicant fosters appreciation of the arts by making its performances readily available to both the general public and the local school children. The applicant ensures that those who are unable to pay for its services have access to its services. These facts support a finding that the property is entitled to the exemption.

Recommendation:

For the foregoing reasons, it is recommended that the property be exempt from taxes for the year 2005.

Linda Olivero  
Administrative Law Judge

Enter: November 30, 2006