

PT 10-06
Tax Type: Property Tax
Issue: Fire Protection Exemption

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ALEXANDER BUSINESS
ASSOCIATION, INC.

Applicant

Docket # 09-PT-0010

Tax Year 2008

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Eddie Carpenter, Attorney at Law, for Alexander Business Association, Inc.

Synopsis:

Alexander Business Association, Inc. (“applicant”) filed an application for a property tax exemption for the year 2008 for two parcels of property located in Alexander, Illinois. The applicant alleges that the property qualifies for an exemption under section 15-70 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is used for fire protection purposes. The parcels contain a building that stores equipment that is used by volunteer firefighters to protect local residents and their property from fire. A portion of the building is also used for training firefighters and for

meetings. The Morgan County Board of Review (“County”) recommended that the parcels receive an exemption. The Department of Revenue (“Department”) disagreed with the County’s decision and determined that the property is neither owned nor used for fire protection purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized in May 1957. (Dept. Ex. #3)
2. The applicant’s bylaws that were adopted on September 10, 1957 indicate the purposes for which the applicant is organized as follows:

The purposes of the Corporation as stated in its certificate of Corporation are Civic, including, but not by way of limitation, to conduct affairs toward the general welfare for the community in and surrounding Alexander, Illinois; to sponsor and assist in sponsoring worth while projects for the Alexander Community; to assist in upholding and maintaining law and order, and to discourage acts of violence, sabotage and vandalism in the Alexander Community; and to acquire and own fire apparatus for use by the Corporation in the protection of persons and property from injury, loss, damage or destruction by fire; and to own and acquire land and to construct and erect buildings for corporate purposes for the use of the members of the corporation in connection with the housing of fire apparatus and for the providing of a place for the conduct of other affairs engaged in by the corporation.¹ (App. Ex. #3, p. 1)

3. In March 2008, the applicant received as a donation two parcels of property located in Alexander. The applicant constructed a firehouse on the parcels that has four garage doors and one walk-in door. It houses four fire trucks, one major

¹ The purposes stated in the applicant’s articles of incorporation are identical to those stated in its bylaws. (Dept. Ex. #3)

- pumper engine, two smaller pumpers, and one tanker. A portion of the building is used for meetings and training. This building is one block away from the previous firehouse and was constructed in order to provide more space.² (Dept. Ex. #1; App. Ex. #1; Tr. pp. 17-18, 24, 41)
4. Approximately 12 of the applicant's members serve as volunteer firefighters who perform acts necessary to carry out the purposes of the applicant. None of the firefighters are compensated for their services. (App. Ex. #3, p. 8; Tr. pp. 9, 14)
 5. The applicant's activities are part of the 911 Emergency Response System. This is a radio system that notifies the applicant's firefighters of a fire in Morgan County within 30 seconds from the time it is reported. (Tr. pp. 9-10)
 6. The applicant's designated first-response area is approximately 6 miles. The applicant is also responsible for 6 miles of Interstate 72 where it responds to vehicle fires or accidents that need assistance. (Tr. pp. 11-12, 14-15)
 7. The applicant has one class of members that consists of residents who live in the applicant's fire district and the property owners in the district. (App. Ex. #3, p. 1; Tr. p. 28)
 8. According to the bylaws, the members are elected with an affirmative vote of 2/3's of the Board of Directors ("Board"). The bylaws state that the cost of membership is \$5 per year, which may be changed from time to time by the Board. The cost of membership must be paid at the time an applicant applies for membership. (App. Ex. #3, pp. 1, 7)

² The testimony indicated that property taxes were not assessed on the previous firehouse. (Tr. p. 41)

9. The annual cost of membership is currently \$40 for the first property that a person owns and an additional \$20 if the person owns other property such as a rental home. The cost is the same regardless of the size of the property. (Tr. p. 29)
10. The applicant sends an invoice for the annual dues to all the residents and property owners in the district. When a resident or owner pays the dues, the applicant considers them to be a member. (Tr. p. 28)
11. If the applicant responds to a fire call, the applicant sends an invoice to the caller. For members, the charge is \$250, and for non-members, the charge is \$500. (Tr. pp. 20, 31)
12. The bylaws state that the Board may “terminate the membership of any member who becomes ineligible for membership, or suspend or expel any member who shall be in default in the payment of dues....” (App. Ex. #3, p. 2; Tr. p. 49)
13. Any member may resign, but the “resignation shall not relieve the member so resigning of the obligation to pay any dues, assessments or other charges theretofore incurred and unpaid.” (App. Ex. #3, p. 2)
14. The applicant has not waived any fees and does not have a written policy to waive its fees. (Tr. pp. 52-53, 55)
15. The applicant’s unaudited income and expense statement for the time period of December 1, 2007 through November 30, 2008 shows the following:

<u>Income:</u>	
The Hohmann Agency	\$ 74.00
Interest	312.36
Dues	8,310.00
Fire Call	2,000.00
Donation	850.00
Scrap Metal	318.45
CD #10495	5,095.47

Check Error	647.00
Loan (Warren Boynton State Bank)	22,500.00
August Picnic ³	9,467.50
Park Use Donation ⁴	30.00
Memorial	95.00
Safeco Insurance	750.00
Gary Martin ⁵	3,050.00
ILEAS	119.70
Cowman's (truck sale)	<u>1,105.00</u>

Total Income \$54,724.48

Expenses:

Alexander Water District	418.00
Verizon	487.83
Gary Strawn ⁶	1,979.04
Ameren ⁷	2,646.31
Jim Kaiser (mowing at firehouse)	30.00
Warren Boynton State Bank	30.00
C. P. Red Cross	40.00
Safeco Insurance	1,477.15
Westside Auto Parts	320.08
NAPA Auto Parts	45.99
U. S. Postmaster	182.40
AEC ⁸	1,530.83
Jacksonville Fire Extinguisher	153.00
Mike Kaiser (used water pump for truck)	100.00
Secretary of State	5.00
Morgan Co. Dive & Rescue	242.86
The Hohmann Agency	651.00
Eddie Carpenter, Attorney	50.00
Lonergan's (mowing park)	835.00
Karen Kaiser (mowing at firehouse)	230.00
St. Paul's Travelers	1,012.00
The Cincinnati	647.00
August Picnic	1,491.28
Moeller Enterprises (Ready Mix)	5,969.75

³ The August Picnic is a fundraising event where food is sold and a raffle and silent auction are held. (Tr. pp. 35-36)

⁴ The applicant receives donations from people who reserve a local park for their use, but the donations are not necessary in order to use the park. (Tr. pp. 40, 54-55) The applicant indicated that it pays for the insurance and utilities for the local park, but no one actually owns the park. (Tr. pp. 39-40)

⁵ This was the down payment for the sale of a building. (App. Ex. #2C, p. 6)

⁶ This was payment for gas for trucks, truck parts, and reimbursement for plumbing supplies for the new firehouse. (App. Ex. 2C, p. 1)

⁷ Ameren bills include park lights and "another community light." (App. Ex. #2C, p. 1)

⁸ The applicant did not clarify what "AEC" stands for.

Hammers Construction	32,304.00
Danenberger's	196.37
Krell's	273.58
Caruther's Garage Door Service	1,000.00
State of Illinois (Sec. of State)	65.00
Ill. Dept. of Revenue	25.00
Smith Concrete, Inc.	6,520.00
Pennell Forklift Svs., Inc.	<u>299.20</u>
Total Expenses	\$61,257.67
(App. Ex. #2C, pp. 1-2)	

16. The applicant's unaudited income and expense statement for the time period of December 1, 2008 through November 30, 2009 shows the following as income:

<u>Income:</u>	
Gary Martin ⁹	\$27,272.00
Interest	59.66
Dues	8,464.00
Fire Call	2,000.00
Insurance Refund	823.82
Donations	300.00
Truck Sale	2,557.50
August Picnic	7,356.51
Refund/Building Supplies	<u>134.69</u>
Total Income	\$48,968.18
(App. Ex. #2D, p. 2)	

17. The applicant's expenses for the time period of December 1, 2008 through November 30, 2009 totaled \$49,949.31. These expenses were similar to those incurred during the previous year. (App. Ex. #2D, p. 1)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto." *Id.* Statutes granting tax

⁹ This amount was received for the sale of a building (see footnote #5). (App. Ex. #2D, p. 3)

exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. The burden is a very heavy one. Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

Pursuant to the constitutional authority, the General Assembly enacted section 15-70 of the Property Tax Code, which allows exemptions for fire protection purposes and provides as follows:

Fire protection purposes. All property used exclusively for fire protection purposes and belonging to any city, village, or incorporated town is exempt.

All property of a corporation or an association which maintains a fire patrol and salvage corps for the public benefit is exempt if the property is:

- (a) used exclusively for providing suitable rooms, housing and storage facilities for fire and rescue equipment, and
- (b) necessary for the accommodation of a fire patrol and salvage corps, or otherwise used exclusively for the purpose of the fire patrol and salvage corps, and
- (c) used to provide a service that is rendered indiscriminately and **without charge** to the public, except reasonable charges for the use of fire covers after the lapse of 10 days following the occurrence of loss or damage.

If a portion of the property of the corporation or association is used exclusively for fire protection purposes, the property shall be exempt only to the extent of the value of that portion, and the remaining portion shall be subject to taxation. (Emphasis added) 35 ILCS 200/15-70.

Meeting the statutory requirements of section 15-70 does not automatically warrant a finding that the property is entitled to an exemption; it must be determined whether the property meets the constitutional requirements as well. Eden Retirement Center, Inc., at 288-291.

The applicant argues that its property falls “within the spirit” of section 15-70 because the applicant indiscriminately and immediately responds to every fire call in the community regardless of whether the caller is a member or nonmember and regardless of whether the caller has paid the applicant for its services. The applicant contends that although it charges for its services, in most cases insurance companies pay for the charges. Also, when the applicant does not receive payment, the charges are written off and never pursued. The applicant, therefore, contends that in a broad sense, its services are provided without charge. In addition, the applicant believes that the income from the service charges is *de minimus* compared to the other income that the applicant receives, and it would be a disservice to find the property is taxable because of an insignificant portion of its income.

Notwithstanding the applicant’s averments, the evidence does not clearly and convincingly show that the applicant meets the statutory requirement that it provide its services “without charge to the public.” 35 ILCS 200/15-70. Initially, it must be noted that the applicant did not provide documentary evidence, such as invoices or records, to substantiate the payments that it received for the charges that it made. The applicant did not give documents to show information such as the number of fire calls for which it sent an invoice, the number of fire calls for which it did not receive payment, or the number of residents who did not pay the membership dues. The testimony indicated that the

applicant does not get a response from a lot of the bills that it sends (tr. p. 38), it does not receive payment for most of the car fires to which it responds (tr. p. 43), and most of its charges are paid by insurance companies. The evidence, however, lacks substantiation to support this. Exemption provisions are strictly construed, and all debatable questions must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. Without documentary evidence to corroborate its contentions, it cannot be found that the applicant has met the clear and convincing standard necessary for the exemption. See Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-297 (1st Dist. 1981) (reasonable for Department to expect more than testimony from taxpayer to support taxpayer's claim for an exemption).

Nevertheless, whether the applicant received payments from insurance companies or whether it did not receive payments at all does not alter the fact that the applicant sent invoices and expected payment for every fire call to which it responded. The person or entity that actually pays the invoice is not relevant; what is relevant is whether the applicant charges for its services. Even though the applicant responds to every fire call, it also expects payment for its services. As previously mentioned, the legislature may place restrictions, limitations, or conditions on an exemption. Eden Retirement Center, Inc., at 291. For the fire protection purposes exemption, the legislature has limited the exemption to those who provide their service without charge. The word "charge" means "to set or ask (a given amount) as a price." The American Heritage Dictionary, Second College Edition, p. 259 (1976). Although a sample invoice was not provided, the testimony indicated that after every fire call the applicant sends an invoice for its services, which meets the definition of "charge."

The applicant admitted that it charges its members \$250 for fire calls and nonmembers \$500. According to the testimony, if the first invoice to a fire caller is not paid, the applicant sends a second invoice, and if the second invoice is not paid, the applicant does not attempt to collect the debt. (Tr. pp. 43-44) Even so, the applicant expects to receive payment for its services.

With respect to the membership dues, the testimony indicated that if someone does not pay their dues for one year, the applicant will continue to send an annual invoice for the dues unless that person has specifically stated that they do not want to be a member. (Tr. p. 30) Again, the applicant expects to receive payment for dues. Paying the dues and becoming a member brings the benefit of reduced charges, and the bylaws state that if the dues are not paid, membership may be terminated. The charge would then be back to twice the amount that is charged to members.

In addition to charging the fire callers for the applicant's services, the applicant does not have a fee waiver policy, and nothing in the record supports a finding that any of the callers received services free of charge. As already stated, the applicant did not provide documents to show what charges were made, who paid them and who did not pay them. In other words, the applicant did not provide evidence of a specific example of when a person received the applicant's services without paying for them.

Exemption provisions must be strictly construed in favor of taxation. Eden Retirement Center, Inc., *supra*. Section 15-70 requires the fire protection services to be provided without charge to the public, yet the applicant charges the callers for its services. Based on a strict reading of the statute, because the applicant charges for its services, the applicant fails to meet the statutory requirements for the exemption.

Even if it were assumed that the applicant has met the statutory requirements, the applicant has also failed to meet the constitutional requirements for an exemption. As mentioned previously, the party claiming the exemption must prove that the property falls within both the constitutional authorization and the terms of the statute. Eden Retirement Center, Inc., *supra*. Because the constitution does not specifically authorize an exemption for fire protection purposes, a corporation or association seeking an exemption under section 15-70 must not only show that the property meets the requirements of section 15-70, but it must also show that the property meets the constitutional requirements for a charitable purposes exemption.

The Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) and reiterated them in Eden Retirement Center, Inc., *supra*. The court stated that the distinctive characteristics of a charitable institution are as follows: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home, at 156-57. The primary purpose for which the property is used, and not any secondary or incidental purpose, must also be charitable. *Id.* For purposes of applying these criteria, the court defined charity as “a gift to be applied ... for the benefit of an indefinite number

of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” *Id.*

The applicant does not meet most of these constitutional guidelines for a charitable purposes exemption. The applicant meets one guideline by not having any capital, capital stock or shareholders, but it does not derive its funds mainly from public and private charity. For the fiscal year ending November 30, 2008, the applicant received \$850 from donations and \$9,467.50 from its August picnic fundraising event, which totals \$10,317.50. This amount is only \$7.50 more than the amount that the applicant received from its dues and fire calls (\$10,310.00), and it is not the majority of what the applicant received as income. The same is true for the following fiscal year.¹⁰ The fact that the primary funding source is not public or private charity does not automatically require a conclusion that the property is not used for charitable purposes. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4th Dist. 2008)¹¹; Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652, 663-664 (1st Dist. 1992). In the present case, however, other criteria have not been met.

The applicant did not show that charity was given to all who needed and applied for it. As already stated, the evidence does not include a specific example of when the applicant provided its services to those who were unable to pay, and it is not clear who received services free of charge. Without evidence of a specific act of charity that was

¹⁰ For the fiscal year ending November 30, 2009, the applicant received \$300 from donations and \$7,356.51 from its August picnic fundraising event, which totals \$7,656.51. (App. Ex. #2D, p. 2) The applicant received \$8,464.00 from dues and \$2,000 from fire calls, which totals \$10,464.00 and is more than the amount that the applicant received from its donations and fundraising.

¹¹ The Supreme Court affirmed the Fourth District Appellate Court’s decision in this matter on March 18, 2010, but as of today’s date, the Supreme Court’s decision has not become final.

provided during the year in question, doubt has been raised as to whether charity was given to all who needed it.

Moreover, obstacles were placed in the way of those who may have needed and would avail themselves of the charitable benefits the applicant offers. As mentioned earlier, the applicant charges fees, it does not have a fee waiver policy, and its bylaws state that membership may be terminated for failing to pay dues. The applicant also does not notify the public that its services may be without charge for those who cannot pay. The failure to notify the public that fees may be waived does not automatically warrant denying the exemption. See Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1st Dist. 2000). In Randolph Street Gallery, however, the court found that during the years in question, the applicant had, and used, an undisputed and consistent fee waiver policy. In the present case, the applicant does not have a fee waiver policy, and the applicant did not provide a specific example of when it actually waived its fees. Although the applicant claims that no one approached the Board to ask for a waiver of the membership fee (tr. p. 44), the community may not have known that a waiver was possible.

Furthermore, writing off a bad debt is not the same as providing charity. Provena Covenant Medical Center, at 761-762; Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998). The applicant sends invoices and notices with the expectation that they will be paid, and if the applicant does not receive payment, the amount is considered uncollectible. Charity is a gift (Provena Covenant Medical Center, at 750; Methodist Old Peoples Home, at 156), and the applicant did not show that it provided any free services that were gifts rather than debt that could not be collected.

The applicant clearly provides essential services to the community, and its services are laudable. Laudable acts, however, do not necessarily constitute charity. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956). The fact that the applicant provides fire protection services to anyone who needs them is not, in and of itself, charity; rather, charity is providing *uncompensated* fire protection services. See Provena Covenant Medical Center, *supra* (charity is not providing medical care to everyone who needs it; charity is providing uncompensated medical care). No specific information was given by the applicant concerning the extent to which it provided uncompensated fire protection services.

Exemption provisions are strictly construed in favor of taxation. Eden Retirement Center, Inc., *supra*. The applicant bears the burden of proving by clear and convincing evidence that it is entitled to the exemption; all factual ambiguities and debatable questions must be resolved in favor of requiring the tax to be paid. *Id.* Because the evidence presented falls short of showing clearly and convincingly that the property meets the statutory requirements, as well as most of the guidelines in Methodist Old Peoples Home, *supra*, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the request for an exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: April 9, 2010