

PT 13-01

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

USA BALLET

Applicant

Docket # 11-PT-0027

Tax Year 2011

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Julia Davis of Hayes, Hammer, Miles & Cox, LLP for USA Ballet

Synopsis:

USA Ballet (“applicant”) filed an application for a property tax exemption for the year 2011 for a parcel of property located in McLean County. The applicant is an organization that promotes, develops, and maintains ballet as a performing art. A facility on the property is used to teach ballet, train dancers, and provide workshops. The applicant acquired the property through an Agreement for Warranty Deed in September 2010, and the Agreement was rescinded in April 2011. The applicant contends that during the four month period of January 1, 2011 through April 30, 2011, the property was owned by a charitable organization and used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS

200/1-1 *et seq.*). The McLean County Board of Review (“County”) recommended that the parcel be exempt for the four months at issue. The Department of Revenue (“Department”) disagreed with the County’s decision and found that the property was neither owned by a charitable organization nor used exclusively for charitable purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. For the following reasons, it is recommended that the exemption be denied.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on December 28, 1990. (Dept. Ex. #1, p. 7)
2. The applicant previously operated under the following names: Prairie Dance Theatre; Illinois Ballet; Mid-Illinois Ballet; and Central Illinois School of Dance. (Dept. Ex. #1, p. 7; Tr. pp. 8-9)
3. The articles of incorporation indicate that the corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, p. 10)
4. The applicant’s mission statement provides as follows:

It is the purpose of the USA Ballet to create, develop and maintain ballet/dance as a performing art, through performances, workshops, outreach programs by world class professional dancers, and to train, develop and nurture students in the art of ballet/dance regardless of race, color, sex, religion, ethnicity, gender identification/orientation, disability or age. To further charitable abilities by providing free tickets to seniors, at risk youth, and those otherwise financially unable to attend and be exposed to ballet/dance performances, as well as traveling on campus to senior facilities, schools for the previously mentioned purposes. (Dept. Ex. #1, p. 14)
5. On September 13, 2010, the applicant entered into an Agreement for Warranty Deed with James A. Jones for the purchase of property located at 417 Olympia Drive in

Bloomington, Illinois. Under the contract, the applicant's monthly payments were initially \$2,000, and the applicant was responsible for paying the real estate taxes. (Dept. Ex. #1, pp. 38-50)

6. The applicant has never previously owned real estate. (Tr. p. 10)
7. The applicant moved into the property on Olympia Drive in September 2010. (Tr. p. 16)
8. In April 2011, the contract was rescinded when the applicant was unable to pay \$25,000 on March 31, 2011 as required under the contract. On April 30, 2011, possession of the property was returned to Mr. Jones. (Dept. Ex. #1, pp. 2, 30, 55-56)
9. The property had a 6,000 square foot building that had a large dance floor, dressing rooms, costume and props storage areas, reception area, restrooms, office areas, and an office supply storage room. (Dept. Ex. #1, pp. 25, 29)
10. The USA Ballet Academy is the applicant's ballet school. (Tr. pp. 11-12)
11. The applicant provides tuition waivers for the school. The waivers are offered based on financial difficulty, talent, special needs, or "other." The Tuition Waiver Form that must be completed by the person seeking the waiver includes the following: "Any financial assistance is provided solely at the discretion of the USA Ballet Board subject to verification." (Dept. Ex. #1, p. 33; Tr. p. 12)
12. After someone completes a Tuition Waiver Form, the applicant's staff will meet with them to review their paperwork and determine whether it is a legitimate request. If it is, the applicant will grant the waiver. (Tr. p. 34)
13. From September 2010 through April 2011, the building on the property was used Monday through Friday from 10:00 to 11:30 a.m. for the applicant's professional company members' warm-up classes. They rehearsed for company performances from

noon to 3:00 p.m. At 3:00 the studio was cleaned for the evening Academy classes. On Monday through Friday, there were Academy classes from 4:00 to 8:30 p.m., with outreach classes occurring on Wednesdays. On Saturdays beginning at 9:00 a.m. there were youth ensemble warm-up classes, Academy classes, and rehearsals through the afternoon or evening, depending on what was being rehearsed. (Dept. Ex. #1, pp. 28-29; Tr. pp. 24-25)

14. The outreach classes on the premises included free classes to children from the Autism Society, the Girl Scouts, and SOAR, which is for physically and emotionally challenged youth. (Dept. Ex. #1, p. 23; Tr. pp. 15, 24)

15. The applicant goes to the Unity Center in Normal, Illinois to provide free weekly classes. The Unity Center is a learning center for children of families who are financially disadvantaged. The applicant also gave a free performance of the Nutcracker at the Unity Center. (Dept. Ex. #1, p. 19; Tr. p. 14)

16. The applicant provides free performances at local events, schools, senior facilities, and the Children’s Discovery Museum. (Dept. Ex. #1, pp. 20-21; Tr. pp. 14-15)

17. The applicant’s unaudited financial statement for the time period of January 1, 2011 through April 30, 2011 provides as follows:

Income

Admissions/Earned ¹	\$ 28,885.20
Contracted Services ²	1,050.00
Other (fundraising, performance boutique)	5,265.48
Corporate/Foundations	550.00
Individual Contributions	<u>950.00</u>
Total Income	\$ 36,700.68

¹ This includes income from performances and from tuition for the Academy. (Tr. pp. 11, 26)

² This is income for performing at different venues. (Tr. p. 26)

Expenses

Free Classes ³	\$ 3,440.00
Personnel Administration ⁴	0.00
Personnel Artistic	480.00
Contracted Artistic	300.00
Contracted Other	1,400.20
Space Rented – building	8,000.00
Space Rented – other ⁵	3,679.55
Travel/Lodging/Transportation	1,194.12
Marketing/Advertising	414.82
Office Expenses	1,183.79
Artistic Supplies	14,653.03
Utilities	1,400.48
Insurance	1,700.00
Legal and Licenses	<u>396.97</u>
Total Expenses	\$ 38,242.96
Net Income (Loss)	\$ (1,542.28)

The applicant's income statement also includes \$17,856.48 for In-kind Contributions, which includes items donated and volunteer time. This amount was not included in the total income and expenses. (Dept. Ex. #1, p. 32; Tr. p. 27)

18. The total income that the applicant received from all of its performances and from the tuition for the Academy for the first four months of 2011 was \$29,935.20 (\$28,885.20 plus \$1,050.00), which was approximately 82% of the total income of \$36,700.68. The remaining income of \$6,765.48 was from private charity. (Dept. Ex. #1, p. 32)

19. The applicant has no capital, capital stock, or shareholders. (Dept. Ex. #1, pp. 7, 74-75; Tr. p. 13)

³ This refers to the tuition waivers for the school classes. (Tr. pp. 27, 33-35)

⁴ The administrative personnel are volunteers. (Tr. p. 27)

⁵ This refers to rent for theatres at which the applicant would perform. (Tr. p. 28)

20. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS on January 11, 2002. (Dept. Ex. #1, pp. 8-9; Tr. p. 10)

21. The applicant is exempt from retailers' occupation taxes and use taxes pursuant to a determination made by the Department on August 15, 2008. (Dept. Ex. #1, p. 11; Tr. p. 10)

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 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.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) (“Provena I”). 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 this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides, in relevant part, as follows:

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 be exempt under this subsection if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen’s Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

The Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (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; (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; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. 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.*

Before addressing these guidelines, the Department has first raised the issue of whether the applicant actually owned the property during the four months in question because the applicant had entered into an Agreement for Warranty Deed. The Illinois Supreme Court addressed a similar issue in Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978). In that case, the applicant entered into a contract for warranty deed for the purchase of property. The court indicated that the applicant had a substantial monetary interest in the property, and the applicant was contractually responsible for the real estate taxes. The court noted that the applicant should not be penalized for using a financing arrangement that was different than the usual mortgage loan. The court found that the applicant was the equitable owner of the property, and the property was entitled to a charitable tax exemption.

The facts in the present case concerning the ownership of the property are similar to those in Christian Action Ministry. In September 2010, USA Ballet entered into an Agreement for Warranty Deed to acquire the property and started making monthly payments of \$2,000. Under the contract, USA Ballet was responsible for paying the property taxes. This financing arrangement is similar to the one in Christian Action Ministry, and USA Ballet is the equitable owner of the property for the time period at issue.

Next, it must be determined whether the applicant is a charitable organization that uses the property exclusively for charitable purposes. An organization that uses property for art and art education may qualify for a charitable exemption if it satisfies the guidelines in Methodist Old Peoples Home, *supra*. See Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 251 (1st Dist. 2002) (primary purpose is to benefit community as a fine art museum);

Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068-1069 (1st Dist. 2000) (primarily integrates contemporary art and art education into the community); Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 464 (2nd Dist. 1990) (primary purpose is to foster appreciation of the arts through concerts and other artistic events). Unfortunately, the evidence in the present case falls short of showing clearly and convincingly that the applicant meets most of the guidelines to support a finding that it is entitled to the exemption.

It should be noted that the applicant has shown that it is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code, and it is exempt from retailers' occupation and use taxes pursuant to a determination made by the Department. The Illinois Supreme Court has found, however, that having a charitable exemption from income taxes or from retailers' occupation and use taxes is not determinative of whether an applicant is entitled to a charitable exemption from property taxes. Provena I, at 389; Hopedale Medical Foundation, at 464. In addition, a cause of action for each property tax year is different, and "even where the ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption annually." Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1st Dist. 1981). The only relevant time period at issue in this case is the first four months of 2011.

Considering the constitutional standards for the exemption that were set forth in Methodist Old Peoples Home, *supra*, the applicant meets the first and fourth factors. USA Ballet does not have capital, capital stock, or shareholders. It also does not provide gain or profit in a private sense to any person connected with it. The evidence is not clear, however, that the applicant meets the remaining factors.

With respect to the second factor, USA Ballet does not derive its funds mainly from public and private charity. The majority of the applicant's income, approximately 82%, is from fees for either its classes or performances, and the remaining 18% is from private charity. It is noteworthy that if the \$17,856.48 that the applicant received from in-kind contributions is included in the applicant's income, then the total amount of income from private charity would be \$24,621.96, which is approximately 45% of the adjusted total income amount of \$54,557.16. This percentage is significantly higher, although still not a majority.

Nevertheless, the fact that the applicant's primary funding source is not public or private charity is not, by itself, dispositive. See Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4th Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010) ("Provena II") (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967)). In addition, the fact that the applicant uses its income to further its charitable purposes does not determine whether there should be an exemption. See Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill. App. 3d 679, 697 (5th Dist. 2008); Cook Communications Ministries v. Department of Revenue, 345 Ill. App. 3d 753, 763 (2nd Dist. 2004); Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2nd Dist. 1988). The actual activities on the property must be considered. *Id.*

In Provena II, the court stated that the factors of dispensing charity to all who need and apply for it and placing no obstacles in their way "are essential criteria; they go to the heart of what it means to be a charitable institution." *Id.* at 750. Furthermore, the factor that the property is used exclusively for charitable purposes is the *sine qua non* of the exemption. *Id.* at 743. In the present case, the facts do not clearly and convincingly show that the applicant meets these other guidelines.

With respect to whether the applicant gives charity to all who need and apply for it, the evidence indicates that the applicant gives tuition waivers to some of its students, and \$3,440 of the tuition was waived during the period at issue. It is important to note, however, that the evidence does not show whether this amount was waived due to financial hardship. The blank Tuition Waiver Form indicates that the tuition may be waived based on, among other things, “talent.” (Dept. Ex. #1, p. 33) The actual completed and signed waiver forms for the time period at issue were not offered into evidence. It is possible that the waivers during 2011 were for talent and not due to the fact that the student or students were unable to pay for the classes.⁶ Charging fees does not automatically disqualify an organization for a charitable exemption as long as the organization furnishes its services to those who are unable to pay. Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). In this case, it is not clear that the applicant actually exercised a tuition waiver policy for those who are unable to pay.

It is also worth noting that the applicant’s mission statement does not refer to free classes for those who are unable to pay. The mission statement indicates that the applicant’s purpose includes “to train, develop and nurture students in the art of ballet/dance regardless of race, color, sex, religion, ethnicity, gender identification/orientation, disability or age.” (Dept. Ex. #1, p. 14) This statement does not indicate that the applicant will train students regardless of “the ability to pay.” The mission statement does, however, refer to outreach programs, free tickets and free performances.

The applicant’s actual practices concerning these other free services are not exactly clear from the record. Although outreach classes were given every Wednesday, the record lacks

⁶ The record also does not indicate the fee or cost of the applicant’s classes, so it is unclear how many students actually received the waiver.

specific information concerning when the free performances took place. It is also unclear how many free tickets were given for other performances and the price of the performances.

In addition, the record is not clear concerning how the applicant advertises its fee waiver policy and free services. With respect to the fee waiver policy, the applicant indicated that it will “mention and promote” it (tr. p. 12), but there are no specific examples or documentary evidence of this. As noted earlier, the applicant’s mission statement does not mention that the applicant will waive the fees for its classes. With respect to the other free services, the mission statement indicates that the applicant will provide outreach programs, free tickets, and free performances, but it is unclear whether the public is aware of the mission statement or how the public is otherwise notified of these services. The applicant mentioned that it will contact local service organizations and senior programs to let them know that free tickets are available (tr. p. 35), but it is unclear how and how often this was done during the time period at issue.

Failing to adequately notify the public of a fee waiver policy or free services is considered to be an obstacle in the way of those seeking charity. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 608-609 (3rd Dist. 2003); Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998). This does not, however, automatically warrant denying the exemption. Randolph Street Gallery, *supra*. In Randolph Street Gallery, however, the court found that during the years in question, the applicant had an undisputed and consistent fee waiver policy, and the applicant actually used it. In the present case, it is unclear whether the fee waiver policy was actually used for those who were unable to pay the tuition. In addition, with the exception of the outreach classes, it is unclear how often the other free services were given.

Other obstacles may be late fees and application or registration fees. Because the income from the tuition and performances was \$28,885.20, which is not a round number, it is possible that late fees were charged. The record lacks information concerning whether late fees were charged and whether any application or registration fees were charged, and it is unclear whether these fees would have ever been waived. From the evidence presented, the applicant has not clearly established that it does not place obstacles in the way of those seeking its charitable benefits.

Charity is not merely helpfulness, but generosity. “To be charitable, an institution must give liberally.” Provena II, at 750. The facts in this case raise doubts concerning the amount of charity that the applicant provided. The few charitable acts performed on the property simply do not warrant a finding that the property was primarily used for charitable purposes.

The applicant undoubtedly provides an important service for the community, but the evidence presented is not sufficient to support a finding that the property is entitled to the exemption. The applicant’s operations are certainly laudable, but laudable acts do not necessarily constitute charity. Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934). As previously mentioned, exemption provisions must be strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The party claiming the exemption must prove by clear and convincing evidence that it is entitled to the exemption. Provena I, at 388. The evidence presented in this case, unfortunately, falls short of showing clearly and convincingly that the property qualifies for the exemption.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: February 11, 2013