

**PT 06-21**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**MURRAYVILLE-WOODSON  
EMERGENCY AMBULANCE SERVICE CORP.  
Applicant**

**v.**

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

**A.H. Docket # 05-PT-0013  
Docket # 04-69-19**

**Parcel Index # 17-07-207-043**

**Barbara S. Rowe  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Charles McNeely, Thomas, McNeely & Crews, P. C., for Murrayville-Woodson Emergency Ambulance Service Corporation; Mr. Kent Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

The hearing in this matter was held to determine whether Morgan County Parcel Index No. 17-07-207-043 qualified for a property tax exemption during the 2004 assessment year.

Mr. Stephen Lakin, founding member of the Murrayville-Woodson Emergency Ambulance Service Corporation (hereinafter referred to as the "Applicant"), and Mr. Eric Lakin, were present and testified on behalf of Applicant.

The issue in this matter is whether Applicant used the parcel for charitable purposes during the 2004 assessment year. After a thorough review of the facts and law presented, it is my recommendation the Department's determination that the property did not qualify for exemption be upheld. In support thereof, I make the following findings of fact and conclusions

of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Morgan County Parcel Index No. 17-07-207-043 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the application for exemption of the subject parcel from the Morgan County Board of Review. The Board recommended granting a partial year exemption from “9-10-02 to subsequent for the 2004 assessment year.” The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. Applicant acquired the subject parcel by a trustee’s deed dated September 10, 2002. (Dept. Ex. No. 1)

4. According to the application, the main activity on the subject parcel is the annual consignment auction held in March of each year. Potential sellers of farm equipment store it on the subject property up to a month before the auction. (Dept. Ex. No. 1; Tr. p. 23)

5. The auctioneers for the consignment sale volunteer their time and Applicant receives the commission that would normally be paid to the auctioneers. It is about fifty percent of Applicant’s gross revenues for the year. Two to three auctioneers have bidding going simultaneously during the consignment auction. (Tr. pp. 22-23)

6. In addition, continuing medical education for Applicant’s volunteers takes place on the property, at least once a month, weather permitting. Applicant serves a rural community so it deals with farm accidents as well as other emergencies. (Dept. Ex. No. 1; Applicant’s Ex. 2; Tr. pp. 28-29)

7. Applicant provides emergency service to approximately a hundred square miles of Illinois including Murrayville, Nortonville, Manchester, southern Morgan County and a portion of northern Scott County. There are about 2,000 residences in the area. (Tr. p. 11)

8. Applicant has approximately 22 volunteers. It averages about ten runs per month. (Tr. p. 12)

9. In addition to Applicant's use of the property, the local fire department uses it about nine times a year for training. The boy scouts also use it to practice putting up tents and for other skill building exercises. (Tr. p. 24)

10. Applicant has no capital stock and no shareholders. (Tr. p. 13)

11. The subject property is 5.41 acres. (Dept. Ex. No. 1; Tr. p. 14)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining

whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967)

Applicant has requested an exemption for the subject property, alleging that it is used for charitable purposes. Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

The Illinois Supreme Court has interpreted this definition by observing that all "institutions of public charity" share the following "distinctive characteristics [:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses;
- 6) and the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968)

In order to preserve the constitutional and statutory limitations that protect the property tax base, statutes conferring property tax exemptions are to be strictly construed with all doubts and evidentiary deficiencies resolved in favor of taxation. An applicant bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565, 569 (1<sup>st</sup> Dist. 1991); Evangelical Hospitals Corporation v. Department of Revenue et al, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992). “Clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In re Israel, 278 Ill. App. 3d 24, 35 (2<sup>nd</sup> Dist. 1996); In re Weaver’s Estate, 75 Ill. App. 2d 227, 229 (4<sup>th</sup> Dist. 1966); Matter of Jones, 285 Ill. App. 3d 8, 13 (3<sup>rd</sup> Dist. 1996)

Applicant’s witness offered oral evidence at hearing that approximately fifty percent of its income comes from the consignment auction held on the subject property. (Tr. pp. 22-23) (testimony of Stephen Lakin, founding member of Applicant) This conflicts with question 12 on the initial application which asks: “Is any income derived from this property?” to which the Applicant responded: “No.” (Dept. Ex. No. 1) With the initial application, Applicant supplied pictures of a large amount of boats, tractors, and other farm equipment on the subject property. The letter that accompanied the initial application stated: “However the primary purpose for this land is to hold our annual Consignment Auction.” The letter was signed by Nancy L. Hall, Training Officer for the Applicant.

In addition to the information supplied with the application, Applicant’s position at hearing was that the property is also used for training and educational exercises. The training is routine, while the auction is the “big activity” and the monthly training is “not a big blowout that

we do once a year.” (Tr. p. 33) (testimony of Stephen Lakin) Nancy Hall did not appear at the hearing to clarify the assertions on the application and the evidence presented with it, that the consignment auction was Applicant’s primary use of the subject property in 2004.

Proceeds from an auction are not funds mainly from public and private charity as suggested by the guidelines in Methodist Old Peoples Home v. Korzen, *supra*. As no financial statement was submitted in this matter, it is unclear how much money Applicant makes from the auction. It was not explained where Applicant gets its additional fifty percent of income.

How and when Applicant responds to emergency calls was also not established. How and under what circumstances Applicant is paid for those emergency calls was not discussed. No evidence was presented about the rates that Applicant charges for the emergency calls. Although Applicant’s witness testified that Applicant would not sue someone if they didn’t pay them or couldn’t pay them (Tr. p. 13), there was no documentary evidence of a waiver of fees in the event someone could not afford to pay for Applicant’s services.

Applicant’s Articles of Incorporation and/or bylaws also were not provided. It is well settled in Illinois that the character and purpose for which a corporation is organized, must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922); Rotary International v. Paschen, 14 Ill. 2d 480 (1958).

The application contains the information that a previous application was given Department of Revenue docket number 02-069-0039 and that Applicant has an Illinois sales tax number. Copies of those documents were not provided. Applicant’s witness testified that an adjacent parcel to the one at issue is exempt (Tr. pp. 13-15; Applicant’s Ex. No. 1) (aerial map entitled “Murrayville-Woodson Emergency [sic] Ambulance Service”), however, a copy of that exemption determination was not provided.

At the hearing, Applicant supplied pictures taken in 2005 that it's witness stated were similar to the training exercises done in 2004. The assertion was that there might be twelve training classes on the subject property in a year (Tr. pp. 19, 31-32), but no schedule of the classes or any other evidence regarding the assertion was provided.

The primary use for which property is devoted and not secondary or incidental use is controlling in determining whether property is used for exempt purposes. City of Lawrenceville v. Maxwell, 6 Ill. 2d 42 (1955) Based upon the lack of documentation and the initial assertions of the Applicant, I must conclude that Applicant has not met its burden showing that the primary use of the property in question was charitable during the 2004 assessment year.

It is therefore recommended that Macon County Parcel Index Number 17-07-207-043 remain on the tax rolls for 2004 and be assessed to the Applicant, the owner thereof.

Barbara S. Rowe  
Administrative Law Judge  
Date: July 25, 2006