

PT 08-12
Tax Type: Property 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.

DECATUR AREA ARTS COUNCIL, INC.

Applicant

Docket # 07-PT-0003
PIN 04-12-15-282-025
PIN 04-12-15-282-026
Tax Year 2005

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Erick F. Hubbard and Edward F. Flynn of Winters, Featherstun, Gaumer, Postlewait, Stocks & Flynn for Decatur Area Arts Council, Inc.

Synopsis:

This case concerns whether property located in Macon County and owned by the Decatur Area Arts Council, Inc. (“applicant” or “DAAC”) qualifies for a charitable purposes property tax exemption for the year 2005. The applicant is a non-profit organization that promotes art and art education programs in Decatur and the surrounding areas. After the applicant applied for the exemption, the County Board of Review recommended that the exemption be granted. The Department of Revenue (“Department”) reviewed the Board’s decision and determined that the exemption should

be denied on the basis that the property is neither owned by a charitable organization nor used for charitable purposes.¹ The applicant timely protested the Department's determination, and an evidentiary hearing was held. After reviewing the record, 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 June 1968. It does not have any capital stock or shareholders. (App. Ex. #1, 2)
2. In 2000, the applicant acquired a building located at 121-125 N. Water Street in Decatur. In 2001, the applicant acquired the adjacent building with an address of 115-117 N. Water Street. During 2000-2001, the applicant began a capital campaign pledge drive, the proceeds of which were to be used to develop the buildings into a Community Arts Center. The campaign had a donation goal of \$2,000,000 over five years. (Dept. Ex. #1, 11, p. 5)
3. In 2004, the buildings were remodeled into one building with an address of 125 N. Water Street. The building is known as the Madden Arts Center and has a total square footage of approximately 17,000. The building has three floors plus a basement. (Dept. Ex. #4, 6, 11; App. Ex. #11, #28; Tr. p. 362)
4. The majority of the first floor contains the applicant's art gallery. The applicant also has two offices and a small kitchen on the first floor. In addition, approximately 720 square feet of the floor is leased to Millikin University ("Millikin") for use as an art gallery known as The Blue Connection. (App. Ex. #5, 11; Tr. pp. 91-92)

¹ The Department's denial also stated that "[t]he property may contain both exempt and non-exempt uses. We are unable to determine that portion which may be exempted based on information in the application."

5. The second floor contains two large classrooms. In addition, approximately 922 square feet of the second floor is leased to the Community Foundation of Decatur and Macon County (“Community Foundation”) for office use. (App. Ex. #6, 11)
6. Most of the third floor is a multi-purpose room. The remainder of the floor, approximately 720 square feet, is unfinished. (App. Ex. #11; Tr. pp. 30)
7. The basement contains storage area for the applicant, The Blue Connection (600 square feet), the Decatur Municipal Band (160 square feet), and the Barn Colony Artists, Inc. (“Barn Colony”) (80 square feet). (App. Ex. #5, 7, 8, 11; Tr. pp. 220-221)
8. The DAAC’s bylaws include the following as its purposes:

The purpose[s] for which the Corporation is organized are charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code and particularly in furtherance thereof to plan, coordinate, promote and develop opportunity for, and the appreciation of cultural activities in the Decatur area.

Any inurement of income to any private shareholders or individuals is prohibited and the corporation shall not participate or intervene in political campaigns on behalf of a candidate for public office.

The assets of the corporation are permanently dedicated to an exempt purpose and the distribution of assets on dissolution shall be limited to organizations which are then qualified as exempt organizations under 501(c)(3) of the Internal Revenue Code.² (App. Ex. #2; Tr. p. 81)

9. The DAAC’s mission statement and goals during 2005 were as follows:

The mission of the Decatur Area Arts Council is to enhance the quality of life of all citizens through the arts, assuring that the arts are a necessary component of life in our community.

The goals of the Decatur Area Arts council are to:

² The applicant’s purposes as listed in its articles of incorporation are substantially similar. (App. Ex. #1)

- Create an environment which is conducive to the growth and development of individual artists and arts organizations.
- Facilitate partnerships within the community to nurture arts opportunities
- Encourage arts education opportunities for all ages:
 - that: develop imagination and creativity
 - experiment with new ideas and concepts
 - value the integrity of cultural traditions
 - support the inclusion of the arts as a basic component of education
- Act as a conduit for arts information
- Promote a broad range of arts activities throughout the area through the support of artists and arts organizations in all disciplines
- Advocate the introduction of the arts to diverse segments of the community
- Stimulate and promote artistic development of programs that reflect cultural diversity
- Contribute to the economic well-being of the community
- Promote the preservation of our local cultural heritage (Dept. Ex. #13; Tr. pp. 258-259)

10. The DAAC's gallery is free and open to the general public. During 2005, the gallery was open Monday through Friday, 9:00 to 4:30 and Saturday 10:00 to 2:00. (Tr. pp. 32, 324)

11. The gallery displays different types of art year round. A new exhibit is generally held each month with the exception of a program called "International Arts Experience" that runs for two months during the summer.³ (Dept. Ex. #2; Tr. pp. 30-32, 259-261)

12. The DAAC hosts events such as gallery openings, which are on Friday nights, with no admission fee. The DAAC also hosts free events that relate to the exhibit in the gallery. For example, one month the gallery exhibited art by Baabe Irving,

³ For the International Arts Experience, the applicant has a tape that explains the art for people who are unable to read the descriptions near the art. (Tr. p. 30)

- who is also jazz musician, and one night Baabe Irving spoke and then played with a jazz quintet. Local artists also played jazz that night. At another event a Celtic duo performed, and an exhibit concerning Japanese art had an event with a Japanese theater demonstration. (Tr. pp. 33-38; 262)
13. Events relating to gallery exhibits usually also include a free educational component. For example, Baabe Irving's visit included a presentation at a local high school. The DAAC also arranged for the Celtic duo to do presentations at several grade schools. (Tr. pp. 46-48)
 14. During some months art in the gallery is for sale; during other months it is not. If an item sells, the DAAC receives a 35% commission. During the month of December, the DAAC sponsors a *Christmas ARTicles Sale* where local artists sell their work. At that time, the DAAC has a reduced commission of 25%. During 2005, the *Christmas ARTicles Sale* generated \$5,687.95 in total sales, and the DAAC retained \$1,421.99. (Dept. Ex. #2; Tr. p. 260)
 15. The applicant offers a range of classes for both children and adults. Examples include pumpkin carving, stoneware sculpture, photoshop elements, and digital photography. (Dept. Ex. #6; Tr. pp. 38-40)
 16. The classes are advertised through a brochure sent to the DAAC's mailing list and its website, www.decatourarts.org. (Dept. Ex. #6; Tr. pp. 39-40)
 17. The fee charged to nonmembers for the classes varies between \$25 and \$60 depending on the class. The registration deadline is five days prior to each class start date. A minimum of six students generally must sign up for a class before

the class will take place. At most, only 50% of the classes usually take place due to lack of enrollment. (Dept. Ex. #6; Tr. pp. 40, 328-329, 337-338)

18. The bylaws state that contributors to the DAAC shall be divided into seven levels: Friend, Contributor, Sponsor, Patron, Investor, Benefactor, Other. The basic membership level for an individual is \$35 and for a family is \$50. Other levels are \$100, \$250, \$500, \$1,000. (App. Ex. #2; Tr. pp. 40, 264)

19. Members receive a \$5 discount on the cost of a class. Members at the \$1,000 level receive a 10% discount on the rental of a room in the building. During 2005, no one took advantage of the room rental discount. (Dept. Ex. #6; Tr. pp. 41-42, 263-265, 317-318)

20. The Board of Directors consists of not less than 10 or more than 25 members. During 2005 the applicant had 22 Board members who were volunteers from the community. The Board members do not have any art for sale in the gallery and are not compensated. (App. Ex. #2; Tr. pp. 26, 260)

21. The applicant's Arts Education Services brochure, which is sent to all the schools and teachers, includes the following:

Experience: ART

Experience ART is a field trip opportunity for grades K-8 at the Madden Arts Center's Anne Lloyd Gallery. Students participate in a gallery tour followed by a hands-on art workshop related to the exhibit. Groups may choose a morning or afternoon time. Reservations are required. (App. Ex. #3, p. 2; Tr. p. 48)

22. The workshop is held in the classrooms above the gallery and relates to what the children see in the gallery (e.g., watercolors if it is a watercolor exhibit).

Experience: ART is offered to all children in the area. (Tr. pp. 43-44)

23. The fee for Experience: ART is \$3 per child that covers the cost of the instructor and the supplies. A minimum of \$75 must be received before the classes can be held. (Dept. Ex. #6; Tr. pp. 44-46, 265- 267, 276)

24. The Arts Education Services brochure also includes the following:

PASS

The Performing Arts Series for Students (PASS) is a high quality experience that focuses on learning through the performing arts. Designed for schools, each series typically contains several performances scheduled during the school calendar year and presented during the school day. Teachers receive study guides prior to each production to help their students get the most from each performance. Each series features outstanding variety and educational content, helping schools meet the Illinois Learning Standards for the Fine Arts. Professional children's theatre companies along with Millikin Decatur Symphony Orchestra and the Millikin University Symphonic Band provide the programs. Most programs are designed for pre-kindergarten through sixth grades. Ticket prices are kept as low as possible. Teachers and chaperones are free. (App. Ex. #3, p. 2)

25. The PASS program usually includes seven or eight different performances a year, and one performance is by the Decatur Youth Symphony Orchestra. The performances are held at the Kirkland Fine Arts Center at Millikin with a seating capacity of approximately 1,500. (Tr. pp. 49-51, 275-276)

26. The fee for PASS is \$4 per student. The teachers and chaperones are free. (Dept. Ex. #6; Tr. pp. 51-52, 57-58, 318-320)

27. The Arts Education Services brochure also includes the following:

ArtsPals

ArtsPals is a group of volunteers who visit elementary classrooms several times during the school year and use school art prints to reinforce the Illinois Learning Standards for the Fine Arts. Principals are encouraged to take advantage of the free ArtsPals training program, teaching volunteers the best techniques for introducing major works of art to students. Schools provide their own volunteers. Training sessions are held at the Madden Arts

Center. Contact DAAC to reserve spaces for your volunteers....or to be a volunteer. (App. Ex. #3, p. 3)

28. The purpose of ArtsPals is to provide arts education in schools because it is a curriculum that has decreased in recent years. The schools send volunteers to the DAAC, and the DAAC provides a free 2-day training program for the volunteers to effectively become substitute art teachers. The DAAC pays the instructor for the training. (Tr. pp. 52-53, 277-278, 316-317)

29. The Arts Education Services brochure also includes the following:

Professional Development for Teachers (CPDUs)

Teachers can earn Continuing Professional Development Units through selected classes and workshops offered at the Madden Arts Center. Varied opportunities from full-day workshops to several short classes in the arts address the Illinois Professional Teaching Standards. Information is sent directly to each school or teachers can contact DAAC for program specifics. (App. Ex. #3, p. 3)

30. The applicant offers CPDUs in arts to allow teachers to meet their professional development requirements. (Tr. pp. 53-55)

31. The Arts Education Services brochure also includes the following:

Arts Lending Library

A 60 portfolio Arts Lending Library is available, free of charge, to all educators in Macon and Piatt counties and the towns of Assumption, Clinton, Moweaqua, Pana, and Taylorville. Portfolios are an introduction to individual artists or periods of art and include large and small prints, biographical information, and lesson plans. Portfolios can be checked out for two weeks and picked up at the Madden Arts Center. Portfolio transportation is also available via the school mail system for those in Macon and Piatt counties. (App. Ex. #3, p. 3)

32. For the Arts Lending Library, the applicant has sign-up sheets for the teachers to request a portfolio in advance. (Tr. pp. 55-56, 61-62, 267-268)

33. The Arts Education Services brochure also includes the following:

Scholarships for Students

Scholarships for Decatur Area Arts Council classes are available for interested students. Recommendations are encouraged from teachers as well as parents. Contact the Decatur Area Arts Council for guidelines and an application form. Scholarships are granted on a sliding scale based on financial need. (App. Ex. #3, p. 3)

34. One standard that the applicant uses to determine whether fees should be waived is if the student qualifies for a free lunch at the school district, then he or she receives a scholarship. This standard, however, does not have to be met. If a parent has been laid off or is financially having a bad month, the DAAC will waive the fee. (Tr. pp. 56-57)

35. The Arts Education Services brochure also includes the following:

Arts in Education Grants

Arts in Education Grants are available to K-12 schools in the Decatur Area Arts Council's service area of Macon County, Assumption, Clinton, Moweaqua, Pana and Taylorville. This program supports creative arts learning experiences in the schools and helps them meet the Illinois Learning Standards for the Fine Arts. Grant applications include a short form of the state fine arts goals [sic]. Call DAAC for an application or download one from our website. Funds for this program are provided by Decatur Area Arts Council contributors and the Illinois Arts Council, a state Agency. (App. Ex. #3, p. 3)

36. For the Arts in Education Grants, the DAAC acts as a "re-granting agency" for the Illinois Arts Council. When a school applies for these funds, the DAAC applies to the Illinois Arts Council, and the DAAC guarantees that it will contribute at least 20% of the funds, which come from its general fund. (App. Ex. #4; Tr. pp. 58-61, 276-277)

37. In addition to the Arts in Education Grants, the DAAC re-grants Arts in Community Grants. These grants are given to other non-profit or governmental

- agencies for activities that are related to the arts. The DAAC contributes at least 20% of the funds. (App. Ex. #4; Tr. pp. 76-78)
38. The criteria used for awarding an Arts in Community Grant is that the recipient must use the money for something related to art that is accessible to everyone, with an emphasis on new, bright, and interesting artistic ideas. Some of the recipients during 2005 were Macon County Conservation District, American Red Cross, Millikin, Forsyth Public Library, and two local churches. (App. Ex. #4; Tr. pp. 76-78)
39. The DAAC usually has an intern from Millikin each semester who helps with setting up or taking down exhibits, writing descriptions for the artwork, or producing fliers. Some interns are not paid; those who are receive half of their pay from Millikin and the other half from the DAAC. The interns are supervised by the gallery director. (Tr. pp. 73-75, 271)
40. The applicant's fiscal year begins September 1 and ends August 31. A local accounting firm performs the internal bookkeeping for the DAAC, and a separate accounting firm performs an annual audit. (Dept. Ex. #11; Tr. pp. 113-114, 119, 343-344)
41. The annual audit report is prepared using the accrual basis of accounting, and the internal reports are prepared using a modified cash basis of accounting. The DAAC prefers the modified cash basis for internal purposes so that it knows the amount of cash actually received and paid. (Dept. Ex. #11; App. Ex. #12; Tr. pp. 347-348)

42. The audited financial report includes the following note concerning promises to give:

Contributions are recognized when the donor makes an unconditional promise to give to the Organization. Contributions that are restricted by the donor are reported as increases in unrestricted net assets if the restrictions expire in the fiscal year in which the contributions are recognized. All other donor-restricted contributions are reported as increases in temporarily or permanently restricted net assets depending on the nature of the restrictions. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets. (Dept. Ex. #11, p. 5)

43. Another note concerning temporarily restricted net assets is as follows:

Temporarily restricted net assets represent the unexpended portion of contributions and promises to give which are restricted by the donor. Capital Campaign contributions are restricted by donors to the renovation and construction of the new Community Arts Center ... and the payment of building-related expenses. (Dept. Ex. #11, p. 12)

44. According to the audited financial report, the DAAC's Statement of Activities for the fiscal year ending August 31, 2005 was as follows:

UNRESTRICTED NET ASSETS

Support, Revenue and Reclassifications:

Fund Drive	\$119,298
Special Fund-Raising Events	62,882
Grants	37,480
Arts in Education Programs	29,002
Arts in Community Programs	18,249
Arts Center	75,099
Class Scholarship	500
Technical Assistance Programs	8,400
Rental Income	18,523
Contributed Facility and Materials	24,947
Contributed Services	109,390
Interest Income	6,848
Miscellaneous	45
Realized Gain (Loss) on Investments	617
Unrealized Gain (Loss) on Investments	(176)

Net Assets Released from Restrictions:

Satisfaction of Purpose Restriction – Capital Campaign	<u>259,721</u>	
Total Support, Revenue and Reclassifications	770,825	
Expenses:		
Program Services	316,637	
General and Administrative	172,732	
Fund-Raising	<u>140,115</u>	
Total Expenses	629,484	
Increase (decrease) in Unrestricted Net Assets		141,341

TEMPORARILY RESTRICTED NET ASSETS

Support, Revenue and Reclassifications:		
Capital Campaign Contributions	52,649	
Capital Campaign Special Fund-Raising Events	8,754	
Capital Campaign Investment Income	50	
Carriere Exhibit Contributions	5,000	
Net Assets Released From Restrictions:		
Satisfaction of Purpose Restriction– Capital Campaign	<u>(259,721)</u>	
Increase (decrease) in Temporarily Restricted Net Assets		(193,268)

PERMANENTLY RESTRICTED NET ASSETS

Support and Revenue:		
Endowment Fund Contributions	<u>97,232</u>	
Increase in Permanently Restricted Net Assets		<u>97,232</u>
Total Increase in Net Assets		45,305
(Dept. Ex. #11)		

45. According to the audited financial report, the following is a detailed listing of the operations expenses for the fiscal year ending August 31, 2005:

Operations:	
Salaries	\$123,307
Payroll Taxes and Benefits	11,481
Insurance	3,770
Equipment Maintenance	2,183
Equipment Rental and Lease	607
Postage	10,540
Dues and Subscriptions	1,585
Cleaning	7,755
Telephone and Utilities	20,163
Professional Fees	9,701
Contributions	1,000
Fund-Raising	32
Special Event Fund-Raising	58,573
Newsletter	30,364
Grants	18,225

Arts in Education	27,047
Arts in the Community	31,300
Arts Center	80,161
General Program	2,785
Depreciation	17,365
Travel	601
Supplies	12,934
Printing	4,017
Marketing	16,006
Recruiting	10,303
Interest	454
Miscellaneous	3,762
Capital Campaign	<u>123,463</u>
Total Expenses	629,484 (Dept. Ex. #11)

46. The following note in the audited financial report concerns contributions-in-kind:

Donated materials and services are reflected in the financial statements as contributions-in-kind at their estimated fair market values at the date of their receipt. [Information concerning 2004 omitted.] In addition, [DAAC] receives various equipment, supplies and use of other facilities, which are provided as contributions-in-kind. Materials and facility used of \$24,947 ..., and professional services of \$109,390 ... were donated for the year ended August 31, 2005. (Dept. Ex. #11, p. 11)

47. Volunteer services are treated as follows:

Volunteer services are performed as a normal part of the program and supporting services. No valuation is made of the volunteer services since the Organization does not exercise direct control over the duties of the volunteers. (Dept. Ex. #11, p. 6)

48. The Statement of Revenue and Expenses prepared by the DAAC's internal accountants on a modified cash basis for the fiscal year ending August 31, 2005 separate the income and expenses into three different funds: Operating Fund, Capital Fund, and Endowment Fund. (App. Ex. #12; Tr. pp. 372-373)

49. The Operating Fund shows the daily cash flow for regular operations. The Capital Fund is the capital projects fund, which includes pledges from people

toward the development of the building. The Endowment Fund is held only to generate interest. (App. Ex. #12; Tr. pp. 120-122)

50. For the fiscal year ending August 31, 2005, according to the internal Statement of Revenue and Expenses, the income from the funds was as follows:

Endowment Fund	\$ 98,027.10
Capital Fund	321,929.44
Operating Fund	<u>380,037.26</u>
Total revenue	799,993.80 (App. Ex. #12)

51. The internal Statement of Revenue and Expenses for the fiscal year ending August 31, 2005 also shows the following as income for all funds:

Contributions	\$537,703.83
Memorials	6,610.00
Grants	37,480.00
Program revenue	192,541.55
Other income	<u>25,658.42</u>
Total support and revenue	799,993.80 (App. Ex. #12)

52. The contributions to the Operating Fund for the fiscal year ending August 31, 2005 were \$126,551.20. This includes membership donations, donations from businesses, major donations from individuals, and gifts. The contributions to the Capital Fund were \$313,125.53, and the contributions to the Endowment Fund were \$98,027.10. (App. Ex. #12; Tr. pp. 121-122)

53. The total program revenue of \$192,541.55 is income for both the operating and capital funds⁴ and includes the following:

Arts in Community programs	\$98,848.04
Arts in Education programs	29,002.00
Special Events	56,291.51
Technical Assistance programs ⁵	<u>8,400.00</u>
Total	192,541.55 (App. Ex. #12)

⁴ The capital fund had program revenue of \$8,754.20, which was from a special event designated to provide income for the capital fund. (App. Ex. #12; Tr. p. 139)

⁵ This is money from the symphony orchestra, for which the DAAC provides services. (Tr. pp. 139, 141)

54. Special events are programs that are intended to make money. During 2005, the DAAC's special events included "Corks & Forks," which is a wine tasting with food from local restaurants. "Blues & Greens" was another special event that was a golf outing with blues music. (App. Ex. #12; Tr. p. 122-127, 132-133, 141)
55. Arts in Community programs include income from the following: classes that the DAAC offers, gallery revenue and sales, bus trips that the DAAC offers to theaters, and "Arts in Central Park," which is an annual art show where the artists have a booth fee to cover costs. This event is free to the public. (App. Ex. #12; Tr. pp. 130-132, 136, 138, 274-275)
56. The gallery revenue that is included in Arts in Community programs includes sponsorships for the gallery. For example, the event with Baabe Irving and the jazz quintet was underwritten by a donation from Caterpillar Tractor of \$15,000. (App. Ex. #12; Tr. pp. 33-37, 127)
57. The applicant's Charitable Facility Use Policy indicates in part as follows:
- D. The accomplishment of the artistic and educational mission of the [DAAC] shall be considered to have first priority in all decisions concerning any use of any facility under this policy. Use of the facility by others shall not be authorized where such use may disturb the conduct of [DAAC] primary activities.
 - E. To the extent that appropriate space is available and subject to reasonable procedures for reservations, the [DAAC's] facilities may be made available to nonaffiliated groups for occasional meetings or activities when their work is compatible with or supplementary to the artistic and educational purposes of the [DAAC].... (App. Ex. #9, p. 2)
58. The gallery has been used for press conferences relating to local government issues. For example, the Lieutenant Governor, local representatives, and senators

- had a press conference to announce grant awards. Another press conference was to announce the City of Decatur was accepted into the Main Street Program. Fees are not charged for the press conferences. (Tr. pp. 72-73, 270-271, 320-321, 336)
59. The City of Decatur uses rooms at the Madden Arts Center for meetings or public hearings generally three or four times a year without charge. (Tr. pp. 70-72)
60. The DAAC allows its facilities to be rented for events such as birthday parties, wedding receptions, cocktail parties, and graduation parties. The DAAC charged the following rates during 2005 for room rental:
- Gallery: Weekdays \$200 for a minimum of 3 hours; \$50 an hour each additional hour. Weekends \$350 for a minimum of 3 hours; \$50 each additional hour.
 - Second floor rooms: \$75 for a minimum of 3 hours; \$10 an hour each additional hour.
 - Third floor room: Weekdays \$125 for a minimum of 3 hours; \$25 an hour each additional hour. Weekends \$200 for a minimum of 3 hours; \$50 each additional hour. (App. Ex. #10; Tr. pp. 296-298)
61. From September through April, every Tuesday from 7 to 9 p.m. a knitting group uses a room at the facility with no charge. (Dept. Ex. #15)
62. The Decatur Park District uses the building free of charge for various activities such as training for its summer staff, meetings, auditions for its summer children's theatre program, and other performing arts programs. (Dept. Ex. #15; Tr. pp. 63-70, 268-269)
63. The Decatur Park District brings children to the Madden Arts Center during the summer to participate in a program that is almost identical to the Experience: ART program. The \$3 fee per child is underwritten by the Park District. (Tr. pp. 64-65, 269)

64. On June 22, 2004, the DAAC entered into a Lease Agreement with Millikin University for the use of approximately 720 square feet of the first floor and 600 square feet of the basement for a period of 5 years. The total leased space (1,320 square feet) is approximately 8% of the entire building. (App. Ex. #5)
65. As part of the Lease Agreement, Millikin made an up-front payment of \$40,000 to the DAAC that was used to renovate the premises; Millikin received the right to occupy the premises for 5 years with no additional rent. The lease includes an option to extend it for another 5 years with rent payments increased to \$9,000 per year. (App. Ex. #5; Tr. pp. 86-89)
66. The DAAC pays for the utilities, which include gas, water, electricity and trash. Millikin is responsible for telephone service and cleaning expenses. (App. Ex. #5; Tr. pp. 86-89)
67. The lease indicates the premises are to be used “for the sole purpose of operating The Blue Connection, a mercantile space.” The Blue Connection is an entrepreneurship program for art, music, theater, and business students at Millikin; it is a retail art gallery that serves as a laboratory for learning. It does not have an organizational status that is separate from Millikin. (Dept. Ex. #3, App. Ex. #5; Tr. p. 187)
68. The 720 square feet of the first floor is used by the Blue Connection as an art gallery that is open to the public generally Tuesday through Thursday from 10 to 4, and Friday and Saturday from 10 to 6. The leased portion of the basement is used for storage or small projects. (App. Ex. #11; Tr. pp. 90-91, 174-175, 196)

69. The art in the gallery is produced by students, faculty, and alumni. It is sold on a consignment basis; typically 60% goes to the artist and 40% to the Blue Connection, but sometimes the Blue Connection will take only 10% or 15% depending on the work that was involved with the student. It has also sold CD's, books, prints, posters, and Christmas ornaments made by the art department. (Tr. pp. 170-171, 200-201)
70. The students operate the gallery, and four faculty members provide classroom instruction. One of the faculty members manages the gallery. The students are required to enroll in two 3-credit courses, and as part of their participation in the first course, they are required to work two hours a week in the gallery for which they are not paid. Students who work during spring, summer, fall, or Christmas breaks are paid. (Dept. Ex. #3; Tr. pp. 170-173)
71. The Blue Connection is a clinical teaching tool, the primary purpose of which is to help the students learn and experience how to operate a business for profit. (Tr. pp. 170, 178-179)
72. On February 27, 2004, the DAAC entered into a Lease Agreement with The Community Foundation for the use of approximately 922 square feet of the second floor for a period of 5½ years. The leased space is approximately 5% of the entire building. (App. Ex. #6; Tr. pp. 94-95)
73. As part of the Lease Agreement, The Community Foundation made an up-front payment of \$28,292 to the DAAC that was used to renovate the premises; the Community Foundation received the right to occupy the premises for 5½ years with no additional rent. The lease includes an option to extend it for another 4½

years with rent payments of \$500 per month (\$6,000 per year). (App. Ex. #6; Tr. pp. 94-97)

74. The DAAC pays for the utilities, which include gas, water, electricity and trash. The Community Foundation is responsible for telephone service and cleaning expenses. (App. Ex. #6; Tr. pp. 94-97)

75. The Community Foundation uses the space for its offices. It is an Illinois non-profit organization that was incorporated on January 5, 1998. It was organized to create an endowment of funds to be used for charitable purposes in the community. (App. Ex. #18; Tr. pp. 94-96, 146)

76. The bylaws of The Community Foundation indicate its purposes are as follows:

The Foundation is organized and shall be operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, including for such purposes the making of distributions to organizations that qualify as exempt organizations under such section 501(c)(3).

The Foundation is a community trust organized to enhance the quality of life in the greater Decatur and Macon County area, and toward that end, to receive, administer and distribute property in cash and in kind primarily to benefit the people, institutions and community, for philanthropic purposes by:

A. Providing a flexible vehicle for donors with varied philanthropic interests by encouraging local philanthropy and serving as a responsible steward of assets entrusted to its care by individuals, families, foundations and organizations;

B. Demonstrating leadership in the local philanthropic community by helping to identify important needs, concerns and opportunities and working to shape effective responses;

C. Receiving and managing funds to build a permanent endowment for the area and using those resources wisely and efficiently to respond to changing needs and to assist existing community organizations. (App. Ex. #19)

77. The Community Foundation Annual Report shows the following as revenue and expenses for the year ending December 31, 2005:

Revenues:	
Gifts	\$1,504,817
Investment income	163,547
Grant income	<u>9,780</u>
Total Contributions and Support	1,678,144
Expenditures:	
Grants given	351,260
General expenses	<u>208,858</u>
Total Grants and Expenses	560,118
Change in net assets	1,118,026 (App. Ex. #20)

78. The Community Foundation has approximately 115 funds, most of which are designated for a specific charitable organization such as the United Way or the Boys Club. The funds are distributed according to the donor's wishes. (Tr. pp. 146-147)

79. On May 1, 2005, the DAAC entered into a Rental Agreement with the Decatur Municipal Band ("Band") for the use of the third floor on Tuesday evenings from May 10, 2005 through August 30, 2005. The agreement is also for the following: use of the third floor one evening in October 2005 and one morning on the day of the 2005 Christmas Parade; use of approximately 160 square feet of storage in the basement; and use of a portion of the third floor closet for uniforms and instruments. The storage space is approximately 1% of the building. (App. Ex. #8)

80. According to the Rental Agreement, the Band pays the DAAC \$2,000 per year as rent, which is based on a \$65 per rehearsal fee and \$70 per month storage fee. (App. Ex. #8; Tr. p. 241)

81. From June through August, the Band performs two evenings a week at local parks. The Band also has a concert in October. There is no admission fee for the concerts. In addition, the Band performs during various local parades. (App. Ex. #26; Tr. pp. 232-235)
82. The Band's bylaws state that its purpose is the presentation of band music to the general public and the promotion of the art of music in Decatur and its vicinity. (App. Ex. #23, 24)
83. The Band has 50 members, and the musicians are paid \$32 for each performance on Sunday and Monday. The members are not paid for the rehearsals held on Tuesdays. The rehearsals last approximately 2 hours. The band has a budget that is paid for through the city. (App. Ex. #25; Tr. p. 236-238)
84. On August 10, 2005, the DAAC entered into a Rental Agreement with Barn Colony Artists, Inc. ("Barn Colony") for the use of a room on the second floor on Monday evenings from September 5, 2005 through May 31, 2006. The agreement is also for the use of approximately 80 square feet of storage in the basement and the use of a portion of the cabinets in the second floor art room for supplies. The storage space is approximately .5% of the building. (App. Ex. #7)
85. According to the Rental Agreement, Barn Colony pays the DAAC \$1,500 per year as rent, which is discounted from a base fee of \$35 per 40 meetings and \$40 per month storage fee. If Barn Colony wishes to use the room on additional dates, it can lease the space at the same rental rate. (App. Ex. #7; Tr. p. 215-218)
86. Barn Colony's articles of incorporation indicate it is organized for the purpose of studying, teaching, and exhibiting fine art. Its bylaws include a more detailed

listing of its purposes, which include fostering a greater appreciation of art in the community, providing meetings and exhibits for its members, and assisting in the sale of pictures or art made by its members. (App. Ex. #21, 22; Tr. p. 227)

87. Membership in Barn Colony is offered to both amateur and professional artists and to persons interested in supporting the arts. There are currently 54 members, most of whom are amateur artists. Anyone willing to pay the dues may be a member. Dues for Macon County residents are currently \$60 a year. (App. Ex. #22; Tr. pp. 205-207)

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. Ill. Const. 1970, art. IX, §6.

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:

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 (1st Dist. 1982).

In Methodist Old Peoples Home, *supra*, 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, 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) 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 (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 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 (2nd 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 (2nd Dist. 1992).

First Guideline

The evidence supports a finding that the DAAC meets the first guideline in Methodist Old Peoples Home, *supra*, because its gifts benefit an indefinite number of people for their general welfare. Although the Department contends nothing indicates charity is part of the DAAC's purpose, the articles and bylaws state the purposes for which the applicant is organized are "charitable and educational." (App. Ex. #1, 2) The articles and bylaws also indicate its purpose includes planning, coordinating, promoting and developing opportunity for, and appreciation of, cultural activities in the area. (App. Ex. #1, 2) The DAAC's mission is "to enhance the quality of life of all citizens through the arts, assuring that the arts are a necessary component of life in our community." (Dept. Ex. #13) In Du Page Art League v. Department of Revenue, 177 Ill. App. 3d 895 (2nd Dist. 1988), the court stated that an art gallery established for the benefit of the public and for the advancement of art education can be a charity. *Id.* at 900. The

DAAC's purpose and mission are similar to those of organizations that have received charitable exemptions. See Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 237 (1st Dist. 2002); Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068-1069 (1st Dist. 2000).

The DAAC provides many gifts that benefit an indefinite number of people. Its gallery is free and open to the public six days a week. During 2005, it was open Monday through Friday 9:00 to 4:30 and Saturday 10:00 to 2:00.⁶ The DAAC hosts various artistic events that are free; these include gallery openings and other events that relate to the exhibits, such as the jazz quintet, Celtic duo, and Japanese theater demonstration. In addition, the DAAC provides extensive educational outreach. Art portfolios are available for free to all the local educators, and through ArtsPals the DAAC trains volunteers to assist the local schools with art education. Its brochure indicates that scholarships are available for students who cannot pay, and it contributes to the funds that are given for the Arts in Education and Arts in Community grants. Furthermore, the Park District, City of Decatur, and other organizations use the building at various times for free. The DAAC has presented sufficient evidence to show that it benefits an indefinite number of people.

Second Guideline

The DAAC has no capital, capital stock or shareholders and earns no profits or dividends. In determining whether the DAAC derives its funds mainly from public and private donations, all of the DAAC's funds must be considered, including the endowment and capital funds. See Arts Club of Chicago, at 245 (investment income from

⁶ The building has 17,000 square feet (App. Ex. #11, 28), which means the first floor has 4,250 square feet. Although the Department contends the building is not open free to the public on a daily basis except for the 720 square feet leased to Millikin, which is approximately 17% of the first floor, the DAAC's gallery occupies the majority of the first floor and is free to the public. The remainder of the first floor has two offices and a small kitchen. (App. Ex. #11)

endowment fund is charity). The record includes two types of financial statements for the DAAC: an audited statement prepared on an accrual basis by one accounting firm and an internal report prepared on a modified cash basis by a separate accounting firm.

According to the internal modified cash basis documents, the majority of the DAAC's income was from donations. The contributions to the endowment fund were \$98,027.10 and to the capital fund were \$313,125.53, which totals \$411,152.63; this is more than half of the total revenue of \$799,993.80. The contributions to the operating fund were \$126,551.20, which includes membership donations, business donations, major donations from individuals, and gifts. The DAAC did not provide a breakdown of the amounts of these donations.⁷ The DAAC considers its membership dues a form of donation because benefits to members are minimal, but even if the dues are considered to be fees rather than donations, the majority of the income shown on the internal documents, which includes the endowment and capital funds, is still from donations.

According to the audited statement, the amount of income from donations is not clear. Contributions on the audited Statement of Activities include the following: \$97,232 for the endowment fund, \$57,649 for the capital campaign fund, \$109,390 for services and \$24,947 for facility and materials. This totals \$289,218, which is approximately 43% of the total income of \$674,789.⁸ This amount for contributions does not include cash donations to the operating fund because the cash donations to that fund are not apparent from the audited statement. The DAAC did not provide supporting documents to show the amount of donations or membership dues that are included in the

⁷ The applicant indicated that for the fiscal year ending August 31, 2007, it changed its internal statements to have a more detailed disclosure of the income sources and expenses. (Tr. pp. 123, 129, 301, 329-330)

⁸ This income is derived from all the funds: unrestricted \$770,825, temporarily restricted (193,268), and permanently restricted \$97,232. (Dept. Ex. #11)

audited statement, and it did not explain what comprises the Fund Drive, Arts in Community Programs, or Arts Center income.⁹

The Department contends the DAAC derives significant funds from its long-term leases, short-term leases, class fees and art commissions. From the audit report, the rental income was \$18,523, which is approximately 3% of the total income of \$674,789. This income from leases, therefore, was a small percentage of the total revenue. As for fees and commissions, although the testimony indicated that the percentage of income from gallery sales and school programs was very small (Tr. pp. 134-135), these are not identified on the audit report and the amounts were not provided. On the internal statements, these amounts also were not specifically identified but were included in the Arts in Community programs amount, which also includes bus trips and corporate sponsors. The total for this was \$98,848.04, which is approximately 12% of the total income of \$799,993.80.

The Department claims that having corporate and government sponsors pay for all or part of almost everything does not reduce the burden of government. Corporate contributions, however, such as the one from Caterpillar Tractor, are private charity and do not affect the DAAC's charitable nature. See Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696, 711 (4th Dist. 1988). Also, the only government funding the DAAC receives is income from "grants," which was \$37,480

⁹ The internal documents do not have a listing for Arts Center income but show Arts in Community income of \$98,848.04. The audit report shows Arts in Community income of \$18,249 and Arts Center income of \$75,099. Because the DAAC indicated the Arts in Community income on the internal documents includes income from classes, gallery revenue and sales, bus trips, and Arts in Central Park, these items may have been separated into the two categories for the audit report, but again, this was not explained. (Dept. Ex. #11; App. Ex. #12)

according to the audit report.¹⁰ This is less than 5% of the income reported on both the modified cash and accrual basis.

Third Guideline

This guideline considers 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 place obstacles of any character in the way of those seeking the charitable benefits.

The Department notes that the articles, bylaws, and class applications do not disclose a fee waiver policy, although one brochure indicates that scholarships are available for students. The Department argues it was not mentioned whether any member had the fee reduced or waived; members are offered fee reductions of \$5 for classes, and members who donate enough can also rent the building at a reduced rate. In addition, only the paying public can rent the building for private parties, and those who do not have the funds to pay cannot use it. There are no fee waivers for the general public. The Department believes this indicates the building is run as a business.

The failure to notify the public of a fee waiver policy does not automatically warrant denying the exemption. See Randolph Street Gallery at 1068. 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 used it. In the present case, the applicant's executive director stated fees have been and would be

¹⁰ "Grant" income may be public charity; to determine whether it is public charity, a distinction is made between payments from the government that are for services rendered pursuant to a contract and payments that are contributions (see e.g., IRS Form 990, Return of Organization Exempt From Income Tax, lines 1(d) and 2). If the government income is a contribution rather than payment for services, it is considered to be public charity.

waived if necessary, but the record lacks substantiation concerning the DAAC's fee waivers during 2005.

It is not clear what fees the DAAC actually waived during the year in question. The education brochure advertises scholarships for students, but information concerning the scholarships that were granted during 2005 was not provided. The DAAC indicated if a child cannot pay for Experience: ART or the PASS program, he or she is still allowed to attend, but the record does not include information concerning when this happened during 2005. It was not shown whether the membership fees were waived. The record does not include evidence of when the DAAC actually waived fees during 2005. In order to receive the exemption, the evidence must be clear and convincing, but the evidence in this case does not clearly show that the DAAC's charity was given to all those who needed and applied for it.

With respect to private gain or profit, the Department refers to the following footnote in the audit report that it believes supports a finding that Board members privately gained from the DAAC:

Note 13 Related Party Transactions

The [DAAC] received donated services toward the renovation and construction of the new Community Arts Center from board members. Professional services of \$29,775 were donated by those related parties for the years ended August 31, 2004 and none in the year ended August 31, 2005.

Also, board members made unconditional promises to give. The balances due from board members were \$7,400 and \$82,030, as of August 31, 2005 and 2004, respectively.

In addition, the Organization paid two board members for materials and services related to the renovations to and construction of the new Community Arts Center. A total of \$691,071 was paid for material and

construction services during the year ended August 31, 2004 and none in the year ended August 31, 2005.

The [DAAC] had balances due to board members for materials and services related to the renovations to and construction of the new Community Arts Center. A total of \$66,784 was due for materials and construction services at August 31, 2005 and 2004. A total of \$1,276 was due for architectural services at August 31, 2004.¹¹ (Dept. Ex. #11)

The Department argues the exemption must be denied on the basis that the Board member's construction company did renovations, costing roughly one million dollars, and two Board members were paid and owed money from DAAC. The DAAC responds by noting that although the construction company of one of the Board members was the general contractor for the renovations, they took place during 2003 through 2004, not during the year in question.¹²

The Department refers to Du Page Art League, *supra*, where only members whose dues were paid could exhibit their work in the gallery, all of the work was required to be marked for sale, the artist determined the sales price, and if it sold, the artist received 80%. The court found this allowed members to impermissibly profit from the Art League's operations. Du Page Art League, at 901. In that case the Art League's members clearly profited from the arrangement. If a member of the organization or a Board member does not actually profit but rather performs services for the organization at cost, then it cannot be found that this guideline was violated.

Because the applicant has the burden of proof, the lack of evidence as to whether the Board members profited from the transaction weighs in favor of the Department. See

¹¹ This footnote in the audit report does not clearly indicate what was paid during the calendar year 2005. The \$1,276 for architectural services was paid either during the last four months of 2004 or the first eight months of 2005. The balance due to the Board members of \$66,784 was not paid during the first eight months of 2005, but may have been paid during the last four months of 2005.

¹² The DAAC contends that if the Department had inquired before the hearing, ample evidence would have been given that the construction was undertaken substantially at cost. (DAAC Reply Br. at 5)

Arts Club of Chicago, at 246 (absence of evidence regarding reasonable salaries weighs in Department's favor). Nevertheless, the fact that during 2005 the applicant might have paid a Board member \$1,276 for architectural services or \$66,784 for materials and construction does not automatically warrant denying the exemption.

Fourth Guideline

The final guideline is whether the primary use of the property is for charitable purposes. The Department argues the property is used primarily for rental income, which the DAAC used to renovate the property. The Department states the DAAC's executive director testified that the DAAC would lease to a for-profit company if necessary. The Department believes this shows the income derived from the leases is more important to the DAAC than the status of the lessee, and the DAAC leases the property with a view to profit.

Courts have long recognized partial exemptions for property. See Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 279 (1996). If property is used for two purposes, one of which is exempt and one of which is not, a partial exemption may be allowed if an identifiable portion is owned and used for exempt purposes. *Id.*; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 499 (1992); Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 65-66 (1971). The DAAC executed four long-term lease agreements that allow organizations to use 14.5% of the building on a full-time basis. Millikin leases 8% of the building, and Community Foundation leases 5% of the building. The remaining two leases allow the Band and Barn Colony to lease a total of 1.5% of the building for storage on a full-time basis and portions of the property on a part-time basis. Even if it is assumed that the space leased

to these organizations on a full-time basis is not exempt, in order to determine whether the DAAC is a charitable organization that uses its property for charitable purposes, the use of the remaining 85.5% of the property must first be examined.

As to the 85.5% portion, the Department contends the DAAC leases it on a short-term basis only to those who can afford to pay the fees; those unable to pay the fees are not allowed to use the building. The hourly rates start at \$75 for a minimum of 3 hours, and members who contribute at the \$1,000 level get a 10% discount while there are no fee waivers for the general public. In the Department's view, renting the building for birthday parties, wedding receptions, cocktail parties, and graduation parties is not "compatible with or supplementary to the artistic and educational purposes of the DAAC" as required by the Charitable Facility Use Policy. The Department also asserts that the number of short-term leases submitted by the DAAC is not a complete list (Dept. Ex. #15), and the pre-printed rental agreement used by the DAAC indicates a long-term willingness to lease the property to people and for-profit entities for a fee.¹³ The Department maintains that when constitutionally reviewing the use of the property as solely or primarily charitable, the argument that the rental income should be ignored because it does not generate much income is ridiculous.

As previously mentioned, the standard for determining the exclusive use of property depends on the primary, not a secondary or incidental, use of the property.

¹³ When the applicant's executive director was asked under cross-examination whether the Department's exhibit #15 was a list of its short-term users during 2005, he stated, "I would say it is not a complete list of all of the room use that was held, but it is the list that comes from the facility rental agreements that were also submitted." (Tr. p. 296) The Department believes this indicates the list in exhibit #15 is not a complete list of short-term leases. (Dept. br. pp. 3, 4) The question answered by the executive director, however, was not whether the exhibit was a complete list of short-term leases, but rather whether it was a list of short-term users. Because the evidence indicates that in addition to the rental agreements the rooms were used for other purposes, such as by the Decatur Park District, that did not require completing a rental agreement, his answer refers to all short-term users. It does not indicate the list of short-term leases is incomplete.

Methodist Old Peoples Home, at 157. The evidence indicates that during 2005, the primary use of 85.5% of the building was not to lease it on a short-term or part-time basis. The applicant presented 15 short-term rental agreements for the year 2005. One of the agreements was for three days of use by the Decatur Celebration, a non-profit organization, and the remaining agreements were for single days.¹⁴ The short-term leases, therefore, were for a total of 17 days; the rental times ranged from 3 hours to all day. Each agreement was either for a room on the second floor, the third floor, or the gallery. In addition, the Band used the third floor on Tuesday evenings from May through August, one evening in October, and one morning in December. Barn Colony used a room on Monday evenings from September through May.

Considering the amount of time that these lessees used the building, the amount of space in the building that the lessees used, and the amount of money paid by the lessees to the DAAC, it cannot be found that the primary use of the 85.5% of the property was for rental purposes. The short-term and part-time uses by the lessees amount to incidental uses of the property. See Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 464 (2nd Dist. 1991) (food stand and gift shop were incidental uses of the property). In addition, intention to use is not the equivalent of use. See Skil Corporation v. Korzen, 32 Ill. 2d 249, 252 (1965). The fact that the DAAC has a pre-printed rental agreement and may in future years rent the building to a for-profit entity is not relevant to deciding whether during 2005 the property was used for charitable purposes.

The Department argues that any for-profit business could operate the same way, and the DAAC does not satisfy a government burden by offering classes for a fee with

¹⁴ Five of the fifteen agreements were for non-profit users. (Dept. Ex. #15; App. Ex. #10)

the exception of a few classes and waiving fees for a few students. The Department contends there was no showing that for-profit art businesses do not offer reduced or waived fees for people who sign up in a group or otherwise, and having financially able persons pay for classes or private parties does not reduce the burden of government. In addition, some of the art is for sale, and the DAAC gets a 35% commission throughout the year except in December it receives 25%. The Department believes that political press conferences are welcomed when they are staged to promote issues favored by DAAC, and this shows political favoritism to any politician who promotes the DAAC and its goals.

As the applicant states in its brief, nothing in the record indicates that press conferences were used to promote issues favored by the DAAC or a favorite politician; the record indicates that political press conferences were held to announce grant awards and that Decatur was accepted into the Main Street Program. Also, charging fees does not necessarily indicate an organization is not a charitable institution as long as the services are furnished to those who are unable to pay. See Methodist Old Peoples Home, at 158; Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). If the DAAC provided substantiating evidence that it gave scholarships and waived fees for those unable to pay, then the fact that those who can afford to pay do so does not preclude the exemption. In addition, if the DAAC provided substantiating evidence that the artwork sold on commission was a small amount in terms of the income received or the number of items sold, then retaining a 35% commission also would not preclude the exemption. See Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App. 3d 964, 972 (1st

Dist. 1991) (retaining 20% of sale price of artwork did not preclude exemption when few items sold).

In its reply brief, the DAAC compared this matter to pointillism, “a neo-impressionist style of painting in which distinct points of primary colors are put together to create larger impressions of many secondary and intermediate colors.” (Reply br. p. 6) Sunday Afternoon on the Island of La Grande Jatte, by Georges Seurat, is a well-known example and is hanging in the Art Institute of Chicago. Viewed up-close, the painting appears to be only random dots of color; when the viewer steps back, the image of people in a park is clear. The applicant contends that like a pointillism painting, applying the factors in Methodist Old Peoples Home, *supra*, to the present case requires viewing the organization as a whole, and when viewed as a whole, the DAAC is a charitable organization.

The analogy to pointillism is inappropriate because when viewed as a whole, the evidence presented in this case unfortunately reveals a picture that is similar to an up-close viewing of a pointillism painting. The evidence does not show with the necessary clarity and conclusiveness that the DAAC is entitled to the exemption. Significantly, there was no direct proof that fees were waived during 2005 and that charity was given to everyone who needed it. In addition, substantiating documents showing the amount of art sold was small, the income on the audit report was primarily donations, and the Board members did not profit during 2005 would provide a clear picture of the DAAC as a charitable organization.

Because the evidence does not clearly establish the DAAC is a charitable organization, the remaining 14.5% of the property, which is leased on a full-time basis, is

also not exempt. That portion must be owned by a charitable organization in order to qualify for the exemption. Whether it is used for charitable purposes does not need to be addressed at this time.

Recommendation:

For the foregoing reasons, it is recommended that the DAAC's request for a charitable purposes exemption for the year 2005 be denied.

Linda Olivero
Administrative Law Judge

Enter: May 30, 2008