

PT 08-6
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.

MADISON COUNTY ARTS COUNCIL

Applicant

Docket No. 06-PT-0013
PIN 23-2-07-13-05-103-020.TOO
Tax Year 2005

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Elizabeth V. Heller of Goldenberg, Heller, Antognoli, Rowland, Short & Gori for Madison County Arts Council.

Synopsis:

This case concerns whether property located in Madison County and owned by the Madison County Arts Council (“applicant”) qualifies for a charitable purposes property tax exemption for the year 2005. The applicant is a non-profit organization that supports art and art education programs. 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. 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 incorporated in 1981. The applicant does not have any capital stock or shareholders. (App. Ex. #1; Tr. pp. 11-12)
2. In April 2004, C. J. Jacoby & Co., Inc. donated a building to the applicant. The building was built in 1904 and was previously used as a furniture store. It had been vacant and on the market for six years before it was donated. The building is now known as the Jacoby Arts Center and is located in the downtown area of Alton. (Dept. Ex. #1, pp. 7-9; Tr. pp. 12, 14-16)
3. The building has three floors and a full basement for a total of approximately 40,000 square feet. (Dept. Ex. #1, pp. 5, 16)
4. During 2005, only the first floor was being used. The basement, second floor, and third floor were empty and closed off. The applicant estimated that it will be three to five years before the applicant will have the finances to open additional floors. (Dept. Ex. #1, p. 16; Tr. pp. 13-14, 30, 32-33)
5. On the west side of the first floor is a gallery that exhibits the work of local, regional, and nationally recognized artists. There is also a gift shop and three small offices. On the east side, the applicant has an education area. (Dept. Ex. #1, pp. 13, 18; Tr. pp. 26, 31)

6. Asbestos was professionally removed from the boiler pipes in the basement and several small areas of flooring throughout the building. Peeling lead paint was removed. (Dept. Ex. #1, p. 14; Tr. pp. 24-25)
7. The boiler operated through the first winter, but during the winter of 2005-2006, it did not work. Space heaters were used to warm the offices and small classrooms. The gallery does not have heat, and neither does most of the education side. (Dept. Ex. #1, pp. 14, 16; Tr. p. 14)
8. The applicant replaced the roof and upgraded the plumbing for the bathrooms. The applicant also upgraded the wiring and electrical panels for one side of the building, the gallery side. Broken windows were repaired, and a corridor in the basement was rebuilt to fire rated code. The applicant installed new emergency exit signs, emergency stairwell lighting, and a new fire alarm system. (Dept. Ex. #1, p. 14; Tr. pp. 13, 30-31)
9. Members of the Alton-Godfrey Rotary Club painted, replaced windows in the restrooms and offices, and created a kitchenette area. (Dept. Ex. #1, p. 42; Tr. p. 32)
10. The applicant hosted its first exhibit in September 2004. From September 2004 through 2005, the applicant continued to use the first floor of the building. Renovations of the first floor are ongoing. (Tr. pp. 30, 33-34)
11. The applicant's bylaws state that it is organized and will be operated exclusively for charitable and educational purposes. (Dept. Ex. #1, p. 31)
12. The bylaws further state as follows:

It shall be the purpose of the Madison County Arts Council: to serve the arts in Madison County and 21 surrounding counties as

designated by the Illinois Arts Council. The Madison County Arts Council will:

- Develop educational programs in the arts.
- Facilitate greater public awareness of, and participation in the arts.
- Foster cooperation among all Madison County arts organizations.
- Encourage development of arts services and programs by cultural, educational, recreational, business, civic, social, and other organizations.
- Provide technical services to individual artists in order to foster their artistic and economic success.
- Serve as the major resource for information about arts resources and activities in Madison County and the surrounding area in Illinois.
- Supplement the services and programs of the other arts organizations by offering services and programs as deemed appropriate. (Dept. Ex. #1, pp. 31-32)

13. With respect to membership, the bylaws state as follows:

The Membership of this organization shall consist of those persons, families, or organizations that have fully paid their annual membership fee. A current list of all members will constitute the official membership list.

- A. **CLASSES OF MEMBERS.** Members of the organization shall be classified based on their annual membership fee as follows: Friend: \$25; Family/Business: \$100; Patron: \$500-\$999; and Benefactor: \$1,000.
- B. **MEMBERSHIP YEAR.** The Membership Year shall correspond to the fiscal year. (Dept. Ex. #1, p. 32)

14. The applicant's fiscal year is from July 1st to June 30th. (Dept. Ex. #1, p. 22)

15. The bylaws do not have a provision that states that membership fees will be waived if a person is unable to pay them. The applicant does not have a formal charitable policy that provides for fees to be waived or adjusted according to one's ability to pay. (Dept. Ex. #1, pp. 31-41; Tr. p. 43)

16. During 2005, the applicant had 188 individual members and 30 family/business level members. (Dept. Ex. #1, p. 15)

17. Members receive a 10% discount on all classes offered by the applicant and on items sold at the gift shop, which is also a consignment shop. (Dept. Ex. #1, p. 49; Tr. p. 28)
18. All the items for sale in the gallery and the gift shop are original works of art. The artists receive 60% from the sale, and the applicant receives 40%. The artist's commission is the same for non-members as it is for members. (Tr. pp. 28, 36)
19. The artwork in the gallery does not have to be for sale. Anyone may submit a piece of art to be exhibited in the gallery space. (Dept. Ex. #1, p. 15; Tr. p. 27)
20. The admission to the art gallery is free, and the gallery is open to the public Tuesday through Saturday, 10:00 a.m. to 5:00 p.m. and Sunday, noon to 4:00 p.m.¹ (Dept. Ex. #1, pp. 43, 48, 56, 57)
21. An exhibition or review committee reviews the works submitted by the artists to determine which works will be displayed in the gallery and the gift shop. The committee is made up of the applicant's board members, community art educators, and art students. (Dept. Ex. #1, p. 15; Tr. pp. 18-19, 37)
22. In its exhibitions, the applicant tries to focus on certain concepts or ideas about art, such as abstract, landscape, or photography. The applicant looks for people who are working in that manner and invites them to submit their slides, images, and resumes. (Tr. pp. 26-27)

¹ Visitors to the gallery are greeted by a person who tells them a little bit about the work in the gallery, gives out a guide, and is available to answer any questions. (Tr. p. 28)

23. The applicant hosts free receptions at the opening of its exhibitions. The exhibitions change approximately every 4 to 6 weeks. (Dept. Ex. #1, p. 15; Tr. pp. 19-20, 51)
24. Artists are not charged to display their work in the gallery, except for the juried show and the Art East show. (Tr. pp. 18-19, 25-26, 36, 38-40)
25. During the summer of 2005, the applicant's juried show was for all types of media. The show was open to all artists, 18 years and older, residing in Illinois and Missouri. The fee was \$25 for members and \$40 for nonmembers. The show opened with an artists' reception on August 5, 2005 and ran through September 4, 2005. (Dept. Ex. #1, p. 43)
26. Every year the applicant also hosts Art East, which is an event that takes place two weekends in October: one weekend in Alton and the second in Edwardsville. The event focuses on the talent in the Metro East area. It is a self-guided tour through the artists' studios and also through local churches, banks, boutiques, and restaurants that host the exhibits. Many artists demonstrate and give talks about their work. This event is free for the patrons, and the applicant's facility is the starting point of the tour. (Dept. Ex. #1, p. 50; Tr. pp. 19, 40)
27. For the Art East event, the fee for the artists to participate is \$20 for members and \$30 for nonmembers. (Tr. pp. 20, 36)
28. Artists who live and work in Madison County may become a member at a discounted rate of \$15 during Art East or the juried exhibition. (Dept. Ex. #1, p. 15; Tr. p. 22)

29. Some of the events that the applicant held at its facility during 2005 were the following: January through February 27, Seven Photographers; March 4 through April 10, Glass Exhibit; April 15 through May 1, Lewis & Clark Student Art Exhibition; May 6 through June 12, Flesh and Bones; May 15, May Day; June 12, Artist's Market; June 17 through July 31, "Material Attraction-Diverse Reactions" Works in Clay; July 16, Rummage sale; and August 5 through September 4, Juried Art Show. The Alton Writer's Guild meets the first Thursday of every month at the facility at 6:15 p.m. (Dept. Ex. #1, pp. 48, 56)
30. The applicant partners with the city of Edwardsville to provide free art classes for children in conjunction with Edwardsville's summer "Arts in the Park" program. The sessions are designed for children ages 6 to 12. During 2005, the participants met at the city park bandstand from 9 to 10:30 a.m. on Saturdays from June 11 through July 23. No prior registration was necessary. (Dept. Ex. #1, p. 44; Tr. pp. 19-20, 42)
31. Four times a year on Saturday mornings the applicant has a free art day for children at the applicant's facility. Approximately 50 children attend. On the Saturday during the summer quarter, the event is held outside the building. (Dept. Ex. #1, p. 13; Tr. pp. 44-45)
32. Once a month beginning in May through October on Saturday afternoons and evenings the Alton marketplace sponsors the Alton block party, which is an evening of music, food, drink, and family activities. The applicant pays artists to be there to do art activities free for the children. (Tr. pp. 20, 41-42)

33. The applicant's quarterly newsletter is called The Artist and is mailed to its members. The newsletter is also sent via email and is on its website at www.madisoncountyartscouncil.org. The local newspaper and radio station advertise the applicant's events. (Dept. Ex. #1, pp. 42-57; Tr. pp. 45-46)
34. The newsletter states that the applicant's building is available for birthday parties, bridal showers, baby showers, graduation parties, business meetings, or social hours. (Dept. Ex. #1, pp. 42, 51)
35. The applicant publishes a brochure called Artland Directory, which is free and features Metro East arts organizations. It includes visual and performing arts venues, festivals, and museums. The brochure is funded through a grant from the Illinois Arts Council with support from the participating organizations. (Dept. Ex. #1, p. 51)
36. During the spring and summer of 2005, some of the classes the applicant offered to children included the following: Drawing; Pottery; Papier-Mache Bowls and Platters; Stained Glass Mosaic Plate Making; Art from Nature; African Art; and Paper Sculpture Kachina Figures. The cost of the spring classes varied between \$10 and \$56. For the summer classes, the cost varied between \$24 and \$72. The cost included the materials. (Dept. Ex. #1, pp. 45, 53-54)
37. During the spring of 2005, some of the classes the applicant offered to adults included the following: Pottery; Drawing in Color; Pastel Drawing; Bookbinding Basics; and a Batik Dyeing workshop. The cost of these classes varied between \$25 and \$120. In addition, the applicant offered a Music Lecture Series for \$10 per lecture or \$25 for all three lectures. (Dept. Ex. #1, pp. 54-55)

38. During the summer of 2005, some of the adult classes offered were Painting Studio, Crochet, Knitting, Tapestry Weaving, Beginning Drawing, and Painted Scarf. The cost of these classes varied between \$15 and \$120. The applicant also offered a free Hot Glass Bead Making Demonstration. (Dept. Ex. #1, pp. 46-47)
39. During 2005, members at the \$100 level could sign up for three classes and get a fourth class of equal or lesser value free. (Dept. Ex. #1, p. 48)
40. All individuals, regardless of membership, receive a \$5 discount per second child enrollment or for enrolling in more than one class at a time. (Dept. Ex. #1, pp. 15, 49)
41. The applicant's bylaws and newsletters do not contain a provision that states that the fees for classes will be waived if a person is unable to pay them. (Dept. Ex. #1, pp. 31-49; Tr. p. 43)
42. The applicant has not had anyone ask to waive the fees for the classes. (Tr. p. 44)
43. The applicant's un-audited financial statement for the fiscal year ending June 30, 2005 shows the applicant's income was \$156,152.48, and its expenses were \$172,219.43, which resulted in a net deficit of \$16,066.95. (Dept. Ex. #1, pp. 22-24)
44. For the fiscal year ending June 30, 2005, the applicant had total donations in the amount of \$65,165.64, which was approximately 42% of the total income. The applicant also received two "grants" from the Illinois Arts Council, one was "restricted" in the amount of \$9,500, and the other one was \$3,870. Other

“grants” included one of \$2,250 for the Art East show, and one of \$5,000 for the Connect the Arts event.² (Dept. Ex. #1, pp. 22-24)

45. For the fiscal year ending June 30, 2005, the applicant’s total membership income of \$8,748 was approximately 6% of the total income. The applicant had income from classes of \$11,626.50, which was approximately 7% of the total income. The income of \$2,882.84 from gallery sales, and \$5,870.41 from gift shop sales was approximately 6% of the total income. (Dept. Ex. #1, pp. 22-24)

46. The applicant’s un-audited summary of income and expenses for the six months of July 1, 2005 through December 31, 2005 shows the applicant’s income was \$59,869.79, and its expenses were \$64,583.51, which resulted in a net deficit of \$4,713.72. (Dept. Ex. #1, pp. 25-27)

47. For the six months ending December 31, 2005, the applicant received donations totaling \$28,218.74, which was approximately 47% of the total income during that time period. The applicant received an Art East “grant” of \$900 and another one for \$5,000. (Dept. Ex. #1, pp. 25-27)

48. For the six months ending December 31, 2005, the applicant’s membership income of \$915 was approximately 1.5% of the income during that time period. The applicant had income from classes of \$5,354.20, which was approximately 9% of the income. The income of \$2,773.52 from gallery sales, and \$3,551.62 from gift shop sales was approximately 11% of the income. (Dept. Ex. #1, pp. 25-27)

² The applicant did not describe the Connect the Arts event or what takes place during it.

49. The applicant awarded grants to various organizations for 2005. The purpose of the grant is to support and encourage community arts programming. The total distribution was \$11,250. (Dept. Ex. #1, p. 44)
50. The money awarded to grant recipients came from the Illinois Arts Council's Community Arts Access Program, as well as from matching money raised by the applicant through fundraisers, memberships and contributions. (Dept. Ex. #1, p. 44)
51. Organizations that received grant awards included the following: Jersey Community High School Theatre Department; Sr. Thea Bowman School; Cahokia Mounds Museum Society; Community Counseling Center; Calhoun Entertainment Company; Edwardsville Art Center; Fete du Bon Vieux Temps, Inc.; St. Mary's School; Curtain's Up Theater Company; Miners Institute Foundation; Alton Beautification and Clean City Committee; Alton Children's Theatre, Inc.; Community Cultivators; Alton Symphony Orchestra; Crossroads Quilters Guild; and Greater Alton Concert Association Foundation, Inc. (Dept. Ex. #1, p. 44)

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, 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).

The applicant argues that it offers a place for anyone to learn about the arts, and its building gives it a face in the community. Its gallery is free and open to the general public, and anyone may exhibit art there. The applicant also provides free classes and activities for children, and it distributes a free newsletter and directory. The applicant notes that there are only two times a year that a fee is charged to artists for participating

in an event, and the minimal fees are needed only to help cover the costs. The applicant contends that it will waive the fee for anyone who is unable to pay it. According to the applicant, the majority of its income is from public or private donations, and it sells art only to supplement its donations. The applicant states that membership is sort of an intensified type of donation, and membership is used to supplement the funds available to support its mission. The applicant maintains that before it began providing its programs, there was very little, if any, outreach to children. It believes that it is filling a need for students, families, and people in the community who are hungry for the arts.

The Department contends that the applicant is not entitled to the exemption because there are two guidelines that the applicant has not clearly established. The Department believes that it is not clear that the applicant dispenses charity to all who need and apply for it or that its income is primarily from public or private donations.

During 2005, the basement, second and third floors were vacant and closed off, and the applicant intends to use this space sometime in the future. In order for this portion of the property to be exempt for the year 2005, however, the applicant must have actually used it for charitable purposes. In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose did not eliminate the need for proof of actual use for that purpose. “Intention to use is not the equivalent of use.” Skil at 252. See also Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994) (failure to put property to any use compels the conclusion that the property is not exempt); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983) (vacant property that was not actually used for exempt purpose was not entitled to

the exemption). Because the applicant did not use the basement, second or third floors during 2005, that portion of the property cannot be exempt.

Nevertheless, a partial exemption may be allowed if an “identifiable portion” of the property is used for an exempt purpose. See Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66 (1971). If property is used as a public forum for art and art education, it may qualify for an exemption if it satisfies the guidelines in Methodist Old Peoples Home, *supra*. See Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060 (1st Dist. 2000); Du Page Art League v. Department of Revenue, 177 Ill. App. 3d 895, 900 (2nd Dist. 1988). The applicant has presented much evidence concerning its contributions to the community with respect to art and art education. Unfortunately, the evidence falls short of meeting the clear and convincing standard necessary to show that the applicant meets most of the guidelines in Methodist Old Peoples Home, *supra*.

The applicant did not present sufficient evidence to show that it dispenses charity to those who need it and obstacles are not placed in the way of those who need charity. Its bylaws do not include a specific charitable policy, and its newsletter does not indicate that fees will be waived for those unable to pay. The failure to have a written charitable policy or 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, although the applicant’s executive director stated that fees would be waived if necessary, she did not know if anyone had asked for a waiver of the membership fees (Tr. p. 42), and no one had asked for a waiver of the class fees (Tr. p. 44), so the policy

was never used. Because it was never used, it is unclear whether the public was aware of it.

An organization does not lose its charitable status by charging those who are able to pay for its services as long as it furnishes its services to those who are unable to pay. See Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 460 (2nd Dist. 1995). The applicant's executive director said that fee waivers have not yet been an issue. She said the applicant is struggling to provide what it can right now, and it might be an issue in the future. (Tr. p. 43) She also said that if an artist cannot pay for an event such as Art East, the applicant still allows the artist to participate in the event. (Tr. p. 20) When asked specifically about waiving fees for indigent artists, she stated, "If artists, you know, so badly want to participate in that program, then we do, we have other artists who have generously donated money to cover the cost of those folks' fees." (Tr. p. 26) If the fees for an artist to participate in an event were waived or covered by another donor, the applicant did not provide evidence to substantiate this. Although the applicant is struggling financially, it is difficult to find that it has met its burden of showing clearly and convincingly that it is a charitable organization when no specific examples of charity were provided.

Some of the applicant's services, such as gallery admission, are free, but it also charges fees for other services without a written, advertised, or executed charity policy. Because charity is a gift (Methodist Old Peoples Home, at 156-157), without specific evidence concerning the waiver of fees, the evidence concerning its free services during 2005 is significant. Some of the testimony during the hearing referred to documentary

evidence that would support the applicant's contentions concerning the free services that it provides, but that evidence was not presented. Its executive director testified that the majority of the applicant's patrons, approximately 95%, receive free services. (Tr. pp. 21, 50-51) She also stated that a record is kept of all the discounts that are given. (Tr. p. 22) The applicant did not, however, present this record. The Board president testified that only approximately 500 of close to 15,000 people who were served during 2005 paid something for the services, and out of those 500, nearly everyone received a discount. (Tr. p. 55) The documents to support this testimony were not provided. Because exemption provisions are strictly construed, every doubt must be resolved in favor of taxation. See City of Chicago, *supra*. It is, therefore, important for the applicant to support its arguments with sufficient documentary evidence.

With respect to whether the applicant derives its funds mainly from public and private charity, additional evidence is necessary to verify whether its "grant" income is public charity. The law recognizes a distinction between income from the government that is charity and income that is received as payment pursuant to a contract entered into for the procurement of services. For example, Form 990, Return of Organization Exempt From Income Tax, which is filed with the Internal Revenue Service, indicates whether money received from the government is a contribution, gift, or grant (line 1), or whether it is "program service revenue including government fees and contracts" (line 2). The income that the applicant identified as grant income must be substantiated to determine whether it is public charity or payment pursuant to a contract for services. The applicant did not provide a copy of its Form 990, nor did it provide any other evidence of the nature of these funds. Testimony from the Board president concerning the financial

statements indicated that the applicant received a grant from the City of Edwardsville for the Art East event (Tr. p. 55), but she did not explain the other grants that are listed on the financial statements. She mentioned that the applicant received money from the Arts and Education Council of Greater St. Louis but did not explain the amount or what expense it covered. (Tr. p. 56) It is not clear from the record whether the grants are donations or whether they are payments for services to be performed pursuant to a contract.

Although the applicant provides significant benefits to the community, its entitlement to an exemption must be established by clear and convincing evidence. See City of Chicago, *supra*. Without additional evidence to verify its sources of funding and the amount of charity that it provided during 2005, it cannot be found that the applicant presented sufficient evidence to meet its burden of proof. The exemption must, therefore, be denied.

Recommendation:

For the foregoing reasons, it is recommended that the exemption for the year 2005 be denied.

Linda Olivero
Administrative Law Judge

Enter: April 8, 2008