

PT 12-06
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

**STONE CITY SOFTBALL, INC.,
APPLICANT**

v.

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

Docket No: 10-PT-0065 (10-47-15)

**Real Estate Exemption
For 2010 Tax Year
P.I.N. 09-20-100-006**

Kendall County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Ed Serdar, President, *pro se*, on behalf of Stone City Softball, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Kendall County Parcel, identified by index number 09-20-100-006 (hereinafter the “subject property”) should be exempt from 2010 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On June 8, 2010, Stone City Softball, Inc. (hereinafter “Stone City”) filed a Property Tax Exemption Complaint with the Kendall County Board of Review seeking exemption from 2010 real estate taxes for the subject

property. It is unclear from the record what action the Board took on the Complaint. On September 16, 2010 the Illinois Department of Revenue (hereinafter the “Department”) denied the exemption finding that the subject property was not in exempt ownership or use in 2010. Dept. Ex. No. 1. On September 24, 2010, Stone City filed an appeal of the Department’s denial of exemption. On October 26, 2011, a formal administrative hearing was held with Ms. Elizabeth Hedgcock testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial of exemption be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2010. Tr. p. 7; Dept. Ex. No. 1.
2. Stone City is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 2.
3. The subject property is owned by Stone City. App. Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that Stone City has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2010 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code, absent appropriate evidence that the subject property is owned by an entity that qualifies as an “institution of public charity,” that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (hereinafter Korzen), the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Applicants for exemption must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

The Illinois Supreme Court articulated the criteria in Korzen “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Com’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965). There is insufficient evidence in the record for me to conclude that Stone City is a charitable organization or that Stone City uses the subject property for charitable purposes.

Ms. Elizabeth Hedgcock testified for Stone City. She has been “involved” with Stone City for two years. There is no evidence in the record as to what her “involvement” was. Mr. Serdar asked her two questions: “And as far as you know, Elizabeth, is

everything we do charitable?” She responded “[Y]es.” “We do not make any revenue from our operations, other than the revenue that we use to operate the teams and pay for the facilities?” She responded “[Y]es.” “I think that’s enough for Ms. Hedgcock ...” Tr. pp. 8-9. There was no other testimony at the hearing. Mr. Serdar then asked that several documents be admitted into evidence. Everything that is known about Stone City is taken from these documents.

Stone City was incorporated on June 27, 2002, “to organize, promote or support educational opportunities and other programs which address physical fitness, health and education for young women, and to organize promote or support amateur sports programs and related activities conducted for the benefit of young women.” “In particular, [Stone City] was organized to provide instruction and education to girls in the sport of fast-pitch softball.” “[Stone City] will operate instructional camps and provide competitive opportunities for girls in the Joliet, Illinois area.” App. Ex. Nos. 1, 5 and 6.

Stone City offers “instructional camps,” for girls interested in learning and developing both fundamental and advanced skills in the sport of softball, and “exposure camps,” designed to showcase the acquired and developing skills of pitchers and catchers, infielders and outfielders. College coaches will be in attendance to observe the exposure camps. Stone City hosts a collegiate round-robin softball tournament in the Spring. Stone City sponsors three summer traveling teams that will compete in local, regional and national tournaments each summer. Stone City operates and maintains a website “in an effort to disseminate knowledge of, and promote an interest in, women’s and girls' softball.” App. Ex. No. 6.

Stone City’s sources of financial support consist of money raised through the fundraising efforts of volunteers, funds generated from softball equipment sales, funds

received from instructional and exposure camp fees, fees generated by participation in softball tournaments hosted by Stone City, revenue from sales of concessions at games and tournaments hosted by Stone City and revenue from acknowledgments of corporate sponsors on Stone City's website. App. Ex. No. 6.

Stone City's fees are \$120 for hitting camps, \$500 for pitching camps and \$60 to \$120 for other positional camps. According to the documents, "a substantial portion of any net proceeds raised by fees for the exposure camps will be designated for college scholarships for selected female softball athletes." App. Ex. No. 6. It is unclear from the record if these scholarships are Stone City's "charity." If so, there is no evidence in the record as to how much of the "substantial portion" was allocated to scholarships in 2010. There is no evidence in the record that any scholarships were awarded. There is no evidence in the record that everyone who applied for a scholarship received one. There is no evidence in the record as to the basis for awarding scholarships.

Stone City's fundraising activities consist of the following: 1) activities such as corn sales, picnics and bowling or other sporting events; 2) softball equipment sales of equipment donated by Wilson Sporting Goods which is sold to other nonprofit softball organizations at below market prices or donated to participants in Stone City's programs; 3) telephone solicitations for contributions from area businesses and individuals; and 4) solicitations for corporate sponsorships. App. Ex. No. 6.

For the period ended September 30, 2010, Stone City had "Operating Income" of \$225,191, of which \$141,296 (63%) was "Fees," \$35,176 (16%) was "Camps," \$25,110 (11%) was "Concessions," and \$19,798 (9%) was "Fundraisers." App. Ex. No. 10. Ms. Hedgcock testified that Stone City does not make any revenue from operations, other than the revenue used to operate the teams and pay for the facilities. Tr. pp. 8-9. This

testimony is not backed up by the “Operating Income,” which shows revenue earned from fees, camps and concessions. Clearly, the majority of Stone City’s funding is not derived from public and private charity.

For the period ended September 30, 2010, Stone City had “Operating Expenses” of \$167,104, resulting in “Net Income” of \$58,086. “Operating Expenses” included “Payments to Shareholders,” of \$20,932. App. Ex. No. 10. There is no evidence in the record as to who the “shareholders” are. In 2009, Stone City earned a “Net Income,” equal to 25% of its Revenue. There is no evidence in the record that these funds are held in trust for charitable purposes.

After Stone City filed its Property Tax Exemption Complaint, the Department sent them a PTAX-305, “Request for Additional Information.” The Department requested a copy of all leases or rental agreements for the softball fields, a statement of the admissions requirements and charitable policy that provides for fees to be waived or adjusted according to one’s ability to pay, copies of application forms and fee schedules for the girls’ fast-pitch softball, the number of players who had fees waived, gate fees and a statement as to whether gate fees were waived, “how the public is informed of the fee or reduction waiver to enter the game,” information as to how many gate fees were waived or reduced in 2010, information on who runs the concession stand, whether fees are waived for the concession stand and information on who else uses the softball field other than Stone City. App. Ex. No. 7. None of this information was provided at the evidentiary hearing.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue,

154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). Stone City has failed to prove that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2010 real estate taxes on the grounds that the subject property was not owned or used by an institution of public charity should be affirmed, and Kendall County Parcel, Index Number 09-20-100-006, should not be exempt from 2010 real estate taxes.

ENTER:

Kenneth J. Galvin

March 20, 2012