

PT 12-07
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

POPLAR GROVE AVIATION
EDUCATION ASSOCIATION, INC.,
APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 10-PT-0058 (09-04-06)

Real Estate Tax Exemption
For 2009 Tax Year
P.I.N. 05-01-101-008

Boone County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. G. Michael Scheurich; Guyer & Enichen, P.C., on behalf of Poplar Grove Aviation Education Association, 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 Boone County Parcel, identified by property index number 05-01-101-008 (hereinafter the “subject property”), qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit, and subsection (f), “Historical societies.” 35 ILCS 200/15-65(f).

This controversy arose as follows: On January 13, 2000, Poplar Grove Aviation Education Association, Inc. (hereinafter “Poplar”) filed an Application for Non-homestead Property Tax Exemption with the Boone County Board of Review (hereinafter the “Board”) seeking exemption from 2009 real estate taxes for the subject property. The Board reviewed the Application and recommended that a full year exemption be granted. On June 4, 2010, the

Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2009. Poplar filed an appeal of the Department’s exemption denial.

On October 25, 2011, an evidentiary hearing was held in this matter with testimony from Ms. Peggy Fry, President of Poplar’s Board of Directors in 2009. Following a careful review of the testimony and evidence it is recommended that the Department’s denial be reversed and that the subject property be exempt from real estate taxes for the 2009 assessment year.

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 2009. Tr. pp. 6-7; Dept. Ex. No. 1.
2. Poplar acquired the subject property, over 11 acres, by warranty deed dated November 3, 1999. Tr. pp. 9-10, 34-35; App. Ex. No. 8.
3. Poplar is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 13; App. Ex. No. 4.
4. Poplar was incorporated on May 15, 1997. Poplar’s Bylaws state that the organization “shall plan and conduct activities and projects which serve to educate the general public about general aviation, automobiles and motorcycles” and “shall address the challenges of the 21st century by advising educators, students and the public about the importance of our transportation heritage.” Poplar is a transportation history museum covering bicycles, motorcycles, cars, trucks, tractors, agricultural equipment and airplanes, all pre-World War 11. Poplar is open to the public. Tr. pp. 23-24, 26; App. Ex. No. 1.
5. The subject property contains the following buildings: “Waukesha Hangar,” a Wisconsin airport building relocated to the present site in 2001 containing artifacts and

vehicle display, classroom, flight simulators, an office and library. “Sun Oil Gas Station,” a 1928 vintage building with non-functional gas pumps displayed as it would have looked during its period of actual use. “Springfield Hangar,” a 1938 steel building relocated from a private farm airstrip west of Springfield, Illinois. This building is used by “Youth Exploring Aviation,” as the group restores a 1941 Aeronica Chief to bring the aircraft back to flying status. “Slim’s Garage,” a 1920-1930 building moved from Green Lake, Wisconsin, that recreates a 1920’s era dealership and garage and houses a 1936 Pontiac Sedan and a 1928 Model A Roadster. “Hamilton T-Hangar,” a 1930 steel building currently used for storage. A “Pavilion,” used for “social purposes, i.e. outdoor grilling, eating and protection from weather at events.” Tr. pp. 15-19; App. Ex. Nos. 2 and 3.

6. Poplar has the following displays and artifacts: 1928 Cessna AW; 1930 LaSalle 2 passenger coup with rumble seat; 1928 Ford Model A Roadster; 1931 Stinson Jr. S; 1942 Harley Davidson WLA; 1931 Corben Baby Ace; 1980 Studebaker Horse Drawn Buggy; vintage bicycles; “Lindbergh letter;” “Wright-signed check;” Wright R-1820-97 cyclone radial engine; several small historic engines; airmail beacon; and “Ford Model A Mail Truck.” Tr. pp. 19-20; App. Ex. No. 3.
7. In 2009, Poplar issued newsletters advertising events for the coming season. Sample events included “Flag Day” on June 14, “for all ages,” where visitors can learn about the history of the flag and proper etiquette; and “Family Day” on August 16, including a pancake breakfast, where kids can make and launch their own model rocket and operate model flying planes or Microsoft Flight Simulators with “more fun activities for the kids.” Tr. pp. 22, 27; App. Ex. No. 6.

8. Any person interested in the purpose of Poplar “and willing to dedicate his/her time and effort in the promotion thereof may become a member of Poplar.” Poplar has three categories of membership: General and Individual Members; Corporate Membership; and Honorary and Endowment membership. Honorary membership is at the discretion of the Board and these members do not pay dues. Tr. p. 28; App. Ex. No. 1.
9. Membership is \$20 for students, \$25 for individuals, \$35 for families, \$30 for grandparents, \$1,000 for corporations. Members get free admission to Poplar, a 10% discount in the gift shop, announcements of programs and events, and free use of the picnic pavilion. Non-member Poplar admission fees are \$5 for adults, \$4 for senior citizens, \$3 for children and children under age 6 are free. Tr. pp. 19-20, 26-28, 30; App. Ex. No. 3.
10. Poplar had a “Fee/Rental Waiver” policy in effect in 2009 which stated that “[L]ocal community non-for-profit groups, organizations or individuals may request waivers of facility/campus rental fees, admission and/or program fees for activities that support the community at large and/or the mission of [Poplar].” “Groups and/or individuals who present an inability to pay will be given the consideration of waiving said fees as well.” “For more information or to make a fee waiver request, contact the Office/Facilities Manager at [phone number] or [e-mail].” Poplar waived admission fees and program fees in 2009. Tr. pp. 22-23, 26-27; App. Ex. No. 7.
11. Poplar has two “youth programs.” “Introduction to Flight” is held on Saturday mornings, twice a year, and is available to youths 10 to 17 years of age. The program lasts three hours and includes a tour of the Springfield hangar, class on the “Theory of Flight” and an introductory flight, weather permitting. The “Youth Exploring Aviation” program is open to youths 14 to 20 years of age and offers an overview of

ground school, including an introductory flight and a cross country flight. App. Ex.No. 3.

12. In 2009, Poplar awarded scholarships to students pursuing careers in aviation or transportation. App. Ex. No. 6.

13. In 2009, Poplar was open Monday through Friday, 10:00 to 3:00 and Saturdays, 10:00 to 1:30. Because of the artifacts on display, Poplar does not rent space for events such as weddings or graduations. Tr. p. 25.

14. Poplar's Directors do not receive any compensation. No member of Poplar is entitled to compensation, salary or wages unless approved by the Board. App. Ex. No. 1.

15. In 2009, Poplar had \$85,057 in Revenue, including \$38,694 (46%) in "membership dues," \$27,508 (32%) in "investment income," and \$18,855 (22%) in "other contributions, gifts and grants." Poplar has an endowment fund. Tr. p. 30. App. Ex. No. 1.

16. In 2009, Poplar had \$95,328 in expenditures and ended the year with a \$10,271 loss. Expenditures included \$7,181 in real estate taxes, \$28,417 in salaries and wages, \$8,974 in repairs and maintenance and \$13,431 in utilities. App. Ex. No. 1.

CONCLUSIONS OF LAW:

An examination of the record establishes that Poplar has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2009 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be reversed. 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).

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 on 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). Poplar has proven, by clear and convincing evidence, that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

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.

(f) Historical societies.

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).

Poplar argues that it qualifies for exemption under either of the following subsections of section 15-65: (a) because it is an institution of public charity or (f) because it is a historical society. Neither the Property Tax Code nor case law defines “historical society.” In looking at the plain meaning of the term “historical society,” “historical” means pertaining to or connected with history or the preservation of the past, and “society,” is a group of people united for the promotion of the same object. Webster’s Encyclopedia Dictionary of the English Language (1971). In Vermilion County Museum Society v. Department of Revenue, 273 Ill. App. 3d 675, 679 (4th Dist. 1995), the Court held that a museum established to educate the public qualifies as a charitable institution noting that “[W]e consider the study of history to be educational, thus qualifying the purpose of the Society as a charitable institution.”

I conclude that Poplar is a “historical society” whose purpose is to educate the public, thus qualifying it as a charitable institution. Poplar was incorporated on May 15, 1997. Poplar is a transportation history museum covering bicycles, motorcycles, cars, trucks, tractors, agricultural equipment and airplanes, all pre-World War 11. Its Bylaws state that the organization “shall plan and conduct activities and projects which serve to educate the general public about general aviation, automobiles and motorcycles” and “shall address the challenges of the 21st century by advising educators, students and the public about the importance of our transportation heritage.” Tr. pp. 23-24, 26; App. Ex. No. 1.

The subject property contains the following buildings: “Waukesha Hangar,” a Wisconsin airport building relocated to the present site in 2001 containing artifacts and vehicle display, classroom, flight simulators, an office and library. “Sun Oil Gas Station,” a 1928 vintage building with non-functional gas pumps displayed as it would have looked during its period of

actual use. “Springfield Hangar,” a 1938 steel building relocated from a private farm airstrip west of Springfield, Illinois. This building is used by “Youth Exploring Aviation,” as the group restores a 1941 Aeronica Chief to bring the aircraft back to flying status. “Slim’s Garage,” a 1920-1930 building moved from Green Lake, Wisconsin, that recreates a 1920’s era dealership and garage and houses a 1936 Pontiac Sedan and a 1928 Model A Roadster. “Hamilton T-Hangar,” a 1930 steel building currently used for storage. A “Pavilion,” used for “social purposes, i.e. outdoor grilling, eating and protection from weather at events.” Tr. pp. 15-19; App. Ex. Nos. 2 and 3.

Poplar has the following displays and artifacts: 1928 Cessna AW; 1930 LaSalle 2 passenger coup with rumble seat; 1928 Ford Model A Roadster; 1931 Stinson Jr. S; 1942 Harley Davidson WLA; 1931 Corben Baby Ace; 1980 Studebaker Horse Drawn Buggy; vintage bicycles; “Lindbergh letter;” “Wright-signed check;” Wright R-1820-97 cyclone radial engine; several small historic engines; airmail beacon; and “Ford Model A Mail Truck.” Tr. pp. 19-20; App. Ex. No. 3.

Poplar’s primary purpose is historical and educational, and under Vermilion County Museum Society and subsection (f) of 35 ILCS 200/15-65, this purpose is a charitable one. Although Poplar has a charitable purpose, it must still meet the guidelines in Korzen in order to receive the exemption. *Id.*

I conclude that Poplar benefits an indefinite number of persons. In 2009, Poplar was open Monday through Friday, 10:00 to 3:00, and Saturdays, 10:00 to 1:30. Tr. p. 25. Poplar is open to the public. Tr. p. 26. “Everything is geared towards exposing youth, seniors, anyone that’s interested in any kind of transportation history, to what it was like back then.” Poplar sponsors “youth programs for children.” Boy Scouts, Girl Scouts and youth groups can earn badges. “There are no charges for these experiences.” Tr. p. 24. Poplar sponsors events that “highlight

specific occurrences,” such as Lindbergh’s trans-Atlantic flight. Poplar reached out to Rock Valley College and the College’s adult learning academy presented a program at Poplar about transportation history. Tr. p. 25.

Poplar sponsors two “youth programs.” “Introduction to Flight” is held on Saturday mornings, twice a year, and is available to youths 10 to 17 years of age. The program lasts three hours and includes a tour of the Springfield hangar, class on the “Theory of Flight” and an introductory flight, weather permitting. The “Youth Exploring Aviation” program is open to youths 14 to 20 years of age and offers an overview of ground school, including an introductory flight and a cross country flight. App. Ex. No. 3. In 2009, Poplar waived admission and program fees and awarded scholarships to individuals interested in careers in aviation or transportation. Tr. pp. 22-23, 26-27; App. Ex. Nos. 6 and 7.

Poplar is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Poplar has no capital, capital stock, or shareholders and earns no profits or dividends. Tr. p. 13; App. Ex. No. 4. In 2009, Poplar had \$95,328 in expenditures and ended the year with a \$10,271 deficit. Poplar’s largest expenditures included \$7,181 (8%) in real estate taxes, \$28,417 (30%) in salaries and wages, \$13,431 (15%) in utilities and \$8,974 (9%) in repairs and maintenance. App. Ex. No. 1. Poplar’s Directors do not receive any compensation. No member of Poplar is entitled to compensation, salary or wages unless approved by the Board. App. Ex. No. 1. I conclude that Poplar is not providing gain or profit in a private sense to persons connected with it.

In 2009, Poplar had \$85,057 in Revenue, including \$38,694 (46%) in “membership dues,” \$27,508 (32%) in “investment income,” and \$18,855 (22%) in “other contributions, gifts and grants.” Poplar has an endowment fund “given to us by a gentleman that we have invested through American Funds.” Tr. p. 30. App. Ex. No. 1. In 2009, non-member Poplar admission fees were \$5 for adults, \$4 for senior citizens, \$3 for children and children under age 6 were free.

Tr. pp. 19-20, 26-28, 30; App. Ex. No. 3. In Vermilion County Museum Society, *supra*, a 1995 case, the Court termed the admission fees of \$1 for adults and 50 cents for children as “insignificant.” Seventeen years after Vermilion County Museum Society, Poplar’s admission fees would not appear to be significant obstacles in the way of those using Poplar’s facilities and participating in its programs.

Although most of Poplar’s revenue is not derived from public and private charity, this Korzen factor “has waned in importance.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 743 (4th Dist. 2008), affirmed, 236 Ill. 2d 368 (2010). In balancing the Korzen criteria, the fact that Poplar’s revenue is not derived mainly from public and private charity is less significant than the fact that Poplar used its revenue, including the admissions fees, to further its charitable purpose. In 2009, Poplar did not provide private inurement to any person and, even while operating at a deficit, Poplar offered scholarships and waived admission fees and program fees.

In Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060 (1st Dist. 2000), the Court stated that a charitable organization does not need to advertise or publish its pay-as-you-can policy for waiving admission fees in order to qualify for a charitable tax exemption. The uncontradicted evidence of record established that Randolph Gallery had a fee waiver policy in place and used it. In the instant case, Poplar also had a fee waiver policy in place and used it. Poplar’s “Fee/Rental Waiver” policy, in effect in 2009, stated that “[L]ocal community non-for-profit groups, organizations or individuals may request waivers of facility/campus rental fees, admission and/or program fees for activities that support the community at large and/or the mission of [Poplar].” “Groups and/or individuals who present an inability to pay will be given the consideration of waiving said fees as well.” “For more information or to make a fee waiver

request, contact the Office/Facilities Manager at [phone number] or [e-mail].” App. Ex. No. 7. I conclude from the record that Poplar’s charity is dispensed to all who need and apply for it.

Finally, I conclude that Poplar does not place obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. Poplar has three categories of membership: General and Individual Members; Corporate Membership; and Honorary and Endowment membership. Honorary membership is at the discretion of the Board and these members do not pay dues. Any person interested in the purpose of Poplar “and willing to dedicate his/her time and effort in the promotion thereof may become a member of Poplar.” Tr. p. 28; App. Ex. No. 1. Membership is \$20 for students, \$25 for individuals, \$35 for families, \$30 for grandparents, \$1,000 for corporations. Tr. pp. 19-20, 26-28, 30; App. Ex. No. 3.

Poplar’s facilities as well as its displays and a significant number of special programs are oriented towards families, making Poplar’s family membership a significant value for families. Pursuant to Vermilion County Museum Society, *supra*, the reasonable membership fees and the liberal waiver policies show that Poplar does not place obstacles in the way of those who wish to avail themselves of the benefits dispensed on the subject property.

I conclude that the significant function of Poplar is to provide a historical society and that the admission fees, membership charges and provision for waiver of fees allows for admission into Poplar of all interested persons. The record requires a finding that the use of the subject property is for charitable purposes.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not in exempt ownership or use should be reversed, and Boone County Parcel, Property Index Number 05-01-101-008 should be exempt from 2009 real estate taxes.

March 20, 2012

Kenneth J. Galvin
Administrative Law Judge