

PT 13-07

Tax Type: Property Tax

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.

**GAO GROTTO, M.O.V.P.E.R.
Applicant**

Docket # 11-PT-0021

Tax Year 2011

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Harlan Martin, *pro se*, for GAO Grotto, M.O.V.P.E.R.¹

Synopsis:

GAO Grotto, M.O.V.P.E.R. (“applicant” or “Grotto”) filed an application for a property tax exemption for the year 2011 for a parcel of property located in Vermilion County. The applicant contends that the property is owned by a charitable organization, used exclusively for charitable purposes, and not used with a view to profit pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Vermilion County Board of Review (“County”) recommended that the exemption be denied because the applicant failed to show how often the property was used for charitable functions. The Department of Revenue (“Department”) agreed with the County’s decision to deny the exemption. The Department determined that the property is neither owned by a charitable organization nor used exclusively for charitable purposes. The

¹ The following Grotto members also appeared: Jim Bays, Bryan Elliott, and Rick Strebing.

applicant timely protested the Department's decision, 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 Grotto is a Masonic Affiliated Fraternal Organization. Its purpose is to cement the bonds of sympathy and good fellowship among its members, called Prophets." (Dept. Ex. #1, p. 58; App. Ex. #4)
2. The applicant is one of about 155 Grottoes throughout the United States and Canada that are chartered by the Supreme Council, Grottoes of North America.² (Dept. Ex. #1, p. 58; App. Ex. #4, #5, pp. 3, 11)
3. The Supreme Council is officially known as "The Supreme Council of the Mystic Order of Veiled Prophets of the Enchanted Realm," which was founded in 1890. The applicant "acknowledges obedience to and the sovereignty of" the Supreme Council. (Dept. Ex. #1, p. 16; App. Ex. #5, pp.10-11)
4. The applicant is located in Danville, Illinois and is known as "GAO Grotto, M.O.V.P.E.R." (Dept. Ex. #1, p. 16)
5. The "Twelve Commandments" of the Grotto indicate that its purposes include drawing "the Master Masons of different Lodges into close and more friendly relations" and creating and maintaining "a spirit of fraternity" among them. Although the Commandments include building up and strengthening the character of Masons, they do not specifically mention charity. (App. Ex. #5, p. 2)

² The applicant's pamphlet states that there are about 155 Grottoes, and the testimony indicated that there are about 169. (App. Ex. #5, p. 11; Tr. p. 11)

6. The Grotto's brochure includes the following: "An atmosphere of good, clean fun and frolic prevails at all times...However, there is also a serious side, that prompts the social conscience, which concentrates on a basic charity." (App. Ex. #5, p. 10)
7. The only other reference to charitable endeavors in its brochure is the following statement under the section titled "Join the Grotto": "Join the happy group of Prophets dedicated to the pleasure of helping those less fortunate." (App. Ex. #5, p. 9)
8. The applicant's bylaws state that "No one but an Ancient Craft Master Mason in good standings and affiliated with a Masonic Lodge is eligible to membership in this Grotto." (Dept. Ex. #1, p. 17)
9. The applicant's brochure states that "the Grotto is a social organization for Master Masons in good standing in their Blue Lodge." Membership is restricted to Master Masons, but "the organization has nothing to do with symbolic craft masonry." (App. Ex. #5, pp. 9-11)
10. According to the bylaws, each petition for membership or for reinstatement of a resigned member must be presented in writing and recommended by a member of the Grotto. (Dept. Ex. #1, p. 21)
11. Each candidate for initiation must pay \$150, and at least \$100 of that must accompany the petition (to be returned if the petition is rejected). The balance must be paid before initiation. The current year's dues must also accompany the petition. (Dept. Ex. #1, p. 21)

12. The annual dues of each member (except honorary and life members) is \$30, plus the amount equal to the annual per capita tax and supreme council assessments; members with an Enchanted Lantern Certificate pay \$1 less.³ (Dept. Ex. #1, p. 21)
13. A member who is in arrears for dues has no right to vote. Only voting members are eligible for office. (Dept. Ex. #1, p. 22)
14. A member who owes one year dues or more may be suspended after being given notice and an opportunity to show cause why he should not be suspended. (Dept. Ex. #1, p. 22)
15. A member suspended for non-payment of dues must pay 2 times the current annual dues to be restored to membership. (Dept. Ex. #1, p. 21)
16. When a Prophet becomes suspended or expelled from a Masonic Lodge, his standing in the Grotto is similarly affected. (Dept. Ex. #1, p. 22)
17. The applicant owns property located at 2400 Denmark Road in Danville, Illinois. (Dept. Ex. #1, pp. 2, 27-29)
18. The property is located on Lake Vermilion, and it has a building that the applicant refers to as the "Club House." The Club House has a kitchen, main room, patio, and outdoor area. (Dept. Ex. #1, pp. 2, 6, 8, 12, 23; Tr. pp. 10-11)
19. The applicant has 400 members, and the members meet on the third Thursday of each month at the Club House. The members also use the Club House weekly for meetings of subordinate groups. (Dept. Ex. #1, pp. 7, 12, 16, 57)
20. The applicant rents the Club House and property to members and non-members for events such as weddings, birthdays, anniversaries, and graduations. These rentals occur,

³ A member in good standing may become a life member by paying an amount equal to 15 times the current annual dues. (Dept. Ex. #1, p. 22) Retired members age 62 or over or members retiring on disability at any age pay \$25 plus the amount equal to the annual per capita tax and supreme council assessments. (Dept. Ex. #1, p. 22) The Enchanted Lantern Certificate will be explained later.

on average, once a month. The applicant will rent any of the following areas: (1) main room; (2) main room and kitchen; (3) grounds only; (4) building and grounds; and (5) patio and grill. (Dept. Ex. #1, pp. 23, 57; Tr. p. 13)

21. The applicant's General Rules indicate that the applicant's property is "primarily for the use of Prophets in Good Standing. Admission can be denied any individual not possessing a current year's dues card." Any Prophet in Good Standing is allowed to bring his wife and family on the property. (Dept. Ex. #1, p. 13; Tr. p. 12)
22. The property is used for camping, picnicking, fishing, boating, and swimming. (Dept. Ex. #1, pp. 8, 12)
23. The camping area is for members only. The property has 25 campsites with water and electricity. (Tr. pp. 11, 17)
24. A separate corporation operates the bar that is in the Club House, and that organization pays rent to the applicant. (Tr. p. 16)
25. Some of the applicant's members keep their boats at the docks that are on the property. (Tr. p. 11)
26. The applicant allows the Danville and Vermilion County AMBUCS to use the property for 2 weeks each summer. (Dept. Ex. #1, p. 57; Tr. p. 7)
27. The applicant's members participate in local parades during which they give tootsie rolls and tooth brushes to children. They have also provided a local fireworks display for the public. (Dept. Ex. #1, p. 57; Tr. p. 25)
28. During 2011, the applicant spent \$672.49 on Christmas gifts for seven children who were referred by the local Shriners. (App. Ex. #1; Tr. pp. 22-23)

29. In 1949, the Supreme Council adopted as its national objective the cause of Cerebral Palsy. Since 1949, the Supreme Council has made significant financial contributions to the United Cerebral Palsy Research Foundation. The Grotto continues to support the research for this disease. (App. Ex. #5, p. 7)
30. In 1949, the Supreme Council founded The Grottoes of North America Humanitarian Foundation (“Humanitarian Foundation”), which currently has two projects: (1) it makes annual financial contributions to the United Cerebral Palsy Research Foundation; and (2) it supports the Dental Care for Children with Special Needs Program, which was adopted in 1970. (App. Ex. #5, pp. 7-8)
31. The Dental Care for Children with Special Needs Program (“Dental Program”) helps cover the costs of dental treatment (including hospital and anesthesia costs) for children with Cerebral Palsy, Muscular Dystrophy (and related neuromuscular disorders), Organ Transplant recipients or those who are Mentally Challenged. (Dept. Ex. #1, pp. 10-11; App. Ex. #4)
32. The dental service is free of charge to any child with special needs under the age of 18 regardless of race, creed, or color; the only prerequisite is that the child must be sponsored by a local Grotto. The Dental Program does not cover children who are covered by Medicaid, and the program is always the secondary carrier. The program does not cover any type of orthodontics, re-constructive jaw surgeries, or implants. (App. Ex. #3, #4)
33. An application for the dental service can be made through any Grotto in the United States and Canada. The application must be completed by the child’s parent or legal guardian and must be submitted to the Grotto’s representative, who is known as their Dr. of

Smiles. The Dr. of Smiles will sign the application and forward it to the Humanitarian Foundation. (Dept. Ex. #1, p. 11; App. Ex. #4)

34. After completing the application, the parents of the child select a dentist, and the Humanitarian Foundation works directly with the dental office to process the claim and issue payment. (App. Ex. #4)

35. The dental service is performed at the dentist's office and not on the Grotto's property. (Tr. p. 21)

36. During 2011, there were 9 local children who benefitted from the applicant's Dental Program. (App. Ex. #1)

37. The applicant's Form 990, Return of Organization Exempt from Income Tax, for the year 2011 shows the following as revenue and expenses:

Revenue:

Contributions and grants:		
Membership dues	\$15,910	
Fundraising events	3,615	
Other contributions	<u>4,683</u>	
Total Contributions		24,208
Investment income		330
Other revenue		
Gross sales ⁴	16,450	
Less COGS	<u>(4,478)</u>	
Total Other Revenue		<u>11,972</u>
Total Revenue		<u>36,510</u>

Expenses:

Fees for services	5,400
Advertising and promotion	2,856
Office expenses	926
Travel	3,000
Payments of travel or entertainment for any public officials	2,682

⁴ The applicant explained that this amount is the rental income, which is listed on the applicant's income report under "Master of Ceremonies." (Tr. p. 14; App. Ex. #2; Dept. Ex. #1, p. 9)

Insurance	1,478
Sales Tax	1,195
Property Tax	4,342
Dues & Fees	10,935
Utilities	1,466
Building Fund & Trash	<u>3,761</u>
Total Expenses	38,041
Net income (loss)	(1,531)
Dept. Ex. #1, pp. 32-54)	

38. The Humanitarian Foundation promotes the purchase of “Enchanted Lanterns.” Any person who donates \$50 to the Humanitarian Foundation receives an Enchanted Lantern lapel pin and certificate. A person does not have to be a Grotto Prophet or member of a Masonic Order to purchase a \$50 Enchanted Lantern. (App. Ex. #4; #5, p. 7)

39. Monies from the investment of the Enchanted Lantern contributions, as well as contributions from the fundraising efforts of the local Grottoes, are used by the Humanitarian Foundation to finance the Dental program. (App. Ex. #4)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). “[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt

arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) (“Provena I”). The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

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 relevant 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 be exempt under this subsection if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen's Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

The Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization 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) the organization dispenses charity to all who need and apply for it; (4) the organization does not

provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as “a gift to be applied ... for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” *Id.*

The applicant claims that the property is used to raise funds to support its charitable projects, and the applicant donates money to several organizations and needy families. In addition to donating money to many charitable causes, the applicant allows AMBUCS to use its property for free for two weeks every summer, and the property is used for other charitable events, such as Christmas parties for children. The applicant also claims that other civic groups in the area, “like Knights of Columbus and the American Legions,” have the exemption, and the applicant asks to be put on the “same playing field” as those organizations. (Tr. p. 28)

The applicant’s services are commendable, but the evidence does not support a finding that the applicant is entitled to the exemption. The facts in this case are similar to those in other cases involving membership organizations where the courts have consistently found that the property is not entitled to a charitable purposes exemption. In Pontiac Lodge No. 294 v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993), the applicant was a Masonic organization that used the property primarily to hold meetings that were fraternal and social in nature. The court noted that Masonic organizations teach principles of “brotherly love, relief, truth, temperance, fortitude, prudence, and justice.” *Id.* at 190. Although the Masonic

organization supported various charities, the court found that it failed to produce sufficient evidence to show that the property was predominantly used for charitable purposes. *Id.* at 194.

Similar findings have been made in other cases involving membership organizations. In Rotary International v. Paschen, 14 Ill. 2d 480 (1958), the court found that Rotary's objective was "to encourage and foster the ideal of service as a basis of worthy enterprise." *Id.* at 488. The court stated that while Rotary's goals were commendable, they were not charitable, and Rotary failed to show that its property was exclusively used for charitable purposes. In addition, the court found that the income of the Rotary organization was not primarily from public or private charity but rather from membership dues. The court stated that the dues were designated as a "per capita tax," and the dues were not private charity because the payments were an obligation and not a gift. The court added that the failure to pay the dues could result in the membership being terminated.

In Kiwanis International v. Lorenz, 23 Ill. 2d 141 (1961), the court noted that the Kiwanis clubs engaged in a variety of charitable, religious, and educational activities that included sponsoring Boy Scout and Girl Scout troops, sponsoring boys clubs, and conducting summer camps. The court found, however, that the Kiwanis clubs were formed by business and professional men "for exchanging experience, for fellowship, and to improve their leadership in the community." *Id.* at 146. The court stated that while the purposes were laudable and many of the activities of the clubs were charitable, Kiwanis had other important purposes: the social, professional, and business advancement of its members. The court concluded that Kiwanis, like Rotary, does philanthropic work of public value, but each organization contains an element of personal advantage to its members. See also Oak Park Club v. Lindheimer, 369 Ill. 462, 465

(1938) (primary use of property was for social and recreational activities; charitable work was secondary).

For the same reasons, the Grotto does not qualify for the charitable purposes property tax exemption. Like the applicants in those cases involving membership organizations, the Grotto's property is used primarily for meetings and social activities for its members. The applicant's brochure states that "the Grotto is a social organization." The members use the grounds for camping, picnicking, fishing, boating, and swimming. Admission to the grounds can be denied to any person who does not possess a current year's dues card, and only Master Masons are eligible for membership. The free dental services are not actually performed on the property. Although the Grotto uses the property for a few charitable events, the property is still primarily used for social and recreational purposes.

Like the court found in Rotary International, the Grotto also does not derive its funds mainly from public and private charity. During 2011, the applicant received a total of \$8,298 from private charity (\$3,615 from fundraising events and \$4,683 from other contributions). This private charity is 23% of the applicant's total revenue of \$36,510. The majority of the applicant's income was from membership dues in the amount of \$15,910, and rental income in the net amount of \$11,972. Although failing to meet the funding guideline is not dispositive, it is relevant to the overall analysis in determining whether the Grotto is a charitable organization. Furthermore, the rental income suggests that for at least a portion of the time, the property may be used with a view to profit, which is another barrier to receiving the exemption. See 35 ILCS 200/15-65(a).

The applicant claims that other local organizations, such as the American Legion, have property tax exemptions. The applicant did not substantiate this claim, but even if it were true, it

does not allow a finding that the Grotto's property should be exempt. First, each case concerning the tax exempt status of a particular piece of property must be decided on its own facts. Hopedale Medical Foundation, at 462 (citing People ex rel. Cannon v. Southern Illinois Hospital Corp., 404 Ill. 66 (1949); Methodist Old Peoples Home, at 156). In addition, the Illinois Supreme Court has found in two separate cases that property of American Legion Posts was not exempt. In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), the court stated that the organization was "organized to carry out the purposes and objectives of the American Legion, to foster love of country, respect for our civil institutions and to benefit and afford comradeship to its members." *Id.* at 291. The court found that these purposes are laudable but not charitable. See also North Shore Post No. 21 v. Korzen, 38 Ill. 2d 231 (1967) (American Legion Post denied charitable exemption because, like Rogers Park case, its activities are public spirited and laudable but not charitable).

For similar reasons, as stated earlier, the Grotto is not entitled to the exemption. The Grotto's purpose is "to cement the bonds of sympathy and good fellowship among its members." (App. Ex. #4) The Grotto sponsors charitable causes in a manner similar to that of the Rotary and Kiwanis clubs, but all of these organizations have other purposes that include the social advancement of its members. The Grotto's charitable work is secondary to its primary purpose of being a social organization. Although the Grotto certainly engages in many worthy pursuits, its activities are not primarily charitable.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for a property tax exemption for the year 2011 be denied.

Linda Olivero
Administrative Law Judge

Enter: September 10, 2013