PT 15-10
Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use

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

LEROY SPORTSMENS CLUB, **APPLICANT** **v.** **THE DEPARTMENT OF REVENUE** **OF THE STATE OF ILLINOIS**	**No. 14-PT-016** **Real Estate Tax Exemption** **For 2014 Tax Year** **P.I.N. 30-02-100-002** **McLean County Parcel** **Kelly K. Yi** **Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Darrin Robinson, *pro se*, on behalf of LeRoy Sportsmens Club; Mr. Robin Gill, Assistant General Counsel, for the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether McLean County Parcel, identified by property index number 30-02-100-002 ("facility"), qualifies for exemption from 2014 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity, actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65(a).

On July 10, 2014, LeRoy Sportsmens Club ("Applicant") filed an application for Non-homestead Property Tax Exemption with the McLean County Board of Review seeking exemption from 2014 real estate taxes for the subject property. The Board reviewed the application and recommended a denial of exemption. The Department of Revenue of the State of Illinois ("Department") affirmed the Board's recommendation in a determination dated September 11, 2014, finding that the subject property was not in exempt ownership or use.

Applicant filed a timely appeal of the Department's exemption denial. On July 10, 2014, a formal administrative hearing was held with Mr. Darrin Robinson, President of Applicant, Mr. Mitch Hardesty, Treasurer of Applicant, and Ms. Lisa Hardesty, a volunteer at Applicant, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its determination that the subject property was not in exempt ownership or use during 2014. Tr. p. 6; Dept. Ex. 1, p. 4.
2. Applicant owns the facility located at 800 E. 28379 North Road, Le Roy, Illinois. Dept. Ex. 1, p. 29.
3. Applicant is exempt under Section 501(c)(7) of the Internal Revenue Code. Dept. Ex. 1, p. 10.
4. The facility is ten acres in size and consists of a trap field and a block building on a slab. The building is used primarily for monthly member dinner meetings called the "Stag." Tr. pp. 14-15; Dept. Ex. 1, p. 17.
5. Applicant is a private shooting sports club. Its purpose is to "organize shooting sports among its members and citizens of the United States residing in our community; to promote education of and encouragement for organized rifle, pistol and shotgun sports; to play, community service, and humanitarian services; to improve the safe handling and proper care of firearms; to promote marksmanship and competitive shooting and to uphold the Constitution of the Untied State of American, with special emphasis placed upon those Rights listed in the Second Amendment." Dept. Ex. 1, p. 18.

6. Applicant's membership eligibility requirements are: 1) support of the second amendment to the U.S. Constitution of right to keep and bear arms; 2) U.S. citizenship with the minimum age of 21 years; 3) legal eligibility to own firearms; 4) no criminal history of violence; and 5) approval by the membership. Dept. Ex. 1, p. 21.
7. The annual membership dues are $35-$40[1] and lifetime memberships are $300 and are limited to 40. There are currently 103 members. Tr. pp. 18-19; Dept. Ex. 1, p. 26.
8. Only the membership may attend member meetings, present issues, and vote on the issues and new membership. Dept. Ex. 1, p. 18.
9. The membership may rent the facility with the governing board's approval and the payment of following fees: 1) $150 plus $100 deposit to members in good standing for 3 consecutive years; and 2) $250 plus $100 deposit to members in good standing for less than 3 consecutive years. Dept. Ex. 1, p. 26.
10. Applicant's bylaws contain no provision for fee waivers for membership or any of its events. Dept. Ex. 1, pp. 18-27.
11. The uses for the facility are as follows: 1) monthly member meeting and dinner; 2) weekly trap shoots from April to December; 3) monthly splatterboard shoots from October to March; and 4) bi-annual boater and hunter safety training. Dept. Ex. 1, p. 5; Tr. pp. 16-17, 19.
12. Mr. Darrin Robinson, President of Applicant, testified that the public uses the facility approximately 80% of the time and the membership uses it 20% of the time. Tr. p. 16.
13. Applicant rents the facility for wedding receptions and family reunions. Tr. p. 16.

[1] Its bylaws state the membership dues are $35 but Mr. Anderson testified that the dues are $40. *See* Tr. p. 18.

14. Applicant gives a free use of the facility to bi-annual boater/hunter safety training, attended by 20-80 participants, and to a high school Future Farmers of America ("FFA") annual trap shoot competition. Tr. pp. 16-17; Dept. Ex. 1, p. 6.

15. The trap league on Wednesday nights is open only to the membership, and the membership is allowed to bring guests once or twice.[2] Tr. p. 19.

16. Applicant has never waived a membership fee. Tr. pp. 19-20.

17. In 2014, Applicant received $1,000 "donations" from businesses in exchange for advertisements in the Applicant's events flyer and displays at the events. Dept. Ex. 1, p. 6.

18. Applicant's 2014 revenues are as follows:

Membership dues/meals		$ 9,811.00
Splatterboard shoots	$ 8,783.00	
Fundraising		$ 3,665.00
Donations		$ 1,000.00
Rental		$ 750.00
Trap shoots		$ 5,304.35
FAA trap shoot		$ 350.00
Total		$29,663.35

Tr. pp. 20-21; Dept. Ex. 1, p. 8.

19. Applicant's 2014 expenses are as follows:

Utilities	$ 6,292.04
Postage	$ 346.00
Accounting	$ 212.50
Insurance	$ 1,870.00
Snow removal/cleaning/mowing	$ 1,972.58
Safe deposit box	$ 25.00
Website	$ 35.00
Real estate taxes	$ 2,053.53
Supplies	$ 650.62
Repair and maintenance	$ 2,522.99
Food and beverage	$ 8,859.32
Prizes	$ 607.04

[2] There is conflicting evidence as to whether the trap shoots are open to the public. *See* Dept. Ex. p. 5.

Shells for shoots	$ 169.39
Clay birds for traps	$ 3,005.35
Total	$28,621.36

Tr. pp. 21-23; Dept. Ex. 1, p. 8.

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption of the subject property from 2013 real estate taxes. 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 affirmed. 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).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both owned by "institutions of public charity" and "actually and exclusively used for charitable or beneficent purposes" provided that the property is not leased or used with a view to profit. 35 ILCS 200/15-65. An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). In determining whether an institution is exempt from taxation, the test is whether its primary purpose is charitable. People v. Young Men's Christian Ass'n of Chicago, 365 Ill. 118 (1936). It is well settled in Illinois that incidental acts are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) ("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. Korzen at 157. Applicant 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 Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2nd Dist. 1995). Thus, the threshold issue is whether Applicant is "an institution of public charity" under the terms of Korzen. I conclude based on the evidence presented that it is not an "institution of public charity."

In determining whether an organization is exclusively charitable in its purpose, it is proper to consider the provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). According to the bylaws, its primary purpose is to educate and organize shooting sports events, perform humanitarian services, promote marksmanship and proper use of firearms, and to uphold the second amendment to the U.S. Constitution of the right to keep and bear arms. Dept. Ex. 1, p. 18. Although Applicant is seeking an exemption from real estate taxes under the charitable exemption, nowhere in its bylaws the word "charity" or "charitable" appears. Without the mention of "charity" in Applicant's bylaws, it is difficult to conclude that its primary purpose is to dispense charity or that the primary use of its property is for charitable purposes, as required under the Property Tax Code.

With its bylaws silent on the issue, I examine the record as a whole to ascertain Applicant's primary charitable purpose. The evidence of record attests that Applicant uses the facility primarily for organizing shooting sports in the local community. Dept. Ex. 1, p. 17. These are fee based sporting events without a fee waiver policy in place. While Applicant confers some benefit to the community in giving free use of the facility for hunter/boater safety

training, the provision of this charity appears to be "secondary" and "incidental" to Applicant's primary purpose of organizing and selling shooting sports events. I find that Applicant lacks a primary charitable purpose and it exists primarily because of its members' mutual interest in promoting friendship among its membership and organizing commercial shooting sports.

In applying the first Korzen characteristic of a charitable organization, the evidence demonstrates that Applicant does not confer benefits to an indefinite number of persons for their general welfare. The evidence demonstrates that although the members of the general public may participate in some of the activities hosted at the facility, most of the benefits Applicant dispenses are reserved for its membership only, consisting of members-only weekly trap shoots,[3] invitation to monthly meeting and dinner, monthly newsletter subscription, discounted rental of the facility, right to present issues, and vote on the issues and membership. Of the two third-party events allowed to be hosted at the facility free of rent, only the safety training is opened to the public, as the high school FFA annual trap shoot competition is a private event. Accordingly, I conclude that Applicant has not met by clear and convincing evidence the first Korzen characteristic of a charitable organization.

The second Korzen characteristic that an organization have no capital, capital stock, or shareholders is not at issue. Tr. p. 28. As to the third Korzen characteristic, the record demonstrates that Applicant derives 100% of its funds from non-charitable funds. Applicant acknowledges that $9,811 in membership dues and dinner fees came from membership. However, it argues that because the remaining funds originated from the event fees, food sales, and the facility rental charged to the "public," it satisfies the third Korzen characteristic. Tr. p. 29. This is based on a misunderstanding of the law. The laws governing property tax exemption

[3] There is conflicting evidence as to whether the weekly trap shoots are opened to the public. *See* Tr. p. 19; Dept. Ex. 1, p. 5.

require that funds come from charitable donations, not from fees collected from the "public" at Applicant's various events. Applicant's financial statement reflects that $8,783 came from splatterboard shoots; $5,304.35 from trap shoots; and $350 from FAA trap shoots; $750 from the rental of the facility; $3,665 from fundraising; and $1,000 from "donations." Although labeled as donations, because $1,000 in "donations" came from businesses in exchange for advertisement in the Applicant's events flyer and displays at the events, those are not truly donations. They were given *quid pro quo*. Similarly, because $3665 from a "fundraiser" came from "sausage sales" at a "mouse race" (Tr. p. 24), these funds cannot be considered donations absent evidence that the public knew that the payment was voluntary. No such evidence was presented at hearing. Charity is an act of kindness or benevolence. "There is nothing particularly kind or benevolent about selling somebody something." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 745 (4th Dist. 2008); aff'd, 236 Ill. 2d 368 (2010). I find that 100% of Applicant's 2014 revenues of $29,663.35 originated from non-charitable funds.

There is no case law establishing a threshold percentage of funding by charitable contributions to satisfy the third Korzen characteristic. In American College of Surgeons v. Korzen, 36 Ill.2d 340, 348 (1967), the Illinois Supreme Court rejected an argument that the college was not a charitable organization because approximately half of its funds came from membership dues. In Riverside Medical Ctr. V. Dept. of Revenue, 324 Ill.App.3d 603 (3rd Dist. 2003), the court noted that 97% of Riverside's net revenue of $10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." *Id.* at 608. In the instant case, 100% of Applicant's 2014 revenue came from non-charitable funds. The exchange of services or foods for payment is certainly not a "use" of

property that has been recognized by Illinois courts as "charitable." I conclude that Applicant has failed to meet by clear and convincing evidence the third Korzen characteristic of a charitable organization.

The fourth Korzen characteristic is a two-prong inquiry: 1) whether the organization dispenses charity to all who need and apply for it; and 2) whether the organization provides gain or profit in a private sense to any person connected with it. The second-prong is not in dispute. Tr. pp. 28-29. The evidence affirms that Applicant does not dispense charity to all who need and apply for it. Applicant charges fees for its events and only the monthly splatterboard shoot is opened to the public. While it gives a rental discount to its membership and a free use of the facility to select events, it charges a market rental rate to the public for various venues such as wedding receptions and family reunions. Such disparate treatment is not consistent with the notion of charity.

Applicant's multi-level membership requirements further support a conclusion that it is not an institution of public charity. Applicant's benefits are contingent upon membership eligibility and dues requirements. Only the membership may participate in the weekly trap shoots, attend monthly meeting called the "Stag," where dinner is served, and discuss the issues and vote on the issues and membership. These are membership benefits not available to anyone outside the membership. Based on these findings, I conclude that Applicant has not met by clear and convincing evidence the first-prong of the fourth Korzen characteristic of a charitable organization.

The fifth Korzen characteristic is whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Other than allowing the third-party safety training to be held at the facility free of

rent, Applicant offers no additional charity to the general public. Its benefits are contingent upon membership eligibility and dues requirements that some members of the public may not be able to meet due to differing views or lack of funds. A member of the general public could not become a "member" at any level without meeting the threshold membership eligibility and dues requirements. Impositions of these requirements present definite obstacles to those who may avail themselves of Applicant's benefits.

It is recognized that charging fees and rendering benefits to persons who are not poverty stricken does not destroy the charitable nature of an organization for tax exemption purposes, but this is only true to the extent that the organization also admits persons who need and seek benefits offered but are unable to pay. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). Applicant lacks a fee waiver policy and has never waived a membership fee. Applicant avers that since it has never been asked to reduce a fee, this has been a "nonissue" for them. Tr. p. 30. However, the evidence attests that Applicant donated a free use of the facility to a high school FFA annual trap shoot competition when they "called." Tr. p. 16. There is no evidence in the record as to how the third-party safety training came to be offered at the facility free of rent, but it demonstrates that Applicant either has been approached or taken initiatives to offer free uses of the facility to select groups, apparently not based on the user's inability to pay but based on the type of activity for use.

A fee waiver is essential to a charitable organization and goes to the heart of what charity is. When charity is not advertised, it is impossible to conclude that charity is dispensed to all who need it. Those who need charity may not apply because it is not advertised and they do not know that it is available. In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable

exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that "the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it." *Id.* at 281. Similarly, the court in Alivio Medical Ctr., *supra*, denied a charitable exemption to a medical care facility in noting, *inter alia*, that "[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care." Alivio Medical Ctr. at 652. In the instant case, there is no evidence that the public was made aware of availability of free use of the facility, as was selectively offered to some groups. The absence of a fee waiver and advertisement for such waiver are obstacles to receiving benefits and prevents a conclusion that charity is dispensed to all who need it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). I conclude that Applicant has failed to meet by clear and convincing evidence the fifth Korzen characteristic of a charitable organization.

In balancing the Korzen characteristics of a charitable organization with an overall focus on whether and how the organization serves the public interest and lessens the government's burden, I find that the public benefit in the free use of the facility through the third-party safety training is incidental to Applicant's primary, non-charitable purpose. While the hunter safety training is a condition precedent to obtaining a hunting license, as the government is not burdened with providing neither the safety training nor the space for such training, there is no reduction of a government burden. *See* 520 ILCS 5/3.2. Applicant is a private sports club without a primary charitable purpose and lacks the essential characteristics of a charitable organization. The fourth and fifth Korzen characteristics that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way, are "more than

guidelines." They are "essential criteria" and "go to the heart of what it means to be a charitable institution." Provena Covenant Medical Center at 750. Without it meeting the "essential criteria" above, Applicant is not an institution of public charity.

Assuming, *arguendo*, that Applicant were a charitable institution, the facility is not used "exclusively" for charitable purposes. Whether the property is actually and exclusively used for charitable purposes depends on the primary use of the property. Korzen at 157. If the primary use of the property is charitable, then 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). Relevant to the determination of how the property is primary used is the percentage of total visitors who use the property for its stated charitable purpose, the percentage of property allocated, and the amount of time that the property is used for the stated charitable purpose. The Arts Club of Chicago v. Department of Revenue, 334 Ill.App.3d 250 (1st Dist. 2002).

Applicant presented no evidence of allocation of use for each of the events at its facility. The sole public charity offered at the facility is the third-party bi-annual safety training, attended by 20 to 80 participants. Giving free use of the facility two days a year does not constitute a primary charitable purpose or use. It is incidental to Applicant's non-charitable purpose stated in the bylaws. Mr. Robinson testified that the facility is used by the public 80% of the time,[4] but the record attests that the facility is used primarily for non-charitable purposes: membership meetings and dinners, shooting sports events for a fee, food sales, and the rentals. Based on

[4] There is no issue of credibility of the witness, only that his testimony may have been based on the misunderstanding of what "public use" or "charitable use" means, in the legal context of property tax exemption.

these findings, I conclude that Applicant has not met by clear and convincing evidence that the facility was exclusively used for charitable purposes in 2014, as required by 35 ILCS 200/15-65.

Applicant contends there is no view towards profit because the funds go towards the operating expenses. Tr. p. 29. However, the concern in 35 ILCS 200/15-65 is whether the property is used with a view to profit, not whether the owner is maximizing profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the court noted that "former decisions of the court" show that the phrase "not leased or otherwise used with a view to profit," "has the ordinary meaning of the words." "If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit." Applicant rents the facility, sells foods, and charges fee for sporting events. In Turnverein "Lincoln" v. Bd. Of Appeals, 385 Ill. 134, 144 (1934), the court noted, with regard to the argument that income from the rented property was offset by operation expenses, that "it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss." As Applicant's facility is "let for a return," it must be liable for the burden of taxation.

Tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People *ex rel.* Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt in order to insure that "sound principles" are preserved, unwarranted exemptions from taxation are avoided and that only the limited class of properties meant to be exempt actually receives the exempt status that the

Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Taxpayer bears the burden of proving "by clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2nd Dist.1991). Applicant has failed to prove by clear and convincing evidence that it is an exclusively charitable organization, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for charitable purposes.

Recommendation:

I recommend that the Applicant's application for a charitable exemption for the year 2014 of McLean County Parcel, identified by property index number 30-02-100-002, be denied.

Kelly K. Yi
Administrative Law Judge

October 8, 2015