

PT 05-21
Tax Type: Property Tax
Issue: Agricultural Purposes/Use

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

**INTERNATIONAL SOCIETY
OF ARBORICULTURE**

Applicant

v.

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

A.H. DOCKET #

00-PT-0023

DOCKET #

99-10-74

P.I. #

41-20-02-130-4012

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Guy C. Hall, Dobbins, Fraker, Tennant, Joy & Perlstein for International Society of Arboriculture; Mr. George Logan, Special Assistant Attorney General for the Department of Revenue of the State of Illinois.

Synopsis:

This case concerns whether property owned and operated by the International Society of Arboriculture (hereinafter referred to as "ISoA" or "Applicant") qualified for a property tax exemption during the 1999 assessment year. Dr. Reinee Hildebrandt, Urban Conservation Forestry Program Administrator for the Department of Natural Resources; Mr. Michael Dirksen, City Arborist for the City of Springfield; and Mr. James Robert Skiera, Associate Executive Director of ISoA were present and testified on behalf of ISoA.

ISoA alleges that the property qualifies for an exemption pursuant to §15-85 of the Property Tax Code (hereinafter referred to as the "Code") (35 ILCS 200/1-1 *et seq.*). The Illinois Department of Revenue (hereinafter referred to as the "Department") denied the

exemption finding the property was not in exempt ownership and not in exempt use. ISoA timely protested the denial and an evidentiary hearing was held. The parties requested that the matter be heard on the stipulation of facts with attached exhibits, additional testimony, and briefs submitted.

After a thorough review of the record, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Parcel Index No. 41-20-02-130-027 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Joint Exhibit 1. ISoA submitted the exemption request to the Champaign County Board of Review, which recommended denying the exemption based upon non-exempt ownership and use. The Department agreed with the Champaign County Board and found that the property was not in exempt ownership and use. (Dept. Ex. No. 1; Tr. p. 8)

2. In its initial correspondence, ISoA set forth two provisions which formed the basis of its protest of the denial: §15-65 of the Code (35 **ILCS** 200/15-65) regarding property owned by a charitable organization and used for charitable purposes, and §15-85 (35 **ILCS** 200/15-85) regarding property used by agricultural or horticultural societies. (Joint Ex. No. 1 Stip. No. 2)

3. For the tax year in question, ISoA waives its appeal as to charitable ownership and use pursuant to §15-65 of the Code and elects to proceed only on the basis that it qualifies under §15-85. (Joint Ex. No. 1 Stip. No. 3)

4. ISoA is an Illinois not for profit corporation. (Joint Ex. No. 1 Stip. No. 4)

5. ISoA owns the subject premises in Fee Simple Absolute pursuant to a warranty deed dated October 23, 1997. (Joint Ex. No. 1 §6, Stip. No. 5)

6. The National Shade Tree Conference was organized in 1924. It became the International Shade Tree Conference in 1961 and was incorporated in Ohio. In 1975, the International Shade Tree Conference became the ISoA and was moved to Illinois. (Joint Ex. No. 1 §3)

7. On July 24, 1975, ISoA was incorporated in Illinois for the following purposes:

To promote and improve the practice of arboriculture, to promote interest and cooperation in the planting, preservation and conservation of trees, to initiate and foster scientific investigation and education in the practice of arboriculture and to administer a separate fund or funds organized exclusively for educational and scientific purposes relating to the practice of arboriculture and (a) qualifying as exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law) and (b) contributions to which are deductible under Section 170(c)(2)¹ of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law). (Joint Ex. No. 1 §2)

8. ISoA is exempt from the payment of Federal income tax pursuant to a finding by the Internal Revenue Service that it is an exempt organization under §501(c)(5)² of the Internal Revenue Code. (Joint Ex. No. 1 §4)

9. ISoA's objectives according to its constitution and bylaws, as revised on January 10, 1999, are:

¹ 26 U.S.C.A. §170(c)(2) defines the charitable contributions and gifts that are allowed as deductions.

² 26 U.S.C.A. §501(c)(5) states that labor, agricultural or horticultural organizations qualify for exemption from federal taxation.

- A. to promote and improve the practice of professional arboriculture,
- B. to stimulate greater interest in the planting and preservation of trees,
- C. to promote public awareness and to develop a greater appreciation for trees, and to promote cooperation in the preservation of trees and in the beautification of the environment,
- D. to recommend and uphold a Code of Ethics established to maintain a high level of practice by those engaged in the profession,
- E. to initiate and support scientific investigation of problems concerned with arboriculture and to publish the results of such investigation,
- F. to sponsor an annual conference devoted to the exchange and presentation of information of interest and value to professional arborists and others in the planting and preservation of trees,
- G. to administer a separate fund or funds organized exclusively for educational and scientific purposes relating to the practice of arboricultural. (Joint Ex. No. 1 §3)

10. Located on the subject property is a 16,552 square foot one story building. A portion of the building is leased to a tenant for \$2,575.00 per month rent. ISoA does not dispute that 31% of the building is taxable. ISoA uses the remaining 69% of the premises exclusively for its purposes. (Joint Ex. No. 1; Applicant Brief p. 3)

11. ISoA has 39³ chapters throughout the United States, Canada, Europe, South America and New Zealand. The Illinois Arbors Association is one of those chapters. (Joint Ex. No. 1 §3; Tr. pp. 25, 77)

12. ISoA's membership is divided as follows: professionals, life, senior, sustaining, students, honorary life, and non-subscribing members. The board of directors establishes membership dues and voting privileges. Any member may be suspended or terminated for just cause including non-payment of dues, violation of any provisions of the constitution, bylaws,

³ ISoA's constitution and bylaws, revised January 10, 1999, lists 36 of those chapters.

agreements or rules, or practices adopted by ISoA, or any other conduct prejudicial to the interests of the ISoA. The fee to join the ISoA is \$105 per year. (Joint Ex. No. 1 §3; Tr. p. 89)

13. ISoA has elected officers from the membership including a president, president-elect, vice-president, and immediate past president. The board of directors appoints the executive director. ISoA also has an executive committee comprised of the officers and board of directors. The board of directors consists of the elected officers and one member representing each chapter. (Joint Ex. No. 1 §3)

14. The executive director receives remuneration for services as approved by the board of directors. Through the executive director, the executive committee administers the affairs of the society as directed by the board of directors. (Joint Ex. No. 1 § 3)

15. ISoA publishes bimonthly periodicals known as the Journal of Arboriculture and Arborist News. The Journal and News are distributed to members without charge and to accredited libraries and non-members for charges established by the board of directors. (Joint Ex. No. 1 § 3)

16. ISoA's audited financial report for the year ending June 30, 1998 shows revenue of \$2,065,345. Of that amount income from member dues = \$895,586; conference registration fees = \$447,447; sales of publications and promotional materials (net of direct costs of \$481,057) = \$293,203; certification program revenue (net of \$149,566 remitted to chapters) = \$210,045; Journal subscriptions = \$22,683; trust administration fees = \$30,000; yearbook, Journal and Arborist News income = \$62,624; interest = \$22,625; gain on sale of building = \$72,948 and other = \$8,184. (Joint Ex. No. 1 §7)

17. ISoA's expenses for the same period totaled \$1,934,613. Included in the expenses were: personnel = \$733,507; yearbook, Journal and Arborist News = \$302,013;

conference = \$238,699; capital outlay = \$11,980; principal payments on building mortgage = \$3,936; member services = \$105,719; office = \$123,500; certification program = \$80,440; international = \$176,614; depreciation expense = \$6,263; chapter = \$30,830; fees = \$62,264; interest expense = \$22,598; and other expense = \$36,250 (Joint Ex. No. 1 §7)

18. For the year ended June 30, 1998, ISoA had a net income gain of \$130,732. (Joint Ex. No. 1 §7)

19. ISoA's assets for the period ending June 30, 1998 were \$1,089,219, with unrestricted cash assets of \$505,626; restricted cash assets of \$49,856; and fixed assets of \$533,737. Liabilities were also \$1,089,219. (Joint Ex. No. 1 §7)

20. ISoA purchased its new location on the parcel at issue for \$540,000 during December 1997. Its building in Savoy, Illinois was sold February 19, 1998 for \$350,00. The mortgage at BankIllinois in the amount of \$163,754 was paid in full at the time of the sale. (Joint Ex. No. 1 §7)

21. The building on the subject property houses the principal and administrative offices of ISoA, where it maintains its program for the certification of arborists, prepares documents and materials for its educational programs, and works on the funding of research to develop educational programs for arborists. Programs and publications, conferences and seminars are planned and developed in the building. (Dept. Group Ex. No. 1)

22. The purpose of ISoA is the promotion and improvement of the practice of arboriculture including educating individuals who are in the business of arboriculture. In the building at issue, ISoA conducts its business activities including the development of bound publications and educational brochures, videos, and other materials related to tree care. Scientific research and publications are overseen and/or developed. Seventy-five percent of

ISoA's publications are written, printed, and published in Illinois. When entities like the City of Springfield or the Department of Natural Resources acquire publications from ISoA, a fee is normally charged. (Joint Ex. No. 1 §11; Tr. pp. 89-90)

23. The Illinois Department of Natural Resources uses tree care standards that ISoA has developed to help communities specify regulations and standards for a "tree care ordinance." (Tr. pp. 16-19)

24. The State of Illinois has 174 "Tree City USA's" that encompass 56% of the population of the state. Each of the cities is required to have some type of "tree care ordinance." The criteria to manage the trees are governed by standards promulgated by ISoA. (Joint Ex. No. 1 §16; Tr. pp. 17-19)

25. ISoA produces numerous brochures to educate the public as part of its Customer Information Program. The brochures address tree care and common problems associated with trees. The brochures are made available to the public through workshops and displays at state fairs. The United States Department of Agriculture provided all the states with an entire complement of ISoA's brochures. (Joint Ex. No. 1 §16; Tr. pp. 26-27)

26. ISoA publishes in excess of 100 books, magazines and videos on tree care and tree care practices. (Tr. pp. 76-77)

27. The techniques used in tree risk management have been established through ISoA and the United States Department of Agriculture, Forest Service. Tree risk management refers to the administration of a program where the architectural integrity of a tree is examined and it is determined whether the tree is healthy enough to remain in the urban forest, or if it is a threat to a person, property, or other trees in the area. (Tr. p. 32)

28. Urban Forestry is the art and science of managing trees within the municipal boundaries of a community. The Urban and Community Forestry Assistance Act, 30 **ILCS** 735/1 *et seq.*, administered by the Illinois Department of Natural Resources, utilizes ISoA's "tree care ordinance" standards. The program offers grants to local units of government for the establishment of new or expansion of existing local urban and community forestry programs. (Applicant's Ex. No. 17; Tr. pp. 36-38, 43-44)

29. Cities have developed ordinances based upon ISoA's standards, which are referred to as the "industry standards." (Tr. p. 58)

30. ISoA has three focus areas: municipal arborists; utility arborists; and commercial arborists, or tree care companies. Each of ISoA's state chapters has a compliment of the focus areas. Training materials in all three areas come from ISoA. (Tr. pp. 44-45)

31. Authorized professional affiliations of ISoA include Arboricultural Research and Education Academy, Society of Municipal Arboriculture, Utility Arborist Association, Society of Commercial Arboriculture, and Student Society of Arboriculture. (Joint Ex. No. 1 §3)

32. An arborist is a professional who possesses the technical competence through experience and related training to provide for or supervise the management of trees and other woody plants in the residential, commercial, and public landscape. (Joint Ex. No. 1 §16)

33. ISoA provides training courses for individuals to become certified arborists, certified "tree worker climber specialists," and utility specialists. Being certified is often necessary to obtain a job as a city arborist. The certification programs have continuing education requirements. (Tr. pp. 52-54, 81-87)

34. ISoA hosts an annual conference that qualifies for continuing educational credits. Typically, the two-day conference has 14 seminars on various topics related to the arboriculture industry. (Tr. pp. 55-58)

35. ISoA has 1000 members in Illinois. Worldwide, ISoA has 16,000 members. ISoA has certified 800-1000 arborists in Illinois. It costs a member of the state chapter, the Illinois Arbors Association, \$100 for the certification program. If a person is not a member, the fee is \$200. A portion of the certification fee goes back to the chapter. (Tr. pp. 88, 91-92)

36. Occupational Safety and Health Administration (hereinafter referred to as "OSHA") of the United States Government regulates the private tree care industry. ISoA serves as the secretariat of OSHA in this area, helps promulgate the standards and distribute copies of those standards to the private tree care industry, and is the source for the purchase of a copy of those standards. (Tr. pp. 17, 61-62)

37. The Department of Labor governs a municipality with regard to safety rules for trees. The Department of Labor uses OSHA's standards. (Tr. p. 62)

38. ISoA also serves as the secretariat for American National Standards Institute (hereinafter referred to as "ANSI") Committee on Arboricultural Safety and Performance Standards, Plant Maintenance for trees, shrubs and other woody plants. ISoA acts in that role as the Director of Public and Industry Relations. Z-133 is the safety standard of the committee and A-300 is the performance standard. Brochures Z-133 and A-300 from ANSI define and explain the standards. The standards are voluntarily accepted by the industry because neither OSHA nor the Department of Labor has issued formal standards. (Applicant Ex. Nos. 18, 19; Tr. pp. 65-66)

39. ISoA has a technical group of experts that help develop the safety standards for ANSI. ISoA gathers information from educators, researchers, manufacturers of equipment,

Department of Labor, the International Brotherhood of Electrical Workers,⁴ and the tree care industry. (Tr. pp. 68-69)

40. Arboriculture is a sub-discipline of the field of horticulture. (Dept. Brief p. 4; Joint Ex. No. 1 §§12-15)

CONCLUSIONS OF LAW:

ISoA initially requested an exemption under either §15-65 of the Code (35 ILCS 200/15-65) for property used for charitable purposes and/or §15-85 (35 ILCS 200/15-85) for property used by agricultural or horticultural societies. ISoA subsequently determined that it wished to proceed solely under 35 ILCS 200/15-85.

Article IX, §6 of the Illinois Constitution of 1970, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Pursuant to the constitutional mandate, the legislature enacted 35 ILCS 200/15-85, which states that, “All property used exclusively by societies for agricultural or horticultural purposes and not used with a view to profit, is exempt.”

ISoA in its brief states “it has been stipulated by the Department of Revenue and ISA [ISoA] that ISA is a horticultural society within the meaning of . . . section (15-85).” (Applicant’s Brief p. 10) According to the Department, it has made no such stipulation. (Dept.

⁴ A lot of tree work is done around utility lines. (Tr. pp. 68-69)

Brief p. 4) Rather, the Department stipulates, “that arboriculture is a sub-discipline of the field of horticulture.” *Id.* Both the Department and the ISoA agree that it must be determined if ISoA is a horticultural society. (Applicant’s Brief p. 5; Dept. Brief p. 4)

ISoA asserts it is a horticultural society (Applicant’s Brief p. 1) and that there are no Illinois cases addressing the exemption for horticultural societies, although cases have interpreted the exemption as it relates to societies organized for agricultural purposes (Applicant’s Brief pp. 3-4). As there are no Illinois cases that directly address the exemption for horticultural societies, the Department asserts that the basis of the analysis in this matter must be done with an examination of the courts’ treatment of agricultural societies and applicants claiming to be agricultural societies. (Dept. Brief pp. 4-5.)

Agriculture commonly refers to farming, crops, and livestock, Bayside Enterprises, Inc. v. National Labor Relations Board, 429 U.S. 298, 300 (1977), hence agricultural societies evolved into entities responsible for holding county and state fairs wherein exhibitions of animals, food products, and equipment used in farming are displayed and judged.

As the Department points out, (Dept. Brief pp. 5-8), county chapters of farm organizations are involved in the farming industry and oftentimes qualify for exemption under the agricultural society exemption found at 35 **ILCS** 200/15-85. In addition, the Department argues that ISoA operates on an international scale rather than in a local arena. However, there is nothing in the statute to limit the operations of an applicant in the manner that the Department asserts must be done.

The Department acknowledges that the court:

has said that the Legislature clearly did not have in mind that the word “society” should include a state school. People ex rel. Lloyd v. University of Illinois, 192 N.E. 243, 248 (1934) . . . The current constitutional provision for the exemption of property used by

agricultural and horticultural societies came from the Constitution of 1870 and employs identical language. The Constitution of 1870 was drafted and ratified during a period in which rural organizations called “agricultural societies” were flourishing throughout the country. Agricultural societies were founded to promote and encourage the developing agricultural industries, and to provide farmers and breeders with a forum for exchanging ideas on new farming practices, the latest breeding techniques, and mechanical improvements. (Dept. Brief p. 5, Exhibit C., “Agricultural Societies and County Fairs” p. 1 [attached to the Dept’s Brief])

The Department asserts that arboriculture is a subsection of horticulture, which is a subsection of agriculture. As agricultural societies conduct farming related activities, and the applicant does not conduct farming related activities, the applicant’s activities do not fall within the parameters of the exemption.

However, the Constitution and legislature have not limited the exemption strictly to agricultural societies and farming related activities. The exemption is for both agricultural and horticultural societies. The Department is wrong to limit the exemption strictly to agricultural societies.

It is axiomatic that the language of a statute must be given its plain and ordinary meaning. In re Application of Peoria Treasurer & Collector, 106 Ill.App.3d 785, 787 (3rd Dist. 1982). “[c]ourts do not presume the existence of surplusage in constitutional or statutory construction. The rule of construction that each word, clause, or sentence must be given some reasonable meaning, if possible, applies especially to constitutional interpretation.” Committee for Educational Rights v. Edgar, 174 Ill.2d 1, 48 (1996). The constitution and the legislature would not include the word horticulture, as well as agriculture, if the word were unnecessary. The undisputed rule is that specific statutory provisions control as against general provisions on the same subject, appearing either in the same act or in other acts. People ex rel. Oller v. Cairo

& Thebes R. Co., 364 Ill. 329 (1936). ISoA has specifically requested that it be considered for exemption under the horticultural society language of that statute.

In People ex rel. Hellyer v. Morton, 373 Ill. 72 (1940), the Illinois Supreme Court granted a property tax exemption to the Morton Arboretum. Although the decision was based on the charitable exemption found in the Code at 35 ILCS 200/15-65, the case discusses that fact that the arboretum was founded to carry on practical scientific research in horticulture and arboriculture by studying trees, shrubs, vines and grasses by means of a great outdoor museum. The purpose of the arboretum was to study and publish the findings of the analysis of every species, variety, and hybrid of the woody plants of the world able to support the climate of Illinois. In granting the charitable exemption, the court discussed that relieving a governmental burden is one of the reasons charitable property tax exemptions are granted. People ex rel. Greer v. Thomas Walters Chapter of the Daughters of the American Revolution, 311 Ill. 304 (1924); Crerar v. Williams, 145 Ill. 625 (1893).

Similarly, ISoA has developed, through experience and research, programs for the management of trees and other woody plants in the residential, commercial, and public landscape, and certification programs for arborists, professionals who possess technical competence. (Joint Ex. No. 1 §16). ISoA has promulgated tree care guidelines that have been incorporated into tree care ordinances used by various municipalities and governmental agencies as standards within the arboricultural industry. ISoA conducts scientific research to enhance public awareness about planting, growing and maintaining trees, particularly in the urban setting. I agree that ISoA not a farming organization and that ISoA has not evolved from farming organizations. In fact, ISoA has always focused on trees, as its prior names International Shade Tree Conference and National Shade Tree Conference, imply.

“‘Horticulture’ is defined as ‘the cultivation of an orchard, garden, or nursery on a small or large scale: the science and art of growing fruits, vegetables, flowers or ornamental plants.’ *Webster’s New Third Int’l Dictionary*, at 1093.” King Estate Winery, Inc. v. Department of Revenue, 329 Or. 414, 423 (1999). *See also Johnson v. Board of Tax Review of Town of Fairfield*, 160 Conn. 71, 74 (1970), Lubold v. Unemployment Compensation Board of Review, 205 Pa.Super 122 (1965)

Further, horticulture means the business of producing vegetables, vegetable plants, nursery stock, including the operation of nurseries and orchards. 86 Admin. Code ch. I, Sec. 130.305; Mid-American Growers, Inc. v. Department of Revenue, 143 Ill.App.3d 600, 606 (3rd Dist. 1986). ISoA is in the business of educating people about trees and establishing standards for the care of trees. The University of Illinois Extension-Champaign County Horticulture Programs states:

About Our Horticulture Programs

Horticulture affects everyone – from the trees along our city streets to flowers in backyard gardens. Gardening is one of the top hobbies. Consumers spend time, money, and energy on their lawns, trees, flowers, fruits and vegetables. The horticulture program of the Champaign County Unit strives to disseminate up-to-date research based information to home gardeners through workshops, publications, public speaking, garden tours and displays.

Our horticulture programs provide information on trees, shrubs, landscaping, fruits, vegetable gardening, flower gardening, houseplants, lawns, soils and fertilizers.

Environmental issues are also part of the horticulture program. Issues include waste management, composting, reducing yard waste, integrated pest management and proper pesticide use. (<http://www.urbanext.uiuc.edu/champaign/hort/default.cfm>)

The University of Illinois Extension website has a section entitled “Hort Corner.” In that sub-section is a program entitled “Selecting Trees for Your Home” which offers information in the categories of: “Search trees,” “Trees by size,” “Trees by exposure,” “Trees by Tolerance,” and “Trees by Use.” (<http://www.urbanext.uiuc.edu/hort/>)

The Department states that while “Illinois courts have never provided a precise definition of agricultural or horticultural societies, they have found certain entities not to be such societies.” (Dept. Brief p. 5) A “society” used in its popular sense is “[A]n association or company of persons (generally unincorporated) united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose.” Black’s Law Dictionary. The Department argues that ISoA is not a society as envisioned by the statute, nor is it a horticultural or agricultural society as anticipated by the property tax code. However, the Department offers no explanation for the statement. It just states “[W]hat type of organization then did the Legislature ‘have in mind’ when it spoke of agricultural and horticultural societies?” and discusses the historical evolution of agricultural societies. (Dept. Brief p. 5)

It is well settled in Illinois that the character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922); Rotary International v. Paschen, 14 Ill.2d 480 (1958). ISoA's Articles of Incorporation provide that it is organized to promote interest and cooperation in planting, preserving and conserving trees, to promote and improve the practice of arboriculture, and to administer funds exclusively for educational or scientific purposes relating to the practice of arboriculture. The Department concedes that arboriculture is a sub-discipline of the field of horticulture. As horticulture includes trees, and ISoA is an organization devoted to trees, and a society is a group of people united together for a common purpose, I find that ISoA is a

horticultural society as envisioned by the statute. However, in order to qualify for his exemption, the statute mandates the property at issue must not be used with a view to profit.

ISoA operates as a professional organization run for the benefit of its members. ISoA charges for its services and for the information it collects and develops and for materials it produces wherein that information is found. Payment of fees and costs gets you the benefits ISoA offers. Pursuant to the evidence of record, members are ISoA's primary beneficiaries. ISoA is an organization of people whose primary purpose is to disseminate information for profit.

The Department asserts that ISoA is an organization similar to the applicants in American College of Chest Physicians v. Department of Revenue, 202 Ill.App.3d 59(1990) and Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542 (1986) and uses its property in a similar manner. In those cases, the courts found that the applicants did not qualify for a property tax exemption because they were in business primarily for the benefit of their members and not for public good. (Dept. Brief pp. 9-10).

American College of Chest Physicians v. Department of Revenue, *supra*, concerned a private institution that qualified neither as a charity nor as an educational organization, but provided services primarily to physicians interested in chest diseases. In Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, *supra*, an organization whose primary function consisted of certifying persons educated in various fields of science and technology did not qualify for a property tax exemption. That court found that a not-for-profit corporation that issued certificates to safety professionals who passed its examinations, did not qualify for a property tax exemption as its "activities benefit primarily a particular class of people, namely safety professionals, and only indirectly the general public." *Id.* at 546. I find that the

organizations that requested exemptions in the two aforementioned cases have operations that are very similar to the ISoA's. All of the organizations have certification programs and publish documents in their related fields. Each is in business primarily to benefit its respective members, and each charges fees to take its exams and renew appropriate certifications.

The statute mandates that the property must be used for agricultural or horticultural purposes by a society, and not used with a view to profit. Regarding the use by a horticultural organization, ISoA uses 69% of the subject property to conduct its principal programs. Those programs consist of the certification programs for arborists, preparing education materials and funding research for those educational programs and planning conferences, programs, publications, and seminars on arboriculture. ISoA publishes in excess of 100 books, magazines, and videos on tree care and tree care practices. ISoA has 16,000 members worldwide and 1000 in Illinois. ISoA also houses its administrative offices in the building on the subject property.

The statute mandates that a horticultural society cannot use the property with a view to profit and qualify for a property tax exemption. ISoA relies upon the Illinois Supreme Court decision in People ex rel. Hughes v. Universal Services Association, 365 Ill. 542 (1937) to define "pecuniary profit," as profit of shareholders or members.

The court in Guilford Hope Grange No. 6, 52 Ill. App. 3d 718 (2nd Dist. 1977) also relied upon People ex re. Hughes v. Universal Service Association, *supra*, for the definition of "pecuniary profit." The horticultural and agricultural statutory exemption provision, at the time that the cases were decided, granted an exemption to "all property which may be used exclusively by societies for agricultural, horticultural, mechanical or philosophical purposes and not for pecuniary profit." Guilford Hope Grange No. 6, *supra* at 719. Guilford Hope Grange No. 6 concerned whether the local chapter of the National Grange, a farm organization, qualified

as tax exempt under the statutory provision granting an exemption to agricultural and horticultural societies. The Grange was an organization concerned with farmers and farm life. It used the building at issue therein for meetings of the Grange, Grange-sponsored activities, and meetings of the women's auxiliary. Dinner was occasionally served in the building and the profits from those dinners were used to pay the taxes, insurance, utilities, and other operating expenses. No salary was paid to any officer of the Grange and no money was returned to any member of the Grange. Those parties did not dispute that the Grange was an agricultural society. The only question the court had to answer was whether the society was operated for "pecuniary profit." The court found that "[T]he record clearly reveals that the objector [the Grange] has not been conducted for the profit of any member or stockholder. The fund-raising functions it undertook were merely to raise an amount of funds to meet its necessary operating expenses. We therefore hold that the objector has met its burden and established that it is an agricultural society not for pecuniary profit and is entitled to tax-exempt status under section 19.10 of the Revenue Code of 1939." *Id.* at 720.

The statutory predecessor to 35 ILCS 200/15-85 contained the words "pecuniary profit." The statute at issue does not use those words. The change came about in P.A. 88-455, Art. 15 § 15-85, eff. Jan. 1, 1994, which amended the statute to state as it currently does that "All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit is exempt."

Although ISoA has no stockholders or shareholders (Tr. pp. 92-93), that is not determinative that it does not operate for the production of income with a view to profit. In fact, that is indicative of the fact that the Internal Revenue Service has granted ISoA an exemption from Federal income tax as a qualified organization under §501(c)(5) of the Internal Revenue

Code, an exemption given to labor, agricultural, or horticultural organizations. As such, there is no guidance from the Internal Revenue Service regarding whether ISoA operates with a view to profit for Illinois property tax exemption purposes. The fact that an organization had been granted a letter of exemption from Federal income taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes qualifies for Illinois tax purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980).

In assessing what the language “used with a view to profit” means, 35 ILCS 200/15-35 exempts property from taxation if it is “property of schools, not sold or leased or otherwise used with a view to profit.” Under that statutory provision, the Illinois Appellate Court discusses “used with a view to profit” in Swank v. Department of Revenue, 336 Ill.App.3d 851, 856 (2nd Dist. 2003). In that case, the court decided that individuals engaged in a private, for-profit corporation using property for educational purposes did not qualify for a property tax exemption. The Swanks were the sole beneficiaries of a land trust that held title to Winnebago County property. They were also the sole shareholders and directors of a for profit corporation, Rockford Business College. Rockford Business College was organized and operated exclusively for educational purposes. The Swanks filed the application for property tax exemption as individuals and not as schools or a for profit corporation. The court found that the plain language of the statute excluded property used with a view to profit from receiving a property tax exemption.

Similarly, in People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934, *reh’g denied*), the Illinois Supreme Court, in interpreting the phrase “not used with a view to profit,” found that property conveyed to the University of Illinois in trust to be managed in the best way

to make the largest permanent income was not entitled to a property tax exemption as it was used with a view to profit. The trust directed that the property be used in a manner that would be of the most benefit educationally and financially. The court found that the trust agreement at issue in that matter states that the agreement:

refers to the ‘net proceeds’ and ‘net returns’ and evinces a design by the grantors that they be operated as model tenant farms, and that they be managed and developed and the fertility of the soil replenished as an example of good husbandry to the neighborhood, with net profits from their operation to be placed in a trust fund from which loans might be available to certain types of students in the University. The evidence shows that the farms were conducted much in the same manner as privately owned farms; that tenants plowed the ground, sowed and planted the grain, took care of the live stock and shared in the sale of produce, live stock and grain, usually on a fifty-fifty basis. In other words, the proof shows that the farms were conducted for income—for profit—and not exclusively for educational, charitable, or philanthropic purposes. . . . The context of the conveyance also fails to bear out the claim for tax exemption, as it is difficult to understand how farm land which is exempted from its just share of the tax burden can well be considered by its neighbors as a model, when the children of its tenants might attend schools supported without any tax contributions from its owners and when its tax-free products can thereby undersell the neighborhood market. The evidence shows that the annual net profit was between \$1,500 and \$3,500, and that the land was leased to tenants and managed as a means of obtaining revenue to lend to students; a worthy purpose, but not one which entitles the land to tax exemption. If the farms were not operated ‘for profit’ as that term is generally understood, there would be nothing with which to create a student loan fund. *Id.* at 376-77

For the period ending June 30, 1998, ISoA had assets and liabilities of \$1,089,219. Its total revenue was \$2,065,345. Of that amount, member dues were \$895,586 (43.4%), conference registration fees were \$447,447 (22.7%), sales of publications and related revenue was \$588,555,⁵ (28.5%) interest was \$22,625 (1.1%), gain on the sale of the building was

⁵ Includes sale of publications and promotional materials (with costs subtracted), certification program (with costs subtracted), journal subscriptions, yearbook, journal and Arborist News income from financial statement. (Joint Ex. No. 1 §7; Finding of Fact No. 17)

\$72,948 (3.5%), and other revenue was \$8,184 (.4%)⁶. ISoA's total expenses for the same period were \$1,934,613 of which personnel accounted for \$733,507 and the amount attributable to the office expenses was \$123,500. There was no testimony, breakdown or explanation of the office and personnel expenses. The excess of revenue over expenses was \$130,732. While the fact that ISoA makes a profit is not dispositive of the issue of whether it is operated with a view to profit, it is certainly appropriate to look at what ISoA does to get that profit.

The focal point of ISoA's research and activities is tree care and practices. The main beneficiaries of ISoA's research and standards are its member arborists, and persons interested in arboriculture. ISoA's financial information establishes that it receives the majority of its income from commercial enterprises, *to wit*, its membership dues, sales of its printed materials, its certification program and conference. By joining ISoA, members are entitled to printed materials at no cost. However, non-members must pay for ISoA's materials. In fact, one of ISoA's witnesses testified that ISoA's "red booklet"⁷ was not distributed by the Department of Natural Resources in a routine manner because it was cost prohibitive. (Tr. p. 31). The representative of the Department of Natural Resources stated that the booklet was only distributed during workshops because "we can't afford, as a state agency, to, you know, hand that one out free gratis." Persons interested in purchasing the booklet are encouraged to obtain one from Applicant. Interested parties who are not members of ISoA must purchase the same materials. No one is entitled to ISoA's benefits without paying a fee, either for the cost of the materials or membership. ISoA receives its income from memberships and from selling the results of its research. Although it is not determinative that ISoA does or does not make a profit, it is important to review what it does with its revenue. There is nothing in the record to show

⁶ Due to rounding, the total is 99.6%.

⁷ The booklet describes tree risk management and hazardous trees.

that ISoA used its profits to more widely distribute its research information to those who cannot afford to pay the fees ISoA charges.

ISoA's benefits are for its members and not the general public. No one can get anything from ISoA without paying a fee, either to become an arborist, purchase a publication, gain education, or become a member. ISoA does all its programs to gain a profit. Thus, ISoA gets its money from commercial enterprises. While eventually people may benefit from the knowledge that ISoA disseminates to its members, it is clear that ISoA disseminates this knowledge via a commercial business process.

Illinois courts have repeatedly held that sponsor organizations whose research, development, education and benefits inure primarily to its members do not qualify for a property tax exemption. In Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957), a nonprofit corporation conducting studies in electronics was not entitled to a property tax exemption. The opinion stated:

So far as the record shows, plaintiff's income is derived solely from tuition fees and from the sale of books to students. In its zeal to increase its enrollment and income, plaintiff, as did its predecessor for profit, pays to its students and graduates a commission for procuring new students. If a student does not pay tuition, or sign a contract for future payment, plaintiff's instruction is not forthcoming. Thus, as the defendants have put it, the plaintiff does nothing for anyone for which it does not expect to be paid in full. *Id.* at 399.

Similarly, ISoA does nothing for anyone for which it does not expect to be paid. In fact, ISoA even reduces tuition to \$100 for its certification program for students who are members of ISoA's affiliate state chapter, a further benefit for joining ISoA and another indication that ISoA's primary focus is on its members and not the general public. Once those students are certified, they must attend and pay for ISoA's continuing education classes in order to remain

certified. Affiliate groups of ISoA earn money when one of their members becomes qualified as an arborist pursuant to ISoA's programs. ISoA also earns money when that happens.

In Gas Research Institute v. Department of Revenue, 154 Ill.App.3d 430 (1st Dist. 1987) the court denied a property tax exemption to an organization which was organized, overseen, and operated by the natural gas industry. The primary focus of the Gas Research Institute was to enhance the position of natural gas in the energy market place. The court found that the indirect conferment of a benefit upon the general public was incidental and not sufficient to grant a property exemption. *Id.* at 437. *See also* DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995), Chicago Bar Association v. Department of Revenue, 163 Ill.2d 290 (1994), American College of Chest Physicians v. Department of Revenue, *supra*, and Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, *supra* (in each case, members were determined to be the primary beneficiaries and the organizations did not qualify for exemption).

Entities that are not affiliated with ISoA must purchase ISoA's materials. Further, nearly 51% of ISoA's general operating expenses⁸ of \$1,695,914 for the year ending June 30, 1998 are for salaries⁹ and office expenses of \$857,007. These are routine business expenses. In Guilford Hope Grange No. 6, *supra*, where a property tax exemption was granted under the statutory provision at issue, the Grange's fund-raising functions were undertaken merely to raise an amount of money necessary to meet its operating expenses. In this case, ISoA's income far exceeds its expenses. ISoA's conference generated revenue of \$447,477; expenses were \$238,699 for a net profit for the activity of \$208,748. ISoA's certification program netted

⁸ The general revenue and expenses do not include the amounts attributable to Applicant's conference. (Joint Ex. No. 1 §7)

⁹ ISoA's executive director is paid an unknown salary and the audited financial statement shows salaries for an unknown number of employees of \$733,507.

\$210,045. ISoA was able to remit \$149,566 to chapters, which means that the certification program earned a total of \$359,611. The sale of publications and promotional materials earned a profit of \$293,203. The direct costs of those materials were \$481,057. The sales of the publications, therefore, earned ISoA \$774,260 from which it had to deduct the associated expenses.

In addition, in Guilford Hope Grange No. 6, *supra*, the court found it important that no salary was paid to an officer of the Grange and no money was returned to any member of the Grange. ISoA pays its executive director, although that salary was not disclosed. Further, by remitting part of the cost of the certification program back to ISoA's chapters, ISoA in fact is returning money to its members or affiliates and encouraging them to continue to benefit from ISoA's activities and research.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967). I must conclude from a review of the record in this case that ISoA has failed to meet its statutory burden of proof.

Based upon the above, I find that ISoA is operated with a view to profit. Were I to recommend granting a property tax exemption to ISoA, it would gain an incredible monetary advantage over any other business that promotes and educates persons interested in gardening

and other horticultural activities and has to pay its fair share of property tax. *See* People ex rel. Lloyd v. University of Illinois, *supra*. If ISoA did not have to pay property taxes, it would have a financial advantage over other entities and stores that sell books and research related materials about plants, trees, and shrubs, just as ISoA does. If anyone wants information from ISoA they must pay for it, either through membership dues or direct payments.

For the aforementioned reasons, it is recommended that the Department's denial of property tax exemption for Champaign County Parcel Index No. 41-20-02-130-4021 be upheld in its entirety for the 1999 assessment year and the property tax be assessed to the ISoA, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: April 28, 2005