

ST 97-40

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

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

TAXPAYER)	CLAIM FOR EXEMPTION
)	
)	
v.)	Docket No.
)	
THE DEPARTMENT OF REVENUE)	John E. White,
OF THE STATE OF ILLINOIS)	Administrative Law Judge

RECOMMENDED DECISION

Appearances: Michael Wynne, Baker & McKenzie, appeared for TAXPAYER. Mark Dyckman, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when the TAXPAYER ("TAXPAYER" or "taxpayer") protested the Illinois Department of Revenue's ("Department['s]") denial of its request for an Illinois tax exemption identification number. At issue is whether TAXPAYER is entitled to a state tax exemption as an exclusively charitable, or as an exclusively educational, organization.

The hearing in this matter was held at the Department's Office of Administrative Hearings in Chicago on March 4, 1997. At hearing, the parties entered into evidence a stipulation of facts and admitted certain documents as exhibits to that stipulation. Taxpayer presented additional documentary and testimonial evidence. I have considered the evidence adduced at hearing, and I am including in this recommendation specific findings of fact and conclusions of law. I recommend the issue be resolved in favor of the Department.

Findings of Fact:

Facts Regarding TAXPAYER's General Organization and Operations

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Department's 5/29/86 denial letter issued to TAXPAYER by the Department. See Department Exhibit ("Dept. Ex. No.") 1; Hearing Transcript ("Tr.") p. 7.
 2. The TAXPAYER is an Illinois nonprofit corporation which was incorporated on November 18, 1948. TAXPAYER commenced activities in 1949. Its general offices are located at Illinois 60173-2266. Stipulation of Facts ("Stip.") ¶ 1.
 3. TAXPAYER is the world's largest actuarial organization with approximately 16,000 members. Stip. ¶ 3.
 4. In its 1995 Yearbook, in a section in which TAXPAYER briefly described the activities of various North American actuarial organizations, TAXPAYER described itself as:

. . . an international research, examination and membership organization for actuaries in the life and health insurance, employee benefits, and pension fields. It administers examinations leading to Associateship and then to Fellowship. A continuing education program is also provided through seminars, symposia and membership meetings.
- Stip. Ex. No. 4, p. 222; see also Stip. ¶ 5.
5. TAXPAYER is exempt from federal and Illinois income tax pursuant to section 501(c)(3) of the Internal Revenue Code as an education and research organization. Stip. Ex. No. 2-A; see also Stip. ¶ 2.
 6. TAXPAYER has no capital structure, no capital stock, no provision

for disbursing dividends or other profits and it pays no director's fees. Stip. ¶ 4.

7. The TAXPAYER has a comprehensive committee structure made up of member volunteers. See Stip. ¶ 13.

8. The TAXPAYER's committees are grouped into 11 different areas, each containing various committees, subcommittees, councils and task forces ("subareas"). These areas are:

1. Presidential Committees - 9 subareas
2. Research Committees - 5 subareas
3. Membership Service Committees - 18 subareas.
4. Examination and Basic Education Committees - 32 subareas
5. Life Insurance Practice Area Committees - 11 subareas
6. Retirement Systems Practice Area Committees - 9 subareas.
7. Health Benefit Systems Practice Area Committees - 23 subareas
8. Financial and Investment Management Practice Area Committees - 11 subareas
9. Actuarial Education Research Fund
10. Liaison Representatives
11. Ambassador Programs

Stip. ¶ 14.

9. TAXPAYER currently employs approximately 84 persons. Stip. ¶ 6.

Facts Regarding TAXPAYER's Examinations Leading Toward Membership

10 TAXPAYER's education and research activities are directed toward improving the professional competence and development of its members, those individuals aspiring to become TAXPAYER members, and of the actuarial profession. Stip. Ex. No. 4, p. 1 (Mission Statement); Stip. ¶ 5.

11. TAXPAYER's Mission Statement provides:

MISSION STATEMENT

The TAXPAYER is an educational, research and professional membership organization whose purposes are to promote high standards of competency and conduct among its members and to advance the state of actuarial science. Members

of the TAXPAYER, who currently practice primarily in the areas of life insurance, health and retirement systems, and investments in the United States and Canada, are skilled in evaluation of contingent events, in structuring models to describe and measure risk, and communicating the resulting implications. Representing its members, the TAXPAYER is a part of the worldwide actuarial profession.

GENERAL OBJECTIVES:

The four general objectives listed below define the manner in which the TAXPAYER should address its mission and highlight priorities for the development of strategies and programs.

- * **Education.** Provide basic and continuing education in actuarial science and currently applied practice.
- * **Research.** Facilitate the conduct of theoretical and practical research.
- * **Membership Services.** Provide quality service to members.
- * **Development of the Actuarial Profession.** Promote the services of the TAXPAYER and its members and support the members in meeting their professional responsibilities to clients, employers and the general public.

Stip. Ex. No. 4, p. 1.

12. The people TAXPAYER represents, i.e., TAXPAYER's members (see *id.*), fall into two classes, associates and fellows. *Id.*, p. 111; Stip. ¶¶ 8-9.
13. Associates are entitled to attend meetings of the TAXPAYER, to present papers approved by the TAXPAYER's Board of Governors, and to join in discussions. Associates may use the designation "A.S.A." (hereinafter "ASA") after their name. Stip. ¶ 8; Stip. Ex. No. 4, p. 111.
14. Fellows are entitled to vote, hold office, make nominations and generally exercise full membership rights. Fellows may use the

designation "F.S.A." (hereinafter "FSA") after their name. Stip. ¶ 9; Stip. Ex. No. 4, p. 111.

15. The ASA designation is intended to signify to the public that the person has developed an understanding of the basic mathematics underlying actuarial science and the application of fundamental mathematical concepts to technical actuarial problems. On average, it takes a student three to four years to become an ASA. Stip. ¶ 8.
16. The FSA designation is intended to signify to the public that the person has developed a knowledge of business environments within which financial arrangements for pensions, life insurance, and health insurance operate, including the application of mathematical concepts and other techniques to the various areas of actuarial practice. Stip. Ex. No. 4, p. 149. On average, it takes seven years to become a fellow. However, the time necessary can range from five to more than ten years. Stip. ¶ 9.
17. The TAXPAYER administers a series of examinations, which, if passed by a candidate, qualifies the candidate for membership in the TAXPAYER. Stip. Ex. No. 5, p. 1, ¶ I.B; see also Stip. ¶ 7.
18. No candidate may become a member of the TAXPAYER until he has successfully completed the Associate education and examination requirements prescribed by TAXPAYER's Board of Governors, and until the Board has approved the candidate's application for admission as an Associate. Stip. Ex. No. 4, pp. 37 (activities of admissions committee), 150-58 (requirements for admissions to the TAXPAYER); Stip. Ex. No. 5, p. 2.
19. All of the examinations TAXPAYER administers are jointly

sponsored by the TAXPAYER, the American Academy of Actuaries ("the Academy"), the Canadian Institute of Actuaries ("CIA"), and the Conference of Consulting Actuaries ("CCA"). Stip. Ex. No. 5, pp. 35, 112, 118 (Application for Actuarial Exams Form ("Exam Application")).¹ The Casualty Actuarial Society ("CAS") jointly sponsors and jointly administers four examinations with the TAXPAYER. *Id.*, pp. 35, 112. The American Society of Pension Actuaries ("ASPA") and the Joint Board for the Enrollment of Actuaries ("Joint Board") jointly sponsor and jointly administer three other examinations with the TAXPAYER. *Id.*; see also Stip. Ex. No. 4, pp. 220-28 (listing and describing North American and international actuarial organizations); 29 U.S.C. §§ 1241-42 (authorizing creation of Joint Board in 1974).

20. The educational requirements for admission in the Academy are automatically satisfied by the completion of the TAXPAYER's courses and exams. Stip. ¶ 27. Approximately 75% of the Academy's members are also members of the TAXPAYER. *Id.* Approximately 80% of the TAXPAYER's U.S. members are also members of the Academy. *Id.*

¹. The last numbered page of Stip. Ex. No. 5 is page 112. Following that page are two (double-sided) pages for notes, followed by, respectively, an Order Form for Review Classes and Seminars, an Order Form for Textbooks Available from the TAXPAYER, an Order Form for Study Notes, and an Application for Actuarial Exams 120-595, and instructions for that Application. For administrative convenience, I have hand-numbered those forms as the following pages, and will refer to those forms using those page numbers in this recommendation.

<u>Stip. Ex. No. 4 Forms</u>	<u>page nos.</u>
Order Form for Review Classes and Seminars,	pp. 113-14
Order Form for Textbooks Available from the TAXPAYER,	pp. 115-16
Order Form for Study Notes,	pp. 117-18
Application for Actuarial Exams 120-595	pp. 119-20
Instructions for Application for Actuarial Exams	pp. 121-22

21. Similarly, the TAXPAYER's Board of Governors may, upon application, waive certain requirements for passing some TAXPAYER examinations if an applicant has passed substantially equivalent examinations required by another recognized actuarial organization. Stip. Ex. No. 5, p. 34; Stip. Ex. No. 4, p. 112 (Article III, § 2 of TAXPAYER's Constitution (Requirements for Admission to Membership)).
22. The University of Illinois accepts passing grades on some TAXPAYER and CAS exams in lieu of its own course requirements for a masters degree in mathematics (actuarial science option). Stip. Ex. No. 6, pp. 11-13; Stip. ¶ 22.
23. The principles underlying the TAXPAYER education and examination system are:
 1. To provide the actuary with an understanding of fundamental mathematical concepts and how they are applied, with recognition of the dynamic nature of these fundamental concepts in that they must remain up-to-date with developments in mathematics and statistics;
 2. To provide the actuary with an accurate picture of the sociodemographic, political, legal, and economic environments within which financial arrangements operate, along with an understanding of the changing nature and potential future directions of these environments;
 3. To expose the actuary to a broad range of techniques that the actuary can recognize and identify as to their application and as to their inherent limitations, with appropriate new techniques introduced into this range as they are developed;
 4. To expose the actuary to a broad range of relevant actuarial practice, including current and potential application of mathematical concepts and techniques to the various and specialized areas of actuarial

- practice; and
5. To develop the actuary's sense of inquisitiveness so as to encourage exploration into areas where traditional methods and practice do not appear to work effectively.

Stip. Ex. No. 5, p. 1, ¶ I.B.

24. As of July 31, 1995, a candidate must earn 300 credits to become an ASA. Credits are earned by passing the examination given for each credited course. See Stip. ¶ 15.
25. TAXPAYER schedules examinations in the fall and spring. The examinations are proctored by TAXPAYER volunteer-members. Stip. ¶ 19.
26. Candidates for associate membership must pass examinations for two hundred fifty-five required credits, and for 45 elective credits. See Stip. ¶ 15.
27. After a candidate has achieved associate membership, the candidate must pass examinations for 90 additional credits in one of five specialty tracks: Finance, Group and Health Benefits, Individual Life and Annuity, Investment, or Pension, and must also pass examinations for another 60 elective credits before being admitted as a Fellow of the TAXPAYER. See Stip. ¶ 16.
28. Where possible, standard textbooks and previously published articles are included within the list of required readings for each examination. See Stip. ¶ 18; Stip. Ex. No. 5, pp. 45, 104 (respectively, course of reading, books included in the course of reading).
29. TAXPAYER employees and volunteer-members prepare study notes that TAXPAYER sells to ASA and FSA candidates. TAXPAYER publishes the

study materials in loose-leaf format, and regularly updates those materials. See Stip. ¶ 18.

30. Candidates sitting for exams may use a calculator only if the calculator is an official TAXPAYER model, which bears the TAXPAYER logo. Stip. Ex. No. 5, pp. 29-30, 119, 121 (¶ 12 of Exam Application, ¶ 12 of Instructions). The TAXPAYER sells such calculators for \$22.00 each. *Id.*, p. 119 (¶¶ 12-13 of Application); see also Stip. Ex. No. 3 (TAXPAYER's audited financial statements), pp. 2-3 (operating expenses included cost of calculators sold by TAXPAYER during fiscal years ending 7/31/94 and 7/31/93).
31. After TAXPAYER sells study materials and textbooks to candidates for examination and/or membership, the candidates study those materials on their own. TAXPAYER intends its "courses" to be self-taught by the candidates. Stip., ¶ 7; Stip. Ex. 5, p. 41; Tr. pp. 42-43, 57 (testimony of TAXPAYER E.D. ("TAXPAYER E.D."), TAXPAYER's executive director); see also Taxpayer's Post-Trial Memorandum ("TAXPAYER's Brief"), p. 7.
32. TAXPAYER introduced no evidence that it employs or uses tutors, teachers, professors or other persons to offer regular instruction to candidates prior to sitting for exams. Tr. pp. 42-43, 57 (TAXPAYER E.D.); *cf.* Stip. Ex. No. 5, p. 44 (Education & Examination ombudsman "available [via phone] to respond to non-routine education and examination inquiries from candidates").
33. Of the 74 courses for credit toward membership listed in TAXPAYER's Associateship and Fellowship Catalog (Stip. Ex. No.

- 5), only one required course -- the Fellowship Admission Course -
- requires candidates to physically attend. Stip. Ex. No. 5, pp.
8-13 (course listings), pp. 49, 52-53, 85-86 (course
descriptions). The Fellowship Admission Course lasts two and
one-half days. *Id.*, pp. 85-86.
34. Additionally, TAXPAYER offers two elective courses as seminars,
each of which are five days long. Stip. Ex. No. 5, pp. 49
(Intensive Seminar on Applied Statistical Methods), 52-53
(Intensive Seminar in Risk Theory).
35. TAXPAYER charges fees for each exam taken. Stip. Ex. No. 5, pp.
25-26, 122. The exam fees range from \$20.00 to \$255.00. *Id.*, pp.
26, 122. TAXPAYER also charges a fee for late registration
(\$50.00), and for changing the place at which the candidate
wishes to take an examination (change of center fee is \$20.00).
Id., p. 25.
36. In addition to the individual exam fee, TAXPAYER charges each
candidate a \$50.00 base fee for each examination session (e.g.,
for the Spring or Fall session), regardless of how many
examinations the candidate will take. Stip. Ex. No. 5, p. 26.
The base fee does not apply for the first two course exams, nor
to the Fellowship Admission Course. An additional base fee of
\$50.00 is charged to take an exam at a center outside the United
States, Canada or Mexico. *Id.* As of fall 1995, the fee for
TAXPAYER's Fellowship Admission Course was \$850.00. *Id.*
37. For fiscal year 1994, TAXPAYER waived a total of \$380.00 in
examination fees. Stip. Ex. No. 2-C, p. 15.

Facts Regarding the Activities of Other North American Actuarial Organizations With Whom TAXPAYER Sponsors Examinations

38. The Academy is:

a professional membership, government information, and public relations organization for all actuaries practicing in the United States, regardless of specialty. The Academy's mission is to ensure that the American public recognizes and benefits from (1) the independent expertise of the actuarial profession in the formulation of public policy, and (2) the adherence of actuaries to high professional standards in discharging their responsibilities. Professional standards of practice and discipline procedures are the responsibility of the Actuarial Standards Board and the Actuarial Board for Counseling and Discipline, respectively, both independent entities within the Academy. The Academy also establishes qualification standards for making public statements of actuarial opinion.

Stip. Ex. No. 4, p. 220. The Actuarial Standards Board ("ASB") was established in 1988 to prepare and initiate public hearings on standards of professional actuarial practice and to review existing standards. Since that time, the ASB has issued many standards. Stip. Ex. No. 4, pp. 10-11.

39. The ASPA (American Society of Pension Actuaries) is:

a professional membership organization designed to educate actuaries, consultants, administrators, and other benefits professionals in the employee benefits field and to preserve and enhance the private pension system. It administers a series of examinations leading to Membership and then Fellowship. A continuing education program is also provided through seminars, conferences, and involvement in the organization.

Stip. Ex. No. 4, p. 220.

40. The CIA (Canadian Institute of Actuaries) is:

a professional membership organization for all

actuaries practicing in Canada. Fellowship in the [CIA] is recognized as the qualification needed to perform actions required of an actuary under Canadian federal and provincial legislation. The Institute serves the public by commenting on issues having actuarial significance. It establishes educational and professional standards for its members; operates a review and disciplinary system; maintains liaison with government authorities, external actuarial bodies and other professions and organizations; and promotes actuarial research. Educational requirements for Fellowship set by the CIA currently may be met through examinations administered by the TAXPAYER or CAS, some of which are specifically Canadian.

Stip. Ex. No. 4, p. 220-21.

41. The CAS (Casualty Actuarial Society) is:

an international research, examination and membership organization for actuaries in the property and casualty insurance, workers' compensation and liability coverage fields. It also administers a series of examinations leading to Associateship and then to Fellowship. A continuing education program is available through seminars and membership meetings.

Stip. Ex. No. 4, p. 221.

42. The CCA (Conference of Consulting Actuaries) as:

a professional membership organization for actuaries in life, health, property and casualty insurance and in the pension planning and employee benefits fields. Continuing education geared toward the consulting field is provided through membership meetings.

Stip. Ex. No. 4, p. 221.

43. The Joint Board (for the Enrollment of Actuaries) is:

a government unit responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. It requires passing two examinations (EA-1 and EA-2) and satisfying an experience criterion before granting the designation of Enrolled Actuary. The examinations are administered by the TAXPAYER.

Stip. Ex. No. 4, p. 221.

44. The Actuarial Education and Research Fund committee is comprised of two directors from each of the following professional actuarial organizations, to wit: the Academy, ASPA, CIA, CAS, CCA and the TAXPAYER. The fund "carries out research and education projects in the field of actuarial science and studies specific projects that could be advanced" Stip. Ex. No. 4, p. 93.
45. The Presidents and Presidents-Elect of the Academy, the ASPA, the CIA, the CAS, the CCA, the *Colegio Nacional de Actuarios* (a professional membership, nonacademic, independent organization for all actuaries licensed to practise in Mexico, see Stip. Ex. No. 4, p. 221) and of the TAXPAYER make up the Council of Presidents, one of the TAXPAYER's Presidential Committees. The Council is "an informal body whose purposes are to coordinate activities of the actuarial organizations on this continent and to exchange views on current and long-term professional questions." Stip. Ex. No. 4, p. 34.
46. In his written address in the 1995 TAXPAYER Handbook, TAXPAYER President TAXPAYER PRES. wrote that the TAXPAYER, the Academy, the CCA, the ASPA and the CAS had accomplished much by working together through the years. Stip. Ex. No. 4, p. 11. When working together, each of the actuarial organizations had one vote for voting matters, and proportional votes (based on membership) for expense allocations. *Id.*
47. TAXPAYER President TAXPAYER PRES. also called for all TAXPAYER members to subscribe to the standards established by the Academy's ASB, and to participate more fully with the circulation

of draft professional actuarial standards affecting the members' specialties. Stip. Ex. No. 4, p. 11.

Facts Regarding TAXPAYER's Dues

48. All TAXPAYER members pay annual dues, unless dues are deferred or waived upon approval of the member's application therefor. Stip. Ex. No. 4, pp. 199-201. Candidates for TAXPAYER membership do not pay dues. Stip. Ex. No. 5, p. 2.
49. The amount of annual dues varies depending on membership class and length of membership. Fellows and associates with over ten years membership pay dues of \$270.00 annually. Associates with less than five calendar years of membership pay dues of \$135.00 annually, and those with five to nine years membership pay \$210.00 annually. Stip. Ex. No. 4, pp. 199-201.
50. TAXPAYER reported on its form 990 that dues are received from members "in exchange for membership benefits such as journals and newsletters." Stip. Ex. No. 2-C, p. 28.
51. TAXPAYER premises dues waiver approval on whether the member is out of the workforce for the entire year. A member whose dues are waived is expected to pay prorated dues if he rejoins the workforce during the year for which a waiver was approved. Stip. Ex. No. 4, p. 200.
52. TAXPAYER may waive dues if a member leaves the workforce to raise children. Such a waiver may be granted for a maximum of five years, provided the member earns no or minimal income. Stip. Ex. No. 4, p. 200.
53. After five years of receiving dues waiver on that basis, the member may be placed on restricted membership status. Stip. Ex.

No. 4, p. 200.

54. Members paying annual dues receive the following publications from the TAXPAYER:

<u>Record of the Society</u> year)	(4 issues per
<u>Transactions</u>	(annual)
<u>Transactions Reports of Mortality, Morbidity and Other Experience</u>	(annual)
<u>The Actuary</u> per year)	(10 issues
<u>Index to Publications of the TAXPAYER</u>	(annual)
<u>Directory of Actuarial Memberships</u> (annual)	
<u>Yearbook</u>	(annual)

- Stip. Ex. No. 4, p. 199; see also Stip. Ex. Nos. 9 (copy of vol. 46 of Transactions (1995)), 10 (copy of vol. 1995.2 ARCH (1995)).
55. Members who do not pay annual dues on time are, following notice, stricken from the roll of TAXPAYER members. Stip. Ex. No. 4, pp. 125 (TAXPAYER's Bylaws, art. IX § 2), 201. Members may be reinstated, after application therefor, by vote of the Board of Governors, and upon payment of arrears. *Id.*
56. If a member is receiving a full waiver of dues, the TAXPAYER will not issue the member copies of the Record, Transactions, Transactions Reports of Mortality, Morbidity and Other Experience, or the Index to Publications of the TAXPAYER, unless the member pays a \$40.00 service charge. Stip. Ex. No. 4, p. 200. Members with restricted membership status are charged published rates for the publications identified in this paragraph. *Id.*; see also, *id.*, pp. 193-94 (cost of TAXPAYER's publications).
57. In the TAXPAYER's 1995 Yearbook, immediately following the sentence substantially quoted as the parties' Stipulation ¶ 12,

the TAXPAYER's President wrote:

Recent trends reflect a declining base of examination candidates. Because of some slackening in E&E [education and examination] revenue, we will have to modify some programs and increase dues. Our present surplus will keep most programs going for now and allow for some planned new ventures, but this is subject to change if revenues continue to decline. This is important for you to know.

Stip. Ex. No. 4, p. 10.

Facts Regarding TAXPAYER's Continuing Education Programs

58. The Academy, CCA, and other actuarial organizations allow members to fulfill certain continuing education requirements by attending TAXPAYER sponsored seminars, meetings, or symposia. Stip. ¶ 34.
59. While the TAXPAYER provides a continuing education program that could be used by accountants, lawyers, enrolled actuaries and members of other actuarial organizations to satisfy continuing education requirements (see Stip. ¶¶ 31-36), the TAXPAYER itself imposes no continuing education requirements on its members. Compare Stip. Ex. No. 4, pp. 111-112 (Constitution of the TAXPAYER, art. III, § 1 (requirements for membership) and Stip. Ex. No. 5, p. 5 with 20 C.F.R. § 901.11(e) (continuing education required for renewal of enrollment with the Joint Board).²
60. The committees that plan TAXPAYER's Spring and annual meetings

². Qualifying continuing education programs for enrolled actuaries include, *inter alia*: formal programs where attendance is mandatory (20 C.F.R. § 901.11(f)(2)(i)); correspondence or individual study programs (including audio-visual and/or videotaped programs (20 C.F.R. § 901.11(f)(2)(ii)); programs "attended" via teleconference (20 C.F.R. § 901.11(f)(2)(iii)); receipt of a passing grade on an examination sponsored by a professional society or organization recognized by the Joint Board (20 C.F.R. § 901.11(f)(2)(viii)).

are within TAXPAYER's Member Services committees. TAXPAYER's derives the greatest amount of continuing education revenues from registration fees for those meetings. Stip. Ex. No. 3, pp. 2-3.

Facts Regarding TAXPAYER's Research and Publication Activities

61. A general objective of the TAXPAYER is to facilitate the conduct of theoretical and practical research. Stip. ¶ 38; see also Stip. ¶ 41.

62. TAXPAYER's practical research committees are designed to assist TAXPAYER's members in their profession. For example:

* TAXPAYER's Committee on Life Insurance Professional Development "coordinates development and maintenance of professional development in the Life Insurance Practice area. The focus is to provide members with the opportunity to acquire knowledge and skills beneficial to professional practice in addition to those acquired in attaining professional designations." Stip. Ex. No. 4, p. 53.

* TAXPAYER's Committee on Life Insurance Research "initiates the development of technical studies and analyses primarily for the purpose of providing the membership with information that will be of utility and interest, particularly to actuaries specializing in the practice area of life insurance." Stip. Ex. No. 4, p. 72.

* The purpose of TAXPAYER's HIV Research Committee is to "keep the Society membership informed of new information pertaining to HIV infection, particularly with respect to incidence and epidemiology." Stip. Ex. No. 4, p. 73.

* TAXPAYER's Committee on Life Insurance Specialty Guides "oversees formation of Professional Actuarial Specialty Guides (PASGs) in the Life Insurance Practice area. It prepares and keeps up-to-date guides to help actuaries stay current or become up-to-date in the Life Insurance Practice specialty." Stip. Ex. No. 4, p. 75.

* TAXPAYER's Committee on Life Insurance Practice Education "develops education material for established practitioners as well as qualifying candidates in the Life Insurance Practice area." Stip. Ex. No. 4, p. 76.

* TAXPAYER's Committee on Retirement Systems Practice

Advancement "manages Society activity in advancement of the Retirement Systems practice area of members." Stip. Ex. No. 4, p. 77.

- * TAXPAYER's Committee on Retirement Systems Research "initiates the development of technical studies and analyses primarily for the purpose of providing the membership with information that will be of utility and interest, particularly to actuaries specializing in the practice area of retirement systems and related matters." Stip. Ex. No. 4, p. 77.
- * TAXPAYER's Committee on Retirement Systems Professional Development "coordinates development and maintenance of professional development in the Retirement Systems Practice area. The focus is to provide members with the opportunity to acquire knowledge and skills beneficial to professional practice in addition to those acquired in attaining professional designations. " Stip. Ex. No. 4, p. 79.
- * TAXPAYER's Committee on Retirement Systems Practice Education "develops education material for qualifying candidates as well as established practitioners in the Retirement Systems Practice area." Stip. Ex. No. 4, p. 80.
- * As one of TAXPAYER's Health Benefit Systems Practice Area Committees, its Medical Effectiveness Task Force "will recommend activities that the Society should undertake so that health actuaries can play a larger role in the area of evaluating medical effectiveness." Stip. Ex. No. 4, p. 83.
- * As one of TAXPAYER's Financial and Investment Management Practice Area Committees, its Asset Risk Experience Committee "will develop and maintain a database that can be used to analyze the risk associated with investment in various types of asset classes and provide reports and analyses of the database." Stip. Ex. No. 4, p. 83.
- * TAXPAYER's Committee on Health Benefit Systems Research "initiates the development of technical studies and analyses primarily for the purpose of providing the membership with information that will be of utility and interest, particularly to actuaries specializing in the practice area of Health Benefit Systems." Stip. Ex. No. 4, p. 84.
- * TAXPAYER's Committee on Health Benefit Systems Professional Education and Development "coordinates development and maintenance of professional development in the Health Benefit Systems Practice area. The focus is to assist in the development of education material for qualifying candidates as well as to provide members with the

opportunity to acquire knowledge and skills beneficial to professional practice." Stip. Ex. No. 4, p. 88.

63. TAXPAYER sponsors a number of research projects each year. The research projects are initiated through a number of channels including specific requests from members and outside parties, research grant competitions, and committee proposals. Stip. ¶ 39; see also Stip. Ex. No. 8-A.
64. TAXPAYER also sponsors an annual Actuarial Research Grants Competition. The grants are intended to support the development of new research in actuarial science. Individuals and groups may apply for a grant. Preference is given to research projects involving actuarial researchers. Graduate and undergraduate students are not eligible to apply individually but can be part of a group. Applicants are expected to come from the following categories: (a) practitioners, usually where the research project is not part of their employment, (b) industry and university researchers embarking on a collaborative project, (c) academics, individually or as a team. The key criterion is that the research should have the potential to contribute significantly to the advancement of knowledge in actuarial science. The TAXPAYER awards several grants a year. Most do not exceed \$10,000.00, although higher amounts are considered. Stip. ¶ 40; see also Stip. Ex. No. 2-C, pp. 15-21.
65. TAXPAYER provides a number of forums for the public dissemination of sponsored and unsponsored research projects. Stip. ¶ 42.
66. Approximately annually, the TAXPAYER conducts various experience studies for use by its members. Expenses in connection with the

compilation of experience studies are charged to a pre-paid account. The following fiscal year, insurance companies and other commercial employers of actuaries are assessed for these and related expenses, at which time the pre-paid account is relieved by charging expenses. Stip. Ex. No. 3, p. 6 (note 1 to TAXPAYER's audited financial statements). During some fiscal years, TAXPAYER's revenues realized from its experience studies exceed its expenses related thereto, and some years its expenses exceed its revenues from selling the results of such studies. *Id.*, pp. 2-3 (expenses exceeded revenues by approximately \$60,000.00 for FY ending 7/31/94, and revenues exceeded expenses by about \$75,000.00 during FY ending 7/31/93).

Facts Regarding TAXPAYER's Publications

67. The primary objective of TAXPAYER's publications is to allow the Society and its members to publish papers, discussions and studies to provide an accurate, informative and permanent record of the activities of the Society. An additional objective is to inform members of relevant developments that occur outside the normal activities of the Society. Stip. Ex. No. 4, p. 159.
68. The following TAXPAYER publications accept contributions and provide a forum for member-to-member communications: Transactions, The Actuary, The Record, ARCH, The Future Actuary, and section newsletters. Stip. Ex. No. 4, pp. 159-60.
69. Transactions is the TAXPAYER's flagship publication. It attracts formal and scholarly papers contributed by members and nonmembers. Papers are reviewed by a panel of individuals well grounded in the subject of the paper. Reviewers can be members

or nonmembers of the TAXPAYER. Stip. ¶ 43. The Transactions Mission Statement provides:

The *Transactions* of the TAXPAYER serves its membership and others interested in actuarial science by publishing refereed papers which:

- * Present original research in actuarial science;
- * Further the education of actuaries;
- * Serve as a commonly used comprehensive review of topics;
- * Provide useful insights into topics important to practicing actuaries.

Stip. Ex. No. 4, p. 162.

70. The ARCH is published twice a year. Since the primary goal of the ARCH is to quickly disseminate current thinking and aids to research, the publication is not thoroughly edited. The primary emphasis is on distribution of short notes or papers on specific research topics to members and friends of the actuarial community. Stip. ¶ 44; Stip. Ex. No. 4, p. 160.
71. A second group of TAXPAYER publications is used to document various forms of information to members. Stip. Ex. No. 4, p. 161. Those publications include: Transactions Reports of Mortality, Morbidity and Other Experience, the TAXPAYER Yearbook, Study Notes, and Professional Actuarial Specialty Guides. *Id.*
72. TAXPAYER's Professional Actuarial Specialty Guides are published on an ad hoc basis. *Id.* The Guides:

focus on a particular specialty, such as U.S. Social Security -- Cash Benefits[,] Life Insurance Company Investments, and U.S. GAAP Financial Reporting, providing a framework in which to understand the specialty and a guide to the essential readings in the specialty. Each guide comprises introductory material and a "road map" that organizes the specialty into topics,

followed by brief descriptions of carefully selected papers, articles, and books. The guides are intended to help experienced actuaries craft their personal continuing education plans and to provide "road maps" to actuarial specialties for those actuaries wishing to become proficient in a new specialty.

Id.

73. The TAXPAYER has a subscription service for nonmembers who wish to purchase the publications TAXPAYER sends to members. For persons in the United States and Canada, the annual subscription price is \$125.00; for others the annual subscription price is \$200.00. Stip. Ex. No. 4, p. 204.
74. The TAXPAYER maintains a library on actuarial sciences containing not only the research produced by and on behalf of the TAXPAYER, but most studies, texts, publications, and other documents of scientific significance for actuarial sciences. Stip. ¶ 45.
75. The TAXPAYER library is made available to any and all actuaries, without regard to membership in the TAXPAYER, and to persons outside the actuarial profession upon their request. Stip. ¶ 46.
76. Where TAXPAYER has contracted with others to conduct research, and the TAXPAYER has secured copyrights to those reports, or where TAXPAYER volunteers and others have undertaken research projects and published reports regarding that research, the TAXPAYER has made copies of those research reports available for sale to others. See, e.g., Stip. Ex. No. 8-B, pp. 8-13 (copies of announcements regarding the availability of, e.g.: the Public Employee Retirement Systems Project Report @ \$125.00 per copy (\$75.00 for public sector purchasers); the Health Carrier Insolvencies Research Project Report @ \$10.00 per copy; the Risk

Adjusters Project Report @ \$35.00 per copy; the Dynamic Solvency Testing Research Project Reports @ \$10.00 per copy; the Long-Term Care Valuation Methods Final Report @ \$30.00 per copy and \$200.00 per floppy disc containing data files and computer program to perform calculations outlined in the report); see also Stip. Ex. No. 4, pp. 191-98 (list of publications available for purchase); Taxpayer Ex. No. 1, pp. 25-39 (permanent publication form for reports regarding TAXPAYER's completed research projects).

Facts Regarding TAXPAYER's Financial Books and Records

77. TAXPAYER files a federal form 990 return with the Internal Revenue Service ("IRS") (see Stip. Ex. No. 2-C, p. 4), and it files a "Charitable Organization Supplement" report with the Office of the Illinois Attorney General. Stip. ¶ 2; Stip. Ex. No. 2-B. TAXPAYER uses a fiscal year ("FY") of August 1 to July 31. Stip. Ex. No. 2-C, p. 1 (line A).
78. On its 1994 federal form 990, TAXPAYER reported that it received total revenues of \$13,962,230.00 during FY 1994. Stip. Ex. No. 2-C, p. 1 (line 12).
79. TAXPAYER received no direct public financial support or government grants. *Id.* TAXPAYER received \$62,865.00 -- or approximately 4/1000ths of its total revenue during FY 1994 -- in indirect public support. *Id.*, pp. 1 (lines 1a-b), 13 (identification of insurance companies and/or foundations providing indirect public support in amounts over \$5,000.00).
80. Of the total amount of revenue TAXPAYER received in 1994, \$3,718,952.00 (or approximately 26.6%) was received as dues from members, \$4,953,545.00 (approximately 35.4%) was received from

examination fees, and \$1,072,808.00 (approximately 7.6%) was gross profit from TAXPAYER's sale of goods. *Id.*, pp. 1 (lines 10a-10c), 7 (lines 93a, 94, 102), 28 (explanation of relationship between income-producing activities and exempt purpose); *see also* Stip. ¶ 12.

81. On its 1994 federal tax form, TAXPAYER explained that the fees it charged to those applying to sit for examinations sponsored by the TAXPAYER and others were charged to "conduct actuarial examinations to advance the knowledge of actuarial science and to promote the maintenance of high standards of competence and conduct within the actuarial profession." Stip. Ex. No. 2-C, pp. 7, 28.
82. Of the total amount of revenue TAXPAYER receives from selling publications, only a small percentage is received from non-members. Tr. p. 133-34 (testimony of TAXPAYER DIRECTOR ("TAXPAYER DIRECTOR"), TAXPAYER's Director of Communications and Administration).
83. Without counting revenues generated from seminar fees and meeting registration, TAXPAYER received approximately 70% of its revenue from members, or from persons seeking to become members of the TAXPAYER or another professional actuarial membership organization with whom TAXPAYER sponsored examinations. *Id.*, pp. 1 (lines 10a-10c), 7 (lines 93a, 94, 102); *see also* Stip. ¶ 12.
84. Approximately 20% of TAXPAYER's revenues are derived from its continuing education activities, through fees from meetings, symposia and seminars. *See* Stip. ¶ 12; Stip. Ex. No. 3 (audited financial statements for years ending 7/31/94, 7/31/93), pp. 2-3

(revenues from meeting registration and seminar fees were approximately 18.7% of TAXPAYER's total revenues during FY ending 7/31/94, and approximately 17.9% of total revenues for FY ending 7/31/93); Tr. p. 166 (Kepraios).

85. TAXPAYER reported that it had program service expenses of \$12,355,280.00 during FY 1994. Stip. Ex. No. 2-C, p. 1 (line 13), p. 4 (Part II, line 44(B) & Part III, line f).
86. TAXPAYER reported that it spent over 2.8 million dollars (approximately 23% of total program service expenses) on continuing education to serve approximately 5,600 of its members and the general public. Stip. Ex. No. 2-C, p. 4 (Part III, line a).
87. TAXPAYER reported that it spent approximately 4.9 million dollars (approximately 39% of its total program expenses) to conduct actuarial examinations to serve 23,000 students. Stip. Ex. No. 2-C, p. 4 (Part III, line b).
88. TAXPAYER reported that it spent 2¼ million dollars (18% of total program service expenses) to print and mail TAXPAYER publications to its 16,000 members and to the general public. Stip. Ex. No. 2-C, p. 4 (Part III, line c).
89. TAXPAYER reported that it spent over 2.3 million dollars to "conduct research activities in actuarial science, publish results to promote and maintain high standards of competence within the actuarial profession and advance actuarial knowledge" to serve its 16,000 members and the general public. Stip. Ex. No. 2-C, p. 4 (Part III, line d).
90. TAXPAYER issued grants totalling \$503,594.00 to university

scholarship programs, to university students, to university faculty and to others. Stip. Ex. No. 2-C, pp. 4, 15-20.

91. Although TAXPAYER's witnesses testified (when asked during cross-examination) that the TAXPAYER received revenues from tuition, no regularly maintained books and records of the TAXPAYER corroborated such testimony, nor did the TAXPAYER report to the IRS that it received any income as tuition. *Compare* Tr. p. 166 (Kepraios) *and* Department's Response, p. 2 *with* Stip. Ex. No. 2-C, p. 7 *and* Beck v. Board of Education, 63 Ill. 2d 10, 16 (referring to the dictionary definition of the term, the Illinois supreme court held, "[t]uition is . . . 'the price of or payment for instruction'") (1976); *but see* 105 **ILCS** 425/1 (for purposes of the Private Business and Vocational Schools Act, the legislature defined "tuition" as "any payment or compensation whether paid by an individual, private organization or an agency of the United States, the State of Illinois or any political subdivision thereof").
92. During fiscal year 1994, TAXPAYER reported that it received over \$3.7 million dollars in income from dues "in exchange for membership benefits such as journals and newsletters." Stip. Ex. No. 2-C, pp. 7, 28. It also reported that it received over 1 million dollars in gross profits³ from selling study material, educational publications and exam related items to identify, educate and qualify persons with the interest and potential to

³. I am using the term "profits" in the ordinary sense here, as reported by taxpayer on its federal tax return.

become actuaries and for others interested in actuarial science.
Id.

93. Candidates for examinations, purchasers of Society calculators, and purchasers of TAXPAYER study materials or publications remit payments to the TAXPAYER through its Illinois address or post office box. See Stip. Ex. No. 4, p. B-3 (order form for TAXPAYER publications); Stip. Ex. No. 5, pp. 119-120 (Application for Actuarial Exams); Stip. Ex. 8-B, pp. 8-13 (TAXPAYER announcements of research report availability).
94. TAXPAYER charges Canadian gross sales tax for its sales of tangible personal property shipped to residents of Canada, but its order forms do not provide for the assessment of Illinois ROT for its sales of study materials shipped to Illinois residents. Stip. Ex. No. 4, pp. B-1, B-3 (order forms attached at back of Yearbook).
95. No information was submitted to indicate whether TAXPAYER ever filed ROT returns regarding its sales of tangible personal property at retail to persons for use in Illinois, as school bookstores are required to file.⁴
96. TAXPAYER did not identify itself as a "school" as that term is used by the IRS on federal tax returns filed by organizations exempt from income tax. See Stip. Ex. 2-C, Form 990. On part 4 of that form, the IRS references the term "school" to §

⁴. Even if it has been issued an Illinois exemption identification number, a private school located in Illinois which sells books and other materials to students is obliged to file returns and pay ROT based on the gross receipts it received from making retail sales of tangible personal property for use in Illinois. See 86 Ill. Admin. Code § 130.2005(b)(4)(C).

170(b)(1)(A)(ii) of the Internal Revenue Code ("the Code"), which, in turn, describes:

an educational organization which normally has a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on

26 U.S.C. § 170(b)(1)(A)(ii) (referred to at Stip. Ex. No. 2-C, p. 9 (Schedule A of TAXPAYER's IRS form 990, line 6)).

Facts Regarding Illinois Laws Concerning Services Provided by Actuaries

97. Illinois has set up no scheme for licensing, regulating, or exercising police powers over persons engaged in the business or profession of rendering actuarial services.

98. Every insurance company which does business in Illinois must file an annual statement with the Illinois Department of Insurance, under the form of statement adopted by the National Association of Insurance Commissioners ("NAIC"). Stip. ¶ 29. The annual statement must be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the NAIC. *Id.*; 215 ILCS 5/136(1). The NAIC instructions require that the annual statement be accompanied by an actuary's opinion on policy reserves and other actuarial items. Such an actuary is defined as a member of the Academy. Stip. ¶ 29.

99. The following provisions of the Illinois Insurance Code, 215 ILCS 5/1 et seq., define an actuary as a member of the Academy:

<u>Statutory Cite</u>	<u>Description</u>
215 ILCS 5/123B-4(B)(1) requires a risk retention

group not organized in Illinois to submit to the Director of the Illinois Department of Insurance a copy of the group's financial statement, which statement contains a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

215 **ILCS** 5/141a(a), (d)(2) § (a) defines the term "actuary" as "a person who is a member in good standing of the American Academy of Actuaries"; § (d)(2) imposes a duty on an insurer using a managing general agent to annually retain an actuary's opinion attesting to the adequacy of the loss reserves established by the managing general agent.

215 **ILCS** 5/223(1a)(A)(6) defines "qualified actuary" as "a member in good standing of the American Academy of Actuaries who meets the requirements set forth in its regulations"

215 **ILCS** 95/10 defines "[a]ctuarial certification", in part, as "a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Director"

215 **ILCS** 100/5, 100/45 § 5 defines "actuary" as "a person who is a member of the American Academy of Actuaries"; § 45 imposes duties on reinsurers using the services of a reinsurance intermediary manager; § 45(c) requires that, if an reinsurance intermediary manager used by the reinsurer establishes loss reserves, the reinsurer annually obtain an actuary's opinion attesting to the adequacy of the loss reserves established for losses incurred and outstanding on business produced by the intermediary manager.

See Stip. ¶ 28.

100. The following provisions of the Illinois Pension Code, 40 **ILCS** 5/1-101 *et seq.*, provide:

Statutory Cite

Description

40 **ILCS** 5/22-503.1(a) requires the annual report filed by a pension fund or retirement system with over 500 participants to include a complete actuarial statement applicable to the plan year; defines the "enrolled actuary" who must prepare the actuarial statement as "an actuary which is (i) a member of the TAXPAYER or the American Academy of Actuaries; and who is (ii) enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 . . . or engaged in providing actuarial services to a public retirement plan in Illinois on July 1, 1983."

40 **ILCS** 5/22-503.2 requires the annual report filed by a pension fund or retirement system with under 500 participants to include a complete actuarial statement applicable to the plan year; defines the "qualified actuary" who must prepare the actuarial statement as "(a) a member of the American Academy of Actuaries, or (b) one who has demonstrated to the satisfaction of the Director of the Department of insurance that he has the educational background necessary for the practice of Actuarial science, and has at least 7 years of actuarial experience."

40 **ILCS** 5/4-118(e) requires city council or municipality to levy property tax in an amount sufficient to meet the annual actuarial requirements of a firefighters' pension fund; defines an "enrolled actuary" who must determine the property tax rate as "an actuary: (1) who is a member of the TAXPAYER or the American Academy of Actuaries; and (2) who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974, or who has been engaged in providing actuarial services to one or more public retirement systems for a period of at least 3 years as of July 1, 1983."

See Stip. ¶¶ 23-25.

101. Section 15-16.3(g) of the Illinois Public Aid Code defines an

actuary as "an Associate or Fellow of the TAXPAYER or a member of the Academy of Actuaries and who has expertise and experience in medical and benefit programs" 305 **ILCS** 5/15-16.3(g); Stip. ¶ 26.

102. The Illinois General Assembly has set up a system to regulate the activities of:

an educational institution privately owned and operated by an owner, partnership or corporation, offering courses for which . . . [any payment or compensation whether paid by an individual, private organization or an agency of the United States, the State of Illinois or any political subdivision thereof] is charged, whether such course of instruction or subjects are offered by in-residence, correspondence, or other methods, to prepare individuals:

* * *

(3) to follow a profession, if the profession is not subject to licensing or registration under any existing statute of the State of Illinois requiring the licensing or registration of persons practicing such profession or if the [educational institution] is not approved and regulated by the agency with such licensing or registration authority; [or]

(4) to improve, enhance, or to add to the skills and abilities of the individual relative to occupational responsibilities or career opportunities.

105 **ILCS** 425/1 (1994). First enacted in 1955, that scheme is now known as the Private Business and Vocational Schools Act. 105 **ILCS** 425/1.01.

clusions of Law:

Section 3-5 of the Retailers' Occupation Tax Act ("ROTA"), 35 **ILCS** 120/2-5(11), provides:

Exemptions. Gross receipts from proceeds from the sale of the following tangible personal

property are exempt from the tax imposed by this Act:

* * *

Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized exclusively for charitable, religious, or educational purposes

ILCS 120/2-55(11) (1992). Section 3-5(4) of the Use Tax Act ("UTA"), 35 **ILCS** 105/3-5(4) (1992), complements § 2-5(11) of the ROTA, and provides, in pertinent part:

Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

* * *

Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes

35 **ILCS** 105/3-5(4).

As statutory provisions exempting property or entities from taxation, §§ 2-5(11) of the ROTA and 3-5(4) of the UTA must be strictly construed against exemption. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The burden of establishing the right to a tax exemption is on the one claiming the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967). "The taxpayer seeking the exemption bears the burden of proving by clear and convincing evidence that the exemption applies." DuPage Co. Board of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 467, 654 N.E.2d 240, 244 (2d Dist. 1995); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434, 507 N.E.2d 141, 144 (1st Dist. 1987) ("the exemption claimant must prove clearly and conclusively its entitlement."). All debatable

questions should be resolved in favor of taxation. People ex rel. Nordlund v. The Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 99-100, 237 N.E.2d 533, 539 (1968).

Whether TAXPAYER Is Organized and Operated Exclusively for Charitable Purposes

In ROT/UT matters, Illinois courts use the same criteria to determine whether an entity is an exclusively charitable organization. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2d Dist. 1995); see also, Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996) (affirming determination that association was not exclusively charitable because it did not satisfy certain criteria). Those criteria, first articulated by the Illinois Supreme Court in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968), are:

1. Whether the benefits taxpayer provides are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduces the burdens on government;
2. Whether taxpayer's organization has any indices of a for-profit structure, such as capital, stock, or shareholders;
3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;
4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with taxpayer;
5. Whether taxpayer places any obstacles in the way of those seeking benefits from it;
6. The term "exclusively used" means the

primary purpose for which the property is used [or for which the organization's benefits are provided] and not any secondary or incidental purpose.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d at 156-57; DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 214 Ill. App. 3d 461, 468 (1st Dist. 1991) (Methodist Old Peoples Home criteria to be used as guidelines, not benchmarks; each need not be "proved" before charitable status recognized).

The phrase "exclusively" has been defined by the Department in a regulation promulgated pursuant to the authority of the Retailers' Occupation Tax Act. 86 Ill. Admin. Code § 130.2005(n). That definition has been approved by Illinois courts. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d at 436, 507 N.E.2d at 145. Rule 2005(n) provides:

Meaning of "Exclusively"

1) Although the provisions of the Retailers' Occupation Tax Act under discussion, in excluding receipts from all sales to certain kinds of purchasers, refers to them as being organized and operated "exclusively" for charitable, religious or educational purposes, the [Illinois] Supreme Court has not given the word "exclusively" its most literal interpretation under similar circumstances because of the virtual impossibility of anyone being engaged "exclusively" in anything, and so the Department will follow a similar policy in applying the word "exclusively", as used in the Retailers' Occupation Tax Act and in this Section, in order to carry out the manifest intention of the General Assembly.

2) However, if a substantial purpose or activity of the purchaser is not charitable, religious or educational, the Department will not consider the purchaser to be organized and

operated exclusively for charitable, religious or educational purposes within the meaning of the Act.

Ill. Admin Code § 130.2005(n).

TAXPAYER asserts it is "primarily and substantially engaged in charitable and educational activities and holds primarily and substantially charitable and educational purposes" TAXPAYER's Brief, p. 19. TAXPAYER argues that its "charter and mission statement clearly state its educational purpose and point to various charitable research purposes as well" *Id.* TAXPAYER describes its primary exempt purpose as its educational operations, and its secondary exempt purpose as its charitable research function. *Id.*, p. 20. TAXPAYER argues that its operations lessen the burden borne by government since its operations "serve to uphold actuarial industry standards required within the actuarial community, . . . mandated by statute and relied upon by federal and state governments." *Id.*

The Department argues the TAXPAYER is not organized and operated exclusive for charitable or educational purposes because its activities primarily serve to benefit its members. See Department's Response to Taxpayer's Post-Trial Memorandum ("Department's Response"), pp. 9-13. The Department cites to rule 130.2005(g) to support its argument, which regulation identifies types of organizations specifically excluded from being considered exempt. That regulation provides:

Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the

business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.

Ill. Admin. Code § 130.2005(g) (emphasis added).

he evidence admitted at hearing supports the Department's argument. Of the \$13,962,230.00 in revenue TAXPAYER received during FY 1994, none of it came from direct public support (see Stip. Ex. No. 2-C, p. 1 (line 12)), and only a tiny percentage of that total came from indirect public support. *Id.*, pp. 1 (lines 1a-b), 13. Based on information contained on its FY 1994 tax form, approximately 70% of TAXPAYER's revenues are received from its members or from those likely seeking to achieve membership in TAXPAYER, through membership dues, examination fees, and gross profit from the sale of study notes, calculators or other tangible personal property. *Id.*, pp. 1 (lines 10a-10c), 7 (lines 93a, 94, 102), 28 (explanation of relationship between income-producing activities and exempt purpose); see also Stip. ¶ 12; Tr. p. 133-34 (TAXPAYER DIRECTOR) (only a small percentage of TAXPAYER's sales of publications is to non-members).

TAXPAYER's books and records also established that TAXPAYER used the funds its received primarily to fund programs for its members. For example, TAXPAYER reported that it spent almost 2.9 million dollars (approximately 23% of its total program services expenses, i.e., \$2,355,359.00) on continuing education to serve approximately 5,600 of its members and the general public. Stip. Ex. No. 2-C, p. 4 (Part III, line a). Of course, since the general public has no continuing

education requirements, the TAXPAYER's continuing education activities must be understood to benefit TAXPAYER's member actuaries more than the general public. And while the parties stipulated that accountants, lawyers and actuaries who may not have been members of the TAXPAYER could satisfy continuing education requirements by attending TAXPAYER meetings, seminars and/or symposia, no evidence was offered to identify how many, if any, non-TAXPAYER members attended its continuing education programs.

TAXPAYER reported that the 4.9 million dollars (approximately 39% of its total program expenses) it spent to conduct actuarial examinations served 23,000 students. Stip. Ex. No. 2-C, p. 4 (Part III, line b). The persons paying examination fees to TAXPAYER, however, were likely attempting to achieve membership (or a higher class of membership) in the TAXPAYER.

The primary purpose of the TAXPAYER's publications was to "allow the Society and its members the opportunity to publish papers, discussions and studies to provide an accurate, informative and permanent record of the activities of the Society." Stip. Ex. No. 4, p. 159. TAXPAYER's director of communications acknowledged that very few non-members actually purchased the publications for which TAXPAYER spent 2¼ million dollars (18% of total program service expenses) to print and mail to its 16,000 members. Compare Stip. Ex. No. 2-C, p. 4 (Part III, line c) (publications printed and mailed to 16,000 TAXPAYER members and to the general public) with Tr. p. 133-34 (TAXPAYER DIRECTOR).

TAXPAYER spent over 2.3 million dollars to "conduct research activities in actuarial science, publish results to promote and

maintain high standards of competence within the actuarial profession and advance actuarial knowledge" to serve its 16,000 members and the general public. Stip. Ex. No. 2-C, p. 4 (Part III, line d). As in the other areas of the TAXPAYER's program activity expenditures, the documentary evidence shows that TAXPAYER members were intended to be the more direct beneficiaries of the research activities conducted or sponsored by the TAXPAYER, than was the general public. See, *supra*, pp. 14-15 (finding of fact no. 62); see also Stip. Ex. No. 4, pp. 38-41 (description of research committee activities). Because TAXPAYER draws its funds primarily from its own members and those aspiring to become members, and its activities serve primarily to benefit those members, it is not an exclusively charitable organization. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d at 263; 86 Ill. Admin. Code § 120.2005(g).

I also find that the TAXPAYER places significant obstacles before the persons to whom it confers most of its benefits. On the most fundamental level, TAXPAYER's members pay for the benefits TAXPAYER confers, either through dues, costs of publications or subscription services, seminar and meeting fees, etc. True, TAXPAYER introduced documentary evidence that it has a dues waiver program, but even then, the members whose dues were waived must pay prorated dues should he re-enter the job market during the membership year the waiver was given. See Stip. Ex. No. 4, p. 200.

TAXPAYER acknowledged that it places significant obstacles in the way of individuals attempting to become members. The Department argues that those obstacles inure a direct profit to current TAXPAYER members, by restricting entry into the actuarial profession.

Department's Response, pp. 9-10 & n.3. TAXPAYER calls that argument cynicism. TAXPAYER's Reply, p. 14. One noted jurist, however, has acknowledged that cartels of professional service providers focus on restricting entry into their profession, which focus naturally results in a greater potential for pecuniary profit to at least some current members of the profession. Posner, Richard A., Overcoming Law 47-57, esp. 51 (1995) (while Posner's discussion focuses on the legal profession, his observations seem even more applicable here, where entry into the actuarial profession is generally not regulated by states, but through qualifications or credentials conferred by admittance into one of the various professional actuarial organizations). Whether cynical or merely rational, there seems to be no dispute that membership in the TAXPAYER, itself, has pecuniary value.

Additionally, there was no showing that TAXPAYER relieves a burden otherwise borne by Illinois government. While the Illinois General Assembly has required insurance companies, pension funds and municipalities to use the services of actuaries, the General Assembly's imposition of duties on those entities can hardly be viewed as the exercise of police powers to set up a scheme of licensing, regulating or underwriting the costs of educating the actuaries hired by those institutions. Illinois exercises police powers to regulate and/or license occupations or professions to protect the public. Illinois has not set up a scheme for licensing or regulating actuaries.

That Illinois has not flexed its regulatory muscle to educate, license or otherwise qualify actuaries, however, is not evidence that the

legislature has consciously decided to *rely* upon TAXPAYER to undertake such a system. See TAXPAYER's Reply, p. 20. Nor is the General Assembly's reference to a credential recognized by a particular industry (e.g., membership in the TAXPAYER or in the Academy) when imposing duties on insurers or fund managers evidence that the legislature has *mandated* the implementation of actuarial standards to which only some of TAXPAYER's members have subscribed. Stip. Ex. No. 4, p. 11 (TAXPAYER's president acknowledging that all of TAXPAYER's members do not subscribe to the standards issued by the Academy's ASB). Instead, it is more likely the General Assembly has not viewed the act of ensuring that math savants are "skilled in evaluat[ing] . . . contingent events, in structuring models to describe and measure risk, and communicating the resulting implications" in order to qualify them for professions "in the areas of life insurance, health and retirement systems, and investments in the United States and Canada", as an activity necessary to fulfill Illinois' constitutional obligation to provide for the general welfare of her residents.

I agree that the TAXPAYER operations may benefit the public indirectly, to the extent that persons who have proved their mathematical mettle by passing TAXPAYER exams following disciplined self-instruction perform actuarial services to others who manage funds held by or distributed to the public, for example, through insurance proceeds, retirement benefits, etc. But if the TAXPAYER were not in operation, the taxpayers of Illinois would not be obliged to support a system of educating or regulating professional actuaries. Nor is it likely that Illinois' institutions of public charity would be overwhelmed by requests for assistance from persons who would

otherwise have received benefits from the TAXPAYER. My review of the Illinois statutes referred to in the parties' stipulations suggests that, if not for the TAXPAYER, the legislature would have merely defined the term "actuary" by reference to membership in another professional membership organization.⁵ Taxpayer introduced no evidence showing that its operations relieve a burden otherwise borne by Illinois.

Based on the evidence adduced at hearing, I conclude that TAXPAYER has not shown that it is organized and operated as an exclusively charitable organization. While TAXPAYER performs certain charitable acts, i.e., its allocation of funds for scholarship or grant purposes, it has not shown sufficient evidence that it meets the first, third, fourth, fifth and sixth criteria set forth by the Illinois supreme court's Methodist Old People's Home decision. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d at 156-57. Taxpayer derives its funding primarily from its members, and it uses those funds primarily to benefit its members. Any purported public benefit resulting from TAXPAYER activities is incidental to its primary purpose of serving its members. There was no showing that the TAXPAYER's activities reduce any burden on government.

Whether TAXPAYER Is Organized and Operated for Exclusively Educational Purposes

Section 2h of the ROTA and section 2c of the UTA provide:

For purpose of this Act, a corporation
society, association, foundation or institution
organized and operated exclusively for

⁵. In fact, more times than not, the statutes referred to in the parties' stipulation defined an actuary as a member of the Academy, instead of the TAXPAYER.

educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to the public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; . . . vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks in duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation.

However, a corporation, society, association, foundation or institution organized and operated for the purpose of offering professional, trade or business seminars of short duration, self-improvement or personality development courses, courses pursued entirely by open circuit television or radio, correspondence courses, or courses which do not provide specialized training within a specific vocational or technical field shall not be considered to be organized and operated exclusively for educational purposes.

35 **ILCS** 105/2c, 120/2h (1996).

The Illinois General Assembly was specific when identifying the organizations entitled to the educational exemption. At hearing, TAXPAYER presented no evidence that it was one of the entities identified by the legislature in the first paragraph of § 2h. TAXPAYER is not a publicly supported school, nor is it a "private school[] which offer[ed] systematic instruction in useful branches of learning by methods common to the public schools". 35 **ILCS** 105/2h; 35 **ILCS** 120/2c. Ordinarily, the course of study offered at public schools does not consist primarily of correspondence courses, such as

the bulk of TAXPAYER activities conducted pursuant to its education and examination operations.⁶ Regular, systematic instruction is the benchmark the Illinois General Assembly set for private schools, vocational or technical schools or institutes who seek to receive an ROT/UT exemption. 35 **ILCS** 105/2h; 35 **ILCS** 120/2c.

TAXPAYER argues that it fits into the system of education set up by Illinois. TAXPAYER's Reply, p. 7. The Illinois General Assembly has set up a system of education which provides for the regulation of

⁶. The parties stipulated that:

"Actuarial science is taught at several universities around the globe. Currently, the University of Illinois, a state supported school, has limited resources to handle the demand. In 1994, TAXPAYER educated over 1,300 Illinois students, while the University of Illinois was only able to accommodate about 130 students in its actuarial science program."

Stip. ¶ 20.

I understand the final clause in the last sentence to mean that 130 students were enrolled in the University of Illinois' actuarial science program. But I do not know what the parties meant in the first clause of the last sentence. Did they mean that 1,300 Illinois residents sat for TAXPAYER exams?; that 1,300 Illinois residents attended an TAXPAYER meeting or seminar?; that 1,300 Illinois residents ordered TAXPAYER's study note series?; a combination of either?

I did not find as a fact that "TAXPAYER educated over 1,300 Illinois students [in 1994]" because I was unsure what facts the parties agreed to when they wrote that factual conclusion. Moreover, the documentary and testimonial evidence established that TAXPAYER was not the agent performing the action of "educating" students. Rather, the evidence established -- and I found as a fact -- that TAXPAYER sold course materials to persons who paid to take actuarial examinations sponsored by the TAXPAYER and others. *See, supra*, p. 8 (findings of fact 31-32). TAXPAYER did not regularly provide teachers, tutors or professors whose services are ordinarily associated with the *instruction* available at an exclusively educational institution. Tr. pp. 42-43, 57 (TAXPAYER E.D.); 35 **ILCS** 105/2c; 120/2h. The candidates who sat for exams sponsored by the TAXPAYER and others educated themselves, as was always intended by TAXPAYER. Stip., ¶ 7; Stip. Ex. 5, p. 41; Tr. pp. 42-43; *see also* TAXPAYER's Brief, p. 7.

private educational institutions which, *inter alia*, do not have accredited status with the North Central Association of Colleges and Schools and which are not regulated by the Illinois Board of Higher Education under the Private College Act or the Academic Degree Act. 105 **ILCS** 425/1.1. Under that system, private educational institutions may offer courses of instruction by correspondence or other methods to prepare individuals to follow a profession, if the profession is not subject to licensing or registration under any existing statute of the State of Illinois requiring the licensing or registration of persons practicing such profession or if the institution is not approved and regulated by the agency with such licensing or registration authority. 105 **ILCS** 425/1. But before it begins to operate, the educational institution must have applied for and received a certification from the Superintendent of the Private Business and Vocational Schools State Advisory Council. 105 **ILCS** 425/5; see also 86 Ill. Admin. Code § 130.2005(1)(5) (" . . . The [ROT] exemption would include vocational or technical schools or institutions . . . (such as a business operated law school) as long as the institution otherwise qualifies as a school within the meaning of this subsection and the Act.").

TAXPAYER has been in operation for almost fifty years, yet it introduced no evidence that it had been issued such a certificate. Considering the TAXPAYER's longstanding presence in Illinois, and the competence of its counsel, I do not believe TAXPAYER forgot to introduce such evidence at hearing. I will presume that the TAXPAYER never applied for a certificate from the Superintendent because it never intended to be operated as an exclusively educational institution or organization. I have already concluded that Illinois

has not set up a scheme for educating, licensing or regulating members of the actuarial profession. If TAXPAYER fits into the system of education the General Assembly *has* set up, it has not shown that it is operating in compliance with Illinois law.

Finally, the documentary evidence introduced at hearing shows that the TAXPAYER is "an international research, examination and membership organization for actuaries in the life and health insurance, employee benefits, and pension fields" which draws its funds largely from its own members and from those aspiring to become members, and as to which an important purpose is to protect and advance the interests of its members in the business world. Those purposes and activities are substantial, and mitigate against a finding that the TAXPAYER is a corporation organized and operated exclusively for educational purposes. 86 Ill. Admin Code § 130.2005(g), (n).

Conclusion:

I conclude that TAXPAYER has not shown that it organized and operated exclusively for charitable or educational purposes. Therefore, I recommend the Director finalize the Department's denial of TAXPAYER's application for a tax exemption identification number.

Date

Administrative Law Judge