

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

LOUP VALLEY CHAPTER OF THE)	
IZAACK WALTON LEAGUE OF)	
AMERICA, A Nebraska Nonprofit)	CASE NO. 04E-3
Corporation,)	
)	
Appellant,)	FINDINGS AND FINAL ORDER
)	GRANTING EXEMPTION
vs.)	
)	
BUFFALO COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Filed January 13, 2005

Appearances:

For the Appellant: Norine A. Nielsen
Secretary/Treasurer,
Loup Valley Chapter, Izaak Walton League
P.O. Box 212
Boelus, NE 68820-0212

For the Appellee: Andrew W. Hoffmeister, Esq.
Deputy Buffalo County Attorney
P.O. Box 67
Kearney, NE 68848

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

The Loup Valley Chapter of the Izaak Walton League of America, a Nebraska Nonprofit Corporation ("the Applicant"), owns a 5.92-acre tract of land legally described as Lots 10-17, 21 & 22, Block 3, and all of Block 4, and the South 56.3' of Lot 1, and All of Lots 2-9, Block 5, in Section 11, Township 12, Range 13, Town of St. Michael, Buffalo County, Nebraska. (E13:1). The

tract of land is improved with one 900-square foot building with a 300-square foot porch, both used for Chapter meetings and education, two outhouses, and a detached garage. (E13:2). The structures were built in 1915. (E13:6).

The Applicant filed its 2004 application for exemption on January 15, 2004 and a written request for a waiver of the 2004 exemption application filing deadline as required by Neb. Rev. Stat. §77-202.01 (Reissue 2003). (E1). The Buffalo County Board of Equalization ("the Board") granted the waiver. The Buffalo County Assessor recommended denial of the application. (E1). The Board denied the application on April 29, 2004. (E1).

The Applicant timely appealed that decision to the Commission on May 11, 2004. The Commission served Notice in Lieu of Summons to the Board on May 26, 2004 and on the Property Tax Administrator on the same date. The Board failed to timely file an Answer to that Notice, and an Order to Show Cause issued. Thereafter the Board was allowed to file an Answer out of time.

The Commission issued an Order for Hearing and Notice of Hearing to the Parties on October 25, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties. This Amended Order and Amended Notice of Hearing provided each of the Parties at least ten-day's notice of the hearing as required by Neb. Rev. Stat. §77-202.06 (Reissue 2003).

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on January 13, 2005. The Applicant appeared through Norine A. Nielsen, Secretary/Treasurer of the Loup Valley Chapter of the Izaak League of America. The Board appeared through Andrew W. Hoffmeister, Esq., Deputy Buffalo County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument as required by law. The Parties stipulated that the Applicant is a qualifying organization; that there were no sales of alcoholic beverages on the property; that the Applicant does not discriminate in membership or employment; that the subject property was exempt from real property taxation from tax year 1967 through and including 2002 by action of the Board; and that there was no change in ownership or use between January 1, 2002 and December 31, 2003.

II. ISSUE

The issue before the Commission is whether the Board's decision to deny the requested exemption from real property taxation for tax year 2004 was incorrect and either unreasonable or arbitrary. In order to prevail the Applicant, after the stipulation of the Parties, must demonstrate by clear and

convincing evidence that (1) the subject property is used exclusively for educational, religious, charitable, or cemetery purposes; and (2) that the subject property is not owned or used for financial gain or profit to either the owner or user.

III. APPLICABLE LAW

A. EXEMPTION PROVISIONS GENERALLY

The Nebraska Constitution and state statutes establish the fundamental requirements for a charitable exemption. The Constitution authorizes an exemption only for educational, religious, charitable or cemetery purposes, and only when the property is neither owned nor used for financial gain or profit to either the owner or user. *Art. VIII, Nebraska Constitution, §2(2)*. State law provides a five-part test for determining exemption eligibility. Real property is exempt only when (1) the property is owned by an educational, religious, charitable or cemetery organization; (2) the property is used exclusively for educational, religious, charitable or cemetery purposes; (3) the property is not owned or used for financial gain or profit to either the owner or user; (4) the property is not used for the sale of alcoholic liquors for more than twenty hours per week; and (5) the property is not owned or used by an organization which discriminates in membership or employment based on race,

color, or national origin. Neb. Rev. Stat. §77-202(1)(d) (Reissue 2003).

B.
THE BURDEN OF PROOF

The Commission hears exemption appeals and determines *de novo* all questions raised in the proceedings upon which the order, decision, determination or action is appealed from. Neb. Rev. Stat. §77-5016(7) (2004 Cum. Supp.). The Applicant in this appeal is required to demonstrate by clear and convincing evidence (1) that the decision of the Board was incorrect and (2) that the decision of the Board was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (2004 Cum. Supp.). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Applicant, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's decision to deny the requested exemption was unreasonable. *Pittman v. Sarpy County Bd. of Equal.*, 258 Neb. 390, 398 - 399, 603 N.W.2d 447, 453 - 454 (1999).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The subject property is used among other things for target practice for young people, including Boy Scouts, who are trying to earn their Gun Safety Permits; and for meetings of the Chapter.
2. Twice each year the subject property is used for fund raisers for the Applicant, which net less than \$300 for each event.
3. The funds generated by the fund raisers and member dues are used to pay insurance for the building improvements; electricity; had been used to fund two scholarships for public school students when funds were available; and are used to support the national organization and one of its divisions.

**V.
ANALYSIS**

The Nebraska Supreme Court has established certain principles controlling tax exemptions. First, an exemption is never presumed. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999). Second, the property which is claimed as exempt must clearly come within the provision granting the exemption. *Nebraska State Bar Foundation v.*

Lancaster Cty. Bd. of Equal., 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991). Third, the laws governing property tax exemptions must be strictly construed. *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993). Finally, the term "exclusive use" means the "predominant or primary use." 350 Nebr. Admin. Code, ch. 40, §005.03 (04/2003).

The Applicant alleges that the Board's decision was incorrect, unreasonable and arbitrary in that (1) the subject property is used exclusively for educational and charitable purposes; and (2) the subject property is not used for financial gain or profit to either the owner or user.

A.
QUALIFYING OWNERSHIP AND USE

Real property can qualify for exemption only if (1) the property is owned by a qualifying entity and (2) the property is used for a qualifying purpose. A qualifying entity is one organized for a educational, religious, charitable or cemetery purposes. Neb. Rev. Stat. §77-202(d) (Reissue 2003). A "charitable" organization is defined as one operated exclusively for the purpose of the mental, social or physical benefit of the public or an indefinite number of persons. Neb. Rev. Stat. §77-202(1) (d) (Reissue 2003).

The Constitution and state law authorize an exemption where the property is both owned and used exclusively for educational, religious, charitable or cemetery purposes. Art. VIII, Neb. Const, §2(2). A "charitable organization" is defined as "an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons. . . ." Neb. Rev. Stat. §77-202(1)(d) (Reissue 2003). The statutes do not, however, explicitly define "charitable use." A sensible construction of the section as a whole, however, would result in the same definition of "charitable" which is applied to the term "use" being applied to the "organization" provision. "Charitable use" would therefore be defined as an activity conducted for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons.

The Applicant has as its organization purpose to "conserve, maintain, protect and restore the soil, forest, water, air and other natural resources of the State of Nebraska and of the United States; to promote the means and opportunities for the education of the public with respect to such resources and wholesome utilization thereof; to promote interest in hunting, fishing, and other lawful sports; to aid in the protection of fish, birds and game; to promote the safe handling and proper care of firearms, as well as improved marksmanship, among members and the public." (E14:1).

The Applicant alleges that these uses qualify as a charitable use, that is, the property is used for the mental, social or physical benefit of the public or an indefinite number of persons. The Applicant provided specific examples of uses which comply with its corporate purposes. The Assessor testified that in his opinion the subject property qualified for exemption from real property taxation, and no contrary evidence appears in the record.

B.
OWNED OR USED FOR FINANCIAL GAIN FOR PROFIT

The Applicant adduced the testimony of its Secretary-Treasurer. The officer testified that the balance in the corporate checking account was approximately \$300 as of December 31, 2003. The officer further testified that all of the other income generated was used to pay insurance on the building improvements, national or division dues, and electrical service. There is no evidence that the property has ever been used for financial gain or profit.

C.
CONCLUSION

The Applicant's real property is owned and used for charitable purposes, and the subject property is neither owned nor used for financial gain or profit.

The Applicant has established by clear and convincing evidence that the property is used for a charitable purpose, and further that the subject property is not used for a for-profit purpose. The Board's decision to deny the requested exemption for the subject property for tax year 2004 must accordingly be vacated and reversed.

**VI.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal pursuant to Neb. Rev. Stat. §77-202.04(2003 Supp., as amended by 2004 Neb. Laws, L.B. 973, §8) and Neb. Rev. Stat. §77-5007(2) (2003 Supp.).
2. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. The burden of showing the Board's decision is unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001). *See also Pittman v. Sarpy County Bd. of Equal.*, 258 Neb. 390, 398 - 399, 603 N.W.2d 447, 453 - 454 (1999).

3. Tax exemption provisions are to be strictly construed.
Metropolitan Utilities Dist. of Omaha v. Balka, 252 Neb. 172, 560 N.W.2d 795 (1997).
4. Tax exempt status under the federal Internal Revenue Service Code is not determinative for tax exemption under Nebraska law. *Nebraska State Bar Foundation v. Lancaster County Bd. Of Equal.*, 237 Neb. 1, 10, 465 N.W.2d 111, 118 (1991).
5. The Applicant has the burden of establishing the exemption. *Nebraska State Bar Foundation v. Lancaster County Bd. Of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
6. The property must be used exclusively for religious, educational, charitable, or cemetery purposes. The property need not be used solely for one of the four categories of exempt use, but may be used for a combination of the exempt uses. The term "exclusive use" means the "predominant or primary use." 350 Nebr. Admin. Code, ch. 40, §005.03 (04/2003).
7. The Applicant has established by clear and convincing evidence that the subject property is used exclusively or predominantly for charitable purposes.
8. The Applicant has also established by clear and convincing evidence that the subject property is not used for financial gain or profit.

9. The Buffalo County Board of Equalization's decision to deny the requested exemption for tax year 2004 must accordingly be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Buffalo County Board of Equalization's Order denying the requested exemption for tax year 2004 for the Applicant's real property legally described as Lots 10-17, 21 & 22, Block 3, and all of Block 4, and the South 56.3' of Lot 1, and All of Lots 2-9, Block 5, in Section 11, Township 12, Range 13, Town of St. Michael, Buffalo County, Nebraska, is vacated and reversed.
2. The Applicant's real property is ordered exempt from real property taxation for tax year 2004 and shall be removed from the tax rolls for tax year 2004.
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Buffalo County Treasurer, and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2004 Cum. Supp.).
5. This decision shall only be applicable to tax year 2004.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 13th day of January, 2005. Commissioner Hans abstained from voting as the Board conceded the issues before the Commission. The Findings and Order were however approved and confirmed by Commissioners Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 14th day of January, 2005.

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.