

PT 09-1
Tax Type: Property Tax
Issue: Agricultural Purposes/Use

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

INTERSTATE CENTER, INC.

Applicant

Docket # 07-PT-0016
PIN 13-36-426-007
PIN 13-36-200-019
Tax Year 2006

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Thomas W. O’Neal of Westervelt, Johnson, Nicoll & Keller, LLC, and Jonathan F. Allen of the Illinois Agricultural Association for Interstate Center, Inc.

Synopsis:

Interstate Center, Inc. (“applicant” or “Interstate”) filed an application for a property tax exemption for the year 2006 for two parcels of property located in McLean County. The property serves as the site of the McLean County Fair, and Interstate contends the property qualifies for an exemption pursuant to section 15-85 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) because it is used exclusively by societies for agricultural purposes, and it is not used with a view to profit. The McLean County Board of Review recommended that the exemption be denied, and the Department of

Revenue (“Department”) agreed with that decision. The Department determined that the property is neither owned by an exempt organization nor used for exempt purposes. The applicant timely protested the Department’s decision to deny the exemption, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. In 1921, the McLean County Farm Bureau (“MCFB”) was organized as an Illinois not-for-profit corporation.¹ (App. Ex. #1C, pp. 14, 19)
2. MCFB’s articles of incorporation indicate its purpose includes to “promote the development of the most permanent and profitable systems of agriculture possible for McLean County.” Its bylaws state that MCFB’s Board of Directors has 12 members. (App. Ex. #1C, pp. 15, 22-23)
3. In 1932, the McLean County Fair (“MCF”) was organized as an Illinois not-for-profit corporation. (App. Ex. #1E, p. 48)
4. MCF’s articles of incorporation indicate it was organized “to further agricultural interests and for the display of agricultural products.” Its articles of incorporation state that MCF’s Board of Directors has 5 members.² (App. Ex. #1E, pp. 48-50)

¹ MCFB was incorporated under the Act Concerning Corporations of 1872, which included corporations not for pecuniary profit. Ill.Rev.Stat. ch. 32, ¶159-190 (repealed). MCFB also has adopted the assumed name of McLean County Agricultural Association. (App. Ex. #1C, p. 28)

² The record does not include a copy of MCF’s bylaws; what is referred to in the exhibits as MCF’s bylaws (App. Ex. #1E pp. 53-61) is another copy of MCFB’s bylaws. (See App. Ex. #1C pp. 19-27) MCF and MCFB are separate legal entities. Although the record indicates that MCF’s five Board members are also members of MCFB’s Board, nothing indicates that MCF adopted MCFB’s bylaws as its own.

5. In 1995, MCFB purchased the property at issue; the property has 115.54 total acres. The property was acquired to provide a new site for hosting the McLean County Fair. (Dept. Ex. #1; App. Ex. #1F, pp. 62-65; Tr. p. 19)
6. Parcel 13-36-426-007 (“parcel 7”) has 51.5 acres. Parcel 13-36-200-19 (“parcel 19”) consists of 64.04 acres and is adjacent to parcel 7. During 2006 parcel 19 was reserved for hosting the fair but “was not used for any exempt or non-exempt purpose.” (App. Ex. #1A, pp. 9, 12)
7. There are five buildings on parcel 7; each has one story and no basement. The buildings are the following: Main building (68,400 sq. ft.), Mini Expo building (38,870 sq. ft.), Inline building (22,880 sq. ft.), Barn A (21,600 sq. ft.), Barn B (21,600 sq. ft.), Barn C (19,200 sq. ft.), and Barn D (19,200 sq. ft.). The total square footage of the buildings is 211,750. (Dept. Ex. #1; App. Ex. #1B)
8. MCFB’s administrative offices occupy 1,324 square feet of the Main building. This space is used year round. (App. Ex. #2, p. 183)
9. In October 1996, MCFB organized the applicant as an Illinois for-profit corporation. Interstate is MCFB’s wholly owned subsidiary (MCFB owns all of Interstate’s stock). (App. Ex. #1D, pp. 34-35, 39; Tr. p. 28)
10. In December 1996, MCFB transferred title to the property at issue to Interstate pursuant to a warranty deed. (App. Ex. #1F, pp. 67-69)
11. Interstate’s articles of incorporation indicate its purpose is to “operate a convention/exhibition facility” and transact any and all lawful business for which the corporation may be incorporated under the Illinois Business Corporation Act

of 1983. Its bylaws state that Interstate's Board of Directors has 5 members. (App. Ex. #1D, pp. 34.5, 43)

12. MCFB created Interstate, a for-profit corporation, to protect MCFB's not-for-profit status. In the event that Interstate made money, MCFB did not want to lose its 501(c)(5) designation with the Internal Revenue Service. (Tr. pp. 31-33, 59-60, 69-70)
13. All members of Interstate's Board are also members of MCFB's Board and MCF's Board. (App. Ex. #1K, p. 144; Tr. p. 28)
14. Interstate's General Manager is also the manager for MCFB and MCF. (Tr. pp. 12-13)
15. Interstate's line of credit is borrowed from MCFB. The line of credit has no scheduled repayment date for the principal. Interstate relies solely on MCFB for its borrowing needs. (App. Ex. #1K, pp. 144-145)
16. The draft copy of Interstate's audit report for fiscal year ending November 30, 2006 shows Interstate had a current note payable to MCFB in the amount of \$909,400, and a long-term note payable to MCFB in the amount of \$2,554,753.³ (App. Ex. #1K, p. 135; Tr. pp. 55-56)
17. The applicant leases portions of parcel 7 to various organizations; one of the leases allows MCF to conduct the annual McLean County Fair on the property. Other organizations use the property on a short-term basis for activities such as

³ Interstate provided a copy of its audited financial statements for the fiscal year ending November 30, 2005 (App. Ex. #1K, pp. 136-157), and this audit report was dated January 17, 2006. (App. Ex. #1K, p. 138) For the fiscal year ending November 30, 2006, however, Interstate provided an audit report that indicated on each page "Draft Copy – Subject to Final Review." (App. Ex. #1K, pp. 130-135) Interstate's General Manager testified that the draft copy became the final report (Tr. p. 43), but the draft copy does not include Notes, which in the previous year's audit report were considered an integral part of the financial statements. (App. Ex. #1K, pp. 142) Interstate did not explain why a final copy was not provided at hearing.

livestock sales and shows, conferences, wedding receptions, private parties, and trade shows. (App. Ex. #1A, p. 10; Ex. #1I, pp. 87-93; Ex. #2)

18. The lease agreement with MCF is for the use of the entire fairgrounds, including the buildings, for the purpose of conducting the fair. The lease covers a period of 14 days (the last seven days of July and the first seven days of August) each year beginning in 1997 and ending in 2017. The lease agreement indicates that MCF agrees to pay \$45,000 annually for the use of the space. (App. Ex. #1I, pp. 87-93)
19. During 2006, the Third Sunday Market leased portions of the property from May through October for the purpose of hosting a market on the third Sunday to sell antiques, collectibles, and crafts to consumers. (App. Ex. #1I, pp. 100-114; #2)
20. During 2006, an in-line hockey league leased the Inline Building to host league practices and games. (App. Ex. #1I, pp. 115-119; #2)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. Ill. Const. 1970, Art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-85 of the Property Tax Code, which provides as follows:

Agricultural or horticultural societies. All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt. 35 ILCS 200/15-85.

In order to qualify for the exemption under section 15-85, two criteria must be met: (1) the property must be used exclusively by societies for agricultural or horticultural purposes and (2) the property cannot be used with a view to profit. The term “exclusively” refers to the primary purpose for which the property is used. Grundy County Agricultural District Fair, Inc. v. Department of Revenue, 346 Ill. App. 3d 1075, 1078-1079 (3rd Dist. 2004).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 288-289 (2004). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996).

Interstate indicated that parcel 19 was reserved for hosting the fair; however it “was not used for any exempt or non-exempt purpose in 2006.” (App. Ex. #1A, p. 12) In order for property to be exempt, the applicant must have actually used it for an exempt purpose. In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court found that even though property is acquired for an exempt purpose, the exemption is not warranted unless the applicant proves the property was actually used for that purpose. “Intention to use is not the equivalent of use.” Skil at 252; see also Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994) (failure to put property to any use requires denial of exemption); Antioch

Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption). Because parcel 19 was not used for any purpose during 2006, it is not entitled to an exemption.

With respect to parcel 7, a partial exemption may be allowed if an “identifiable portion” of the property is used for an exempt purpose. See Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66 (1971). During the entire year of 2006, MCFB’s administrative offices occupied 1,324 square feet of the Main building. MCFB is an agricultural society, and administrative offices have been found to be exempt on the basis that they are reasonably necessary for the accomplishment and fulfillment of exempt purposes. See Evangelical Hospital Association v. Novak, 125 Ill. App. 3d 439, 442-443 (2nd Dist. 1984). This portion of the property, therefore, is used by a society for agricultural purposes.

In order for this portion of the property to be exempt, however, Interstate must also show that it is not used with a view to profit. The oral testimony indicated there is a written agreement between Interstate and MCFB that allows MCFB to provide computer support and bookkeeping services to Interstate in lieu of paying rent. (Tr. pp. 38, 69) Interstate did not offer a copy of the written agreement into evidence.

As mentioned previously, Interstate must prove clearly and convincingly that it is entitled to the exemption. Eden Retirement, *supra*. Exemption provisions are strictly construed and all debatable questions are resolved in favor of taxation. *Id.* Because the written agreement between Interstate and MCFB concerning the use of this portion of the

property was not provided, the evidence is not clear and convincing that this portion of the property is used without a view to profit.

Agricultural Use by Societies

For the remaining portion of parcel 7, it first must be determined whether the property was used by societies primarily for agricultural purposes. In Grundy County, *supra*, the court stated that an analysis of the primary use of the property for agricultural purposes must include the following factors: (1) whether non-exempt uses directly and substantially support the exempt uses, (2) the amount of time the property is used for exempt purposes, (3) the percentage of the property used for exempt purposes, and (4) the percentage of total visitors who use the property for exempt purposes. *Id.* at 1079. All of these factors must be weighed together to determine whether the property's primary use is agricultural. *Id.*

Based on invoices that were issued to its customers, Interstate prepared a list of every organization that used the property during 2006. Interstate first separated the organizations on the invoices into four categories: (1) Exempt, which includes events by organizations that Interstate believes are directly related to the production of agriculture and farming; (2) Not-for-Profits, which includes organizations that have not-for-profit status under sections 501(c)(3), (4), (5), or (6) of the Internal Revenue Code;⁴ (3) Government, which includes organizations that provided governmental services to the public; and (4) Non-Exempt, which includes the remaining organizations (i.e., those that are for-profit). (App. Ex. #2; Tr. pp. 34, 38-40)

⁴ Interstate indicated that it asked its customers to provide documentation to support their status. For those that did not provide documents, Interstate stated that it verified their status through the internet. (Tr. pp. 39-40)

In addition to separating the organizations into four categories, for each event the applicant's list shows information about the event in accordance with the Grundy County factors: the total amount of money received from the organization for the activity on the property, the number of days the property was used by the organization for the activity (including days that were necessary to set-up or take things down), the square footage that was used for the activity (including indoor and outdoor space),⁵ and the number of people who attended the event. Interstate summarized its list as follows:

<u>Event</u>	<u>Gross income</u>	<u>Days used</u>	<u>Sq. Ft. used</u>	<u>Attendance</u>
Exempt	\$ 162,373 (12%)	438 ⁶ (38%)	4,607,070 (18%)	46,889 (22%)
Not for Profits	\$ 483,394 (34%)	395 (34%)	9,053,587 (35%)	74,536 (34%)
Government	\$ 122,430 (9%)	33 (3%)	440,850 (2%)	6,368 (3%)
<u>Non-Exempt</u>	<u>\$ 637,243 (45%)</u>	<u>287 (25%)</u>	<u>11,523,047 (45%)</u>	<u>88,760 (41%)</u>
Totals	\$ 1,405,440	1,153	25,624,554	216,553

Even though the list contains a summary of the use in accordance with the Grundy County factors, Interstate contends that simplistically applying those factors to the present case can create misleading results. For example, Interstate states that comparing square footage used for exempt and non-exempt purposes is important when the exempt and non-exempt uses take place in separate and defined areas, but the utility of this factor is diminished when, as on this property, exempt and non-exempt activities take place in

⁵ If the event occupied the space for more than one day, the square footage was multiplied by the number of days used. (Tr. pp. 46-47)

⁶ This number includes the 365 days that MCFB used a portion of the Main building for its administrative offices. (App. Ex. #2, p. 183) Interstate's list does not show income from this event because MCFB provides computer support and bookkeeping services in lieu of rent. (Tr. p. 69)

the same areas on different days. In addition, the size of the event in terms of square feet is often not indicative of the intensity of the use. For example, over 40% of the square footage included in the non-exempt category consists of a large section of the parking lot that was used for “semi-driving schools” a few times per year.⁷ (App. Brief p. 5) The driving schools involved approximately 100 unique visitors and generated less than \$7,500 in revenue, which indicates that although this activity greatly impacted the square footage analysis, the use was very low intensity.

Interstate’s concerns are valid, and they highlight the importance of weighing all of the factors together rather than focusing on just one. As Interstate indicates, focusing solely on the square footage would be misleading. Interstate’s example concerning the driving school illustrates the significance of considering the number of visitors and the amount of revenue in addition to the square footage. The other example concerning the exempt and non-exempt activities demonstrates the need to also consider the number of days the property is used. Because Interstate’s analysis shows the total number of days that the property was used during the year as 1,153, which is much larger than 365 (the number of days in one year), the analysis takes into account the fact that exempt and non-exempt activities take place in the same areas on different days. The analysis also takes this into consideration by counting the square footage for every use. When an activity took place on more than one day, Interstate multiplied the square footage used for the event by the number of days that the activity took place. The analysis shows the total square footage as 25,624,554, which is more than 588 acres and more than the actual size of the property.

⁷ The definition of “semi-driving school” is not in the record, but considering the large amount of space used, it is apparently a school for learning how to drive semi-trucks.

Before relying on Interstate's summary, it must be emphasized that the invoices used to prepare the list were not included in the record, and there was no underlying documentation to support the classification of the organizations and the uses of the property. It is not clear that the first category titled "Exempt" includes only agricultural uses by societies. See e.g., People ex rel. Lloyd v. University of Illinois, 357 Ill. 369, 378 (1934) (state university is not a "society" within the meaning of the exemption). The remaining three categories titled "Not-for-Profits," "Government," and "Non-Exempt" are for uses that would not qualify the property for the exemption. The exemption requires use by societies for agricultural purposes, but Interstate has failed to establish that the use in these three categories meets this requirement.

Even if it is assumed that the applicant's categorization of the exempt activity during 2006 is accurate, the summary shows that the exempt use was not the primary use of the property. The exempt use was less than 50% for all of the factors shown on the summary. The one category with the highest percentage of exempt use is the days that it was used, but if the 365 days used by MCFB for its offices is removed from that number (because that portion is clearly used by a society for agricultural purposes), then the remainder of the property was used only 73 days for exempt purposes.

Moreover, the first factor listed in Grundy County, *supra*, must also be considered. This factor is whether the non-exempt use directly and substantially supports the exempt use. Interstate believes it clearly meets this factor because it hosts the events on the property in order to offset the operating expenses of the annual McLean County Fair. Interstate points out that its summary shows it received income of approximately \$162,000 from exempt events and \$637,000 from non-exempt events, and its audit report

for the fiscal year ending November 30, 2006 shows a loss of \$688,894. Interstate claims the fair had a loss for the year, and Interstate's events offset that loss.

Despite Interstate's averments, the record does not show that Interstate's income is used to directly and substantially support the fair. Although all three entities in this case share the same Board of Directors, they are three distinct legal entities. Each corporation is a separate legal entity, and having the same officers or directors does not warrant disregarding the corporate entity. Superior Coal Company v. Department of Finance, 377 Ill. 282, 289-290 (1941); Lombard Public Facilities Corporation v. Department of Revenue, 378 Ill. App. 3d 921, 933 (2nd Dist. 2008). Neither MCF's nor MCFB's financial statements, however, were offered into evidence. During the General Manager's direct testimony, he was asked whether MCF, as an organization, had a profit during 2006, and his response was, "On paper, no. In cash, yes." (Tr. pp. 47-48) He was later asked whether MCFB has needed to borrow funds, and the response was "No." (Tr. p. 53) This was the only testimony regarding their financial status, and no documentary evidence was provided. The only financial document in evidence for the year in question is the draft copy of Interstate's audit report, which shows that Interstate received income from MCF in the amount of \$93,894. (App. Ex. #1K, p. 132) The same report shows Interstate's expense for MCF to be zero. *Id.* In one of the notes to the audit report for the fiscal year ending November 30, 2005, it states in part as follows:

The Fair leases property from [Interstate] in order to conduct the county fair. During the year ended November 30, 1997, the Fair transferred assets in the amount of \$887,876 to [Interstate] in exchange for a 20-year lease. The lease income is recognized on a straight-line basis over the life of the lease. The Fair also reimbursed [Interstate] for labor costs of \$48,028 and \$25,000 during the years ended November 30, 2005 and 2004 respectively. (App. Ex. #1K, p. 144)

The audit report also indicates that Interstate receives financial support from MCFB, but nothing demonstrates that Interstate's income is used to cover the cost of the fair. Interstate has not established that the non-exempt use directly and substantially supports the exempt use, and it has not established that the property is primarily used by societies for agricultural purposes.

View to Profit

Even if the applicant established that under the Grundy County factors the property was used primarily by societies for agricultural purposes, in order to receive the exemption it must also show that the property was not used "with a view to profit." With respect to this element of the exemption, Interstate contends that Justice Holdridge's argument in his dissent in Grundy County, *supra*, should be adopted. In his dissent, he states that the "record is clear that all funds raised by renting out the fair grounds were used to offset the operating expenses of the annual agricultural fair." *Id.* at 1082. He then cites In re Application of County Treasurer of Winnebago County, 52 Ill. App. 3d 718, 720 (2nd Dist. 1977) for the proposition that funds that are raised to meet necessary operating expenses of an agricultural or horticultural society will not defeat that society's tax exempt status. *Id.* Justice Holdridge disagreed with the argument that the Winnebago County case did not apply because the statutory language has changed since that decision.⁸ Interstate encourages this tribunal to adopt Justice Holdridge's view and conclude that the primary purpose of the property is to host an agricultural fair, which

⁸ In Winnebago County, the applicable statute was the Revenue Act of 1939, which allowed an exemption for property used by agricultural societies if it was not used "for pecuniary profit." Ill. Rev. Stat. Ch. 120, par. 500.10 (West 1975). The current version of the statute uses the phrase "not used with a view to profit." 35 ILC 200/15-85.

qualifies for an exempt use, and the other activities are conducted to offset a portion of the operating expenses of that exempt use.

Interstate also points out that the reason it was organized as a for-profit entity is because MCFB envisioned hosting events on the property, and MCFB wanted to prevent these activities from impacting its tax-exempt status. (App. Brief p. 3) Interstate claims that MCFB did not acquire the property with the intention of making a profit; a projected income analysis completed at the time of purchase indicated that it would not be profitable in the foreseeable future. The offered financial statements show a loss of \$688,894 for the fiscal year ending November 30, 2006, and this was an increase of \$107,177 from the loss for fiscal 2005. Interstate believes that part of the reason why it has not operated the property at a profit is because it gives preferential rental rates to agricultural interests and not-for-profit organizations. Interstate indicated that its event manager has the discretion to lower the rate charged to the exempt, not-for-profits, and government organizations. (Tr. pp. 64-66, 70-71) Interstate also indicated that every three to six months it does an inventory of the rates charged at the other facilities in town, and because it does not have an “excellent facility on the exterior,” it keeps its rates below market in order to get customers in the door. (Tr. p. 67) Moreover, MCFB funds Interstate’s operating shortfall through a line of credit, and MCFB does not require Interstate to make principal or interest payments. Interstate claims there is no evidence that it has ever intended to earn a profit.

Unlike the record in Grundy County, *supra*, the record in the present case does not show that all the funds that were raised by renting out the fair grounds were used to offset the operating expenses of the annual fair. As previously mentioned, Interstate did

not provide documentation to support this contention. Justice Holdridge's reasoning, therefore, would not apply to this case.

Even if the record supported the conclusion that the funds were used to offset the operating expenses, under the current statutory provision, the exemption would not be warranted. The current statutory language, "not used with a view to profit," is similar to language in the other exemption sections, such as the charitable exemption. See 35 ILCS 200/15-65 ("not leased or otherwise used with a view to profit"). While the current statutory language for the agricultural exemption is different than the language that was used in the Revenue Act of 1939, the current statutory language for the charitable exemption is not different. The charitable exemption section under the Revenue Act of 1939 had the same language as the current charitable exemption section. When determining whether property is not leased or otherwise used with a view to profit, courts have found that it is immaterial whether the owner actually makes a profit or sustains a loss. Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144 (1934); Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497, 500 (1st Dist. 1983). Also, the fact that the money may be used to serve the applicant's exempt purposes does not automatically entitle the property to an exemption. Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2nd Dist. 1988). It is the use to which the property is devoted, not how the money is used, that determines whether the property is used with a view to profit. Salvation Army, *supra*.

In the present case, when MCFB, a not-for-profit corporation, decided to lease the property in question, it organized a for-profit corporation in order to protect its tax-exempt status in the event that the leasing of the property made money. Although

Interstate claims there was no intention to profit, the potential for making a profit is the very reason why Interstate was organized. Interstate's principal business is to operate a convention and exhibition facility (App. Ex. #1K, p. 143), and its purpose is to lease the property in order to generate income. Interstate sets its rent below the market rate in order to attract customers to rent the property without regard to any agricultural use. If the primary purpose is to generate income from the property, then under Salvation Army, which interpreted statutory language that is similar to the current version of the agricultural exemption, it is used with a view to profit.

It must be reiterated that Interstate has the burden of proving its right to the exemption, and the evidence must be clear and convincing. Eden Retirement, *supra*. All facts are to be construed and all debatable questions resolved in favor of taxation. *Id.* Because Interstate has failed to prove by clear and convincing evidence that the property is primarily used by societies for agricultural purposes and that it is used without a view to profit, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to the exemption.

Linda Olivero
Administrative Law Judge

Enter: October 23, 2008