

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CHERRY CREEK GUN CLUB INC.,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINSTRATOR</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas N. Scheffel, Esq. Thomas N. Scheffel & Associates, P.C.</p> <p>Address: 3801 East Florida Avenue, Suite 600 Denver, Colorado 80210</p> <p>Phone Number: (303) 759-5937</p> <p>E-mail: tscheffel@tnslaw.com</p> <p>Attorney Reg. No.: 7869</p> <p>And</p> <p>Name: Robert A. Lees, Esq. Robert A. Lees & Associates</p> <p>Address: 7437 Village Square Drive, Suite 210 Castle Pines, Colorado 80108</p> <p>Phone Number: (303) 292-1020</p> <p>E-mail: ral@robertalees.com</p> <p>Attorney Reg. No.: 8369</p>	<p>Docket Number: 41189</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 12, 2004, Rebecca Hawkins and Karen E. Hart presiding. Petitioner was represented by Thomas N. Scheffel, Esq. and Robert A. Lees, Esq. Respondent was represented by Larry A. Williams, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1300 and 1310 South Clinton Street, Denver, Colorado
(Division of Property Taxation File Nos. 03-01619-01 and 03-01619-02)**

Petitioner is protesting Respondent's denial of property tax exemption for the subject property for tax years 2001 and 2002. Petitioner owns and operates a non-profit gun club and is therefore exempt from Federal Income Tax. The Club promotes and provides education on the safe use and handling of small firearms, encourages lawful ownership and promotes the recreational aspect of small arms through lectures and educational programs. The Club is organized for recreational purposes as well as to support and develop amateur athletes for participation in local, state, national and international competitions.

ISSUES:

Petitioner:

The Cherry Creek Gun Club, Inc. (the Club) at 1310 South Clinton Street has been exempt from taxation since January 1, 1990. The Club applied for tax exemption for an adjoining vacant parcel of land at 1300 South Clinton Street. The Division of Property Taxation (DPT) denied the application and recommended that the exemption for 1310 South Clinton Street be revoked effective January 1, 2001. Petitioner contends that DPT misinterpreted the requirements of the amateur sports statute and believes that the subject property qualifies for exemption under C.R.S. 39-3-108(1.3)

Respondent:

Respondent contends that the DPT reviewed the initial application of Cherry Creek Gun Club, Inc. pursuant to C.R.S. 39-3-108 1.3 and determined that they did not meet requirements as set forth in the statute. When the statute is read in its entirety, it is clear that the subject property does not qualify for tax exemption. Further, there is a question as to whether the activities of the Club are charitable.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Donald Shearer, President of Cherry Creek Gun Club, testified that the Club began in the 1940's and was incorporated in 1987. The Club exists for many reasons, one of which is to foster training and safe gun handling and competition. Further descriptions of the Club's purpose are contained in the Articles of Incorporation shown in Petitioner's Exhibit 6.

2. Mr. Shearer testified regarding the numerous activities and organized competitions available at the Club. Activities are comprised of formal programs, tournaments involving the National Rifle Association and regional and state amateur competitive tournaments. The remaining activities include open practice sessions to develop skills and prepare members for formal competition. He explained that some competitions are in the form of league shooting, along the lines of the National Rifle Association national match format and are scored on points tabulated over the shooting season. Mr. Shearer described eight activities as follows:

Pistol Winter League: allows members to train and compete

Action Shooting: allows members to train and compete

Small-bore Winter League: allows shooters to train in competitive atmosphere

Junior Shooter Development Program/Practice: open to ages 8 to 20

NRA Conventional Pistol Tournaments: offered monthly during the season

Other Tournaments: offered during the shooting season on a rotating basis

High Power Rifle Range: a 100-yard rifle range used for competitive shooting

Open Practice Sessions: pistol and rifle ranges are available at certain times

3. Mr. Shearer testified that the Club operates four programs that are designed specifically to prepare the participants for amateur shooting competitions. They host two types of competitive events on a recurring basis, they maintain facilities for members to accomplish load development and gun sight testing for each competitive event. The Club also allows each member the opportunity to practice based on the individual training regimen.

4. Mr. Shearer testified that the Club is non-profit; none of the profits flow to individual members. The Club is not open to the general public but members may bring guests and the public may watch competitions. The Club incurs costs to operate and members pay yearly dues. Guests are allowed but may only visit six times per year. Mr. Shearer testified that the Club has an excellent safety record and has never had an accident.

5. Mr. Shearer testified that the education provided by the Club is done on a one-on-one basis. Coaches manage the programs and provide instruction on form and mental approach. Mr. Shearer testified that the purpose of the Club in 2001 and 2002 was to foster training in shooting sports and to provide a mechanism for individuals to compete on an interclub level, state level and beyond. The Club requires its members to also be members of the National Rifle Association (NRA). The NRA is the national sanctioning body for competition. Competitions include club

level, rotating matches with other clubs, statewide competitions and national events including Camp Perry. Camp Perry involves shooters from all over the United States and includes competitions with long-range rifles, shotguns and pistols.

6. Mr. Shearer testified that the fees for membership include a \$100 initiation fee, a \$100 annual fee and a \$50 refundable work bond. The member either forfeits the \$50.00 bond or performs maintenance duties throughout the Club and receives a refund. Other memberships are available: people who have been members for more than 15 years pay reduced fees and members over age 65 receive free life memberships after performing a meritory service.

7. Mr. Shearer testified that members of the public cannot compete if they are not a member of the Cherry Creek Gun Club or another club. Approximately 15 to 20 members participate in the Monday night league; during the course of a year about 50 members are involved. He estimates that approximately 15 members compete in regional competition. He estimates that 150 out of 500 members were involved in competition during 2001 and 2002. Any new members must be approved by a vote of the Board of Directors.

8. Under cross-examination, Mr. Shearer testified that the Club is open 24 hours a day, seven days a week. He testified that the Club does not provide funds for participation in competitions. Participants pay their own way.

9. In redirect testimony, Mr. Shearer testified that 24-hour access to the Club is provided by identification card and that an adult must accompany junior members. The program for Boy Scouts was formally adopted in 2003, but an informal program was offered prior to that. A Boy Scout may be a junior member and not participate in the Junior Program. He can participate in league competition.

10. In response to questions from the Board, Mr. Shearer testified that instruction is available during organized league activities and by appointment. Leagues have been in place for a number of years.

11. After further questioning, Mr. Shearer testified that, other than having reduced fees for long-standing members or members over age 65, they do not have a sliding fee scale or reduced fee. The Wheeling Sportsman member may waive the work bond. The number of participants varies based on the night of the week and the specific event. During 2000, the Club had approximately 350 members. In 2001, the Club had between 400 and 425 members, with approximately 150 participating in competition. Membership is currently approaching 500.

12. Petitioner's witness, Mr. Gil Sharp, is a member of the Wheelin' Sportsmen, a nationally known program that helps people with disabilities enjoy the outdoors. Mr. Sharp testified that the Club provides him accessibility and training to shoot safely. The benefits to the disabled shooter include training, support, education and the opportunity to safely handle firearms. It is more difficult to handle firearms in a wheelchair than when standing. The instructors are available to help make shooting safer.

13. Under cross-examination, Mr. Sharp testified that the Boy Scout program began in

2003. It took quite a while to organize the program and it may have started in 2002. The boys are not required to move forward to other competitions. They also have a non-competitive program available.

14. In redirect testimony, Mr. Sharp testified that the number of boys involved in the Boy Scout program varies from as few as two or three to as many as eight or nine.

15. Petitioner's witness, Mr. William E. Bierbach, the head of the Boy Scout program at the Club, testified that the purpose of this program is to introduce young people to shooting sports and competition. Mr. Bierbach is a retired police officer with military experience and is also on the Board of Directors. A certified instructor is always present with a Boy Scout. The program does not have any written structure and badges are not provided. He described how juniors also participate in the Junior Olympic Rifle Competition, a national match open to anyone.

16. Mr. Bierbach testified that the instructors use the standard promoted by the National Rifle Association. The instructors are certified through the National Rifle Association. The National Rifle Association is recognized nationally for certifying instructors and is the standard by which everybody is graded. Instructors must be certified for liability reasons. The National Rifle Association must sponsor the Club and all members must also be members of National Rifle Association. Boy Scouts do not have to be members of the Club to participate in the program. The National Rifle Association has extensive youth programs, classifications and competitions for juniors.

17. Petitioner's witness, Mr. Dennis Fluman, further described the Junior Program. Participants must have a good attention span and be able to follow instructions. The juniors are first shown a film on marksmanship and safe gun handling. Mr. Fluman usually has 18 to 19 boys each week. The program does not have any written structure and no one is pushed to move to a higher level. Classes are held throughout the week with instruction on both a .22 rifle and an air rifle.

18. Mr. Fluman testified that the only purpose of the program is to train for competition. They follow the National Rifle Association's national standards for classification and competitions so all levels can compete. Where they start within the program depends on the junior's size, age and experience level. Colleges do give scholarships and grades are of the utmost importance. College coaches are always concerned about grades. In the past, some junior teams won in their class several times and five received college scholarships. Plans are to continue the Junior Program in the future. A junior leaves the program when he or she turns 21.

19. Under cross-examination, Mr. Fluman testified that approximately 50% of the junior participants are members of the Club. The Bylaws do not apply to the Junior Program. The number of junior participants changes constantly but he estimated that more than 25 attended last year. Mr. Fluman explained that if a junior's parents are members, they may meet with a coach or shoot at any time. If the parent is a non-member, the junior may only shoot on certain nights or can meet coaches for additional instruction.

20. In redirect testimony, Mr. Fluman testified that the juniors participate in numerous national events, as well as the Junior Olympic Rifle Competition. The national matches are open to

anyone. He does not know for sure how many juniors are enrolled in the program but thinks it could be close to 50.

21. During questions from the Board, Mr. Fluman testified that the matches are held annually; however, some juniors do not have an interest in traveling. Junior participants pay their own expenses and the parents are required to get the participants to the match. The Club furnishes rifles, scopes and gloves for juniors at the entry level. As the junior advances, the Club recommends to the parents that they purchase their own equipment. The Club always furnishes ammunition unless a participant brings their own.

22. Petitioner is requesting a property tax exemption for the subject property for tax years 2001 and 2002.

23. Respondent's witness, Mr. Stanley Gueldenzopf, Manager of the exemption section of the Division of Property Taxation, testified regarding the Division's denial of exempt status for the subject property. Before finalizing a decision, he reviews all relevant information, the data provided by the taxpayer, and any earlier decisions that may apply. Mr. Gueldenzopf considered additional information sent by Petitioner and determined that the Cherry Creek Gun Club did not qualify for exemption. He based his decision on the fact that the Club is not operated primarily to support amateur athletes, but is more for local members. While some advance to national and international competitions, this is not the primary purpose of the Club.

24. Mr. Gueldenzopf testified that he reviewed the Club's Articles of Incorporation and Bylaws in making this determination. He considered the Internal Revenue Service designation as it gives him another opinion and helps to determine if the Club is charitable. The IRS classification is important but not a controlling factor. He further testified that the Club does not have a structured program to develop amateur athletics for competition. Mr. Gueldenzopf explained that any information presented after the final decision dated February 2003 was rendered was not considered. At that time there was no evidence of the programs with the Boy Scouts, Craig Hospital or the disabled. Mr. Gueldenzopf testified that he has not heard anything during this hearing that would change his mind regarding his decision. The organization is not primarily about national and international competitions.

25. Under cross-examination, Mr. Gueldenzopf testified that he relies on his staff for recommendations and takes the type of organization into consideration when making a final decision. He explained that the phrase "non-profit" is not important in this case. Almost all exempt organizations are non-profit under 501 (c). Mr. Gueldenzopf and his staff questioned whether the Club is charitable and/or meets the requirements of the amateur sports statute. They reviewed the distinction between non-profit and charitable. The bulk of the use of the property is for local member competitions. C.R.S. 39-3-108 states that in order to be qualified as an amateur sports organization, the organization must be "... organized and operated primarily to support and develop amateur athletes for national or international competition in sports. ..." Per the Club's Bylaws, their objectives deal with education in handling firearms, safety issues, as well as to "promote social welfare and public defense." The Bylaws do not address that the Club is organized and operated primarily to support and develop amateur athletes for national or international competitions.

26. Upon redirect, Mr. Gueldenzopf testified that, when applying C.R.S. 39-3-108, the entire statute must be read as a whole; taking just parts of the text is not applicable. He testified that no evidence was provided to support that the Club's primary purpose is to support amateur athletes.

27. In response to questions from the Board, Mr. Gueldenzopf testified that the Club does not meet the requirements set forth in C.R.S. 39-3-108(1.3). He explained that nothing changed in the statute or in the status of the Club. Mr. Gueldenzopf testified that the reason for revoking the exemption was due to a review of the Club's activities and the requirements of the statute. The review was triggered by the Club's application for exemption on the vacant parcel next door. He believes that the Club's lack of national and international competition poses a problem in terms of meeting the statutory requirements. Mr. Gueldenzopf does not think the Club meets the requirements of the statute since the organization is not "primarily" operated to support and develop amateur athletes, or operated "exclusively" to foster competitions at various levels.

CONCLUSIONS:

1. At issue in this Appeal is whether or not Petitioner meets the requirements of C.R.S. 39-3-108 (1.3):

"Nonresidential property that is owned and used solely and exclusively by a qualified amateur sports organization shall be presumed to be owned and used solely and exclusively for strictly charitable purposes. For purposes of this subsection (1.3), the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster local, statewide, national, or international amateur sports competition if such organization is also organized and operated primarily to support and develop amateur athletes for national or international competition in sports; except that no part of the net earnings of such organization inure to the benefit of any private shareholder or individual. So long as a qualified amateur sports organization demonstrates that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in such sport or to any amateur sports organization that conducts programs in such sport, or both, the organization shall be presumed to provide public benefits to an indefinite number of persons and to directly benefit the people of Colorado whether or not the right to benefit may depend upon voluntary membership in the organization."

2. The testimony and evidence presented described a facility that is used primarily for the recreational enjoyment of its members.

3. While the Board agrees that the programs offered by the Club foster all levels of competition, the low percentage of members that participate in competitive events does not substantiate the meaning of “organized and operated exclusively to foster local, statewide, national or international amateur sports competition.” While the Club has demonstrated it is open to any individual, it has not demonstrated that a predominate percentage of its members are amateur athletes or active officials in the sport of competitive shooting.

4. The Board interpreted the language from C.R.S. 39-3-108 (1.3) “. . . organized and operated primarily to support and develop amateur athletes. . .” to require a more dedicated use than what was exhibited by Cherry Creek Gun Club. According to the Club’s revised Bylaws dated May 1992, the objectives of the Cherry Creek Gun Club, Inc. are silent as to the support and development of amateur athletes, to wit:

"In accordance with and in addition to the purposes as set forth in the original charter, the objectives of this Club are to promote social welfare and public defense, safety, law and order, and the National Defense; to educate and train citizens of good repute in the safe and efficient handling of small arms, to increase the knowledge of small arms, and to promote efficiency in the use of small arms on the part of members of law enforcement agencies, the Armed Forces, and of citizens who would be subject to military service in the event of armed conflict; encourage in general the lawful ownership and use of small arms by citizens of good repute; and to forward the development of those characteristics of honesty, good fellowship, self-discipline, team play and self-reliance which are the essentials of good sportsmanship and the foundation of true patriotism.”

According to the testimony, the original purpose of the Club as stated in the Bylaws has not changed.

5. The Board recognizes Petitioner was granted a property tax exemption in 1990; however, the Board maintains that sufficient evidence was presented to support the revocation of exemption.

6. After careful consideration of all of the evidence and testimony presented, the Board finds that the subject property does not meet the statutory requirements for property tax exemption.

ORDER:

The petition is denied.

APPEAL:

If the above decision of the Board is against the Petitioner, the Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado Appellate Rules and the provisions of C.R.S. 24-4-106 (11). If the above decision of the Board is against the Respondent, the Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado Appellate Rules and the provisions of C.R.S. 24-4-106 (11).

DATED and MAILED this 13th day of April, 2004.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Rebecca Hawkins
Rebecca A. Hawkins

This decision was put on the record

APR 13 2004

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal
Penny S. Lowenthal

