

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WESTERN STOCK SHOW ASSOCIATION,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 44910</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 4, 2007, Diane M. DeVries and Karen E. Hart presiding. Petitioner was represented by Adam Chase, Esq. Respondent was represented by Robert Dodd, Esq. Petitioner protested Respondent’s denial of property tax exemption for tax year 2003 forward for the subject personal property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

4655 Humboldt Street, Denver, Colorado

The subject property consists of personal property located at 4655 Humboldt Street.

ISSUES:

Petitioner:

Petitioner contends that it, The Western Stock Show Association (“WSSA”), is a charity which operates to provide charitable gifts to an indefinite number of persons through youth and adult education, and lessening the burdens of government. WSSA’s mission is to preserve western heritage and values as a living museum. WSSA believes that its mission goes to the roots of Colorado as a farming and ranching state. Petitioner contends it is an educational and charitable organization which does not primarily engage in marketing

commercial activities. Fundraising activities, such as sales of commercial booth space, do not detract from that purpose.

Respondent:

Respondent contends that WSSA's primary objective is the promotion of agribusiness in Colorado and western states. Its primary purpose is not charitable, but rather is promotion and marketing. The overwhelming majority of National Western Stock Show, Rodeo and Horse Show ("Stock Show") participants are there to display and promote their business, and do not participate for education purposes. They come to find leads, sell livestock, and celebrate western business. Respondent contends WSSA is a market based organization, not charitable. It is a forum for agribusiness.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Petitioner owns 95 acres of land north of Interstate 70; the City and County of Denver owns the buildings on this land. All of the property used by Petitioner south of Interstate 70, land and buildings, belongs to the City and County of Denver. The buildings owned by the City and County of Denver are leased for \$1.00 to Petitioner for a 50-year period, ending in 2040. The buildings revert to Petitioner at the end of the lease. Petitioner must pay for all of the costs of maintenance, operation, and improvements. There is about 615,000 square feet of net rentable space. Only personal property owned by Petitioner is at issue in this appeal.

2. Petitioner has IRS 501(c)(3) status, and is required to file IRS forms 990 and 990T. Petitioner is a not-for-profit entity that is exempt from federal income taxes and Colorado sales taxes. However, it does pay federal and state income taxes on its unrelated business income.

3. WSSA has been in existence since 1906. Their articles of incorporation were filed in 1928. The stated objectives (in pertinent part) were as follows:

To hold exhibitions of live stock and of the products thereof, and of products and appliances necessary or useful in the breeding, feeding, care and fattening and improving of live stock; to arrange for and give premiums, prizes, diplomas and the like in furtherance of each exhibition or show; to encourage and promote the live stock industry among the members of this association in particular, and generally in the western states and territories; to promote and encourage the improvement and better breeding of live stock and the feeding and care thereof; to forward the interests of the Denver live stock market This corporation is formed to continue the existence, and to carry out the objects and purposes, of The Western Stock Show Association, a corporation organized under the laws of the state of Colorado on the 12th day of March, 1906.

Respondent's Exhibit 1 at 29-30.

4. The objectives were amended in 1959 to read (in pertinent part):

1. To sponsor, produce and present agricultural fairs for the exhibition of farm produce, livestock, poultry, flowers and the like for the promotion and advancement of livestock or agriculture.
2. To hold exhibitions of livestock and of the products thereof, and of products and appliances necessary or useful in the breeding, feeding, care and fattening and improving of livestock.
3. To arrange for and give premiums, prizes, diplomas and the like in furtherance of such exhibitions or shows.
4. To encourage and promote the livestock industry among the members of this Association in particular and generally in the western states and territories.
5. To promote and encourage the improvement and better breeding of livestock and the feeding and care thereof.

Petitioner's Exhibit C at 14.

5. The articles were amended again in 2005. They now state the primary purpose of the organization to be (in pertinent part):

The Corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 In furtherance of the foregoing purposes, the primary purposes of the Corporation shall be:

(i) to hold exhibitions of livestock and the products thereof, and of products and appliances necessary, appropriate and/or useful in the breeding, feeding, care and improvement of livestock;

(ii) to receive any donations that may be made to the Corporation or to its affiliated entity, the National Western Scholarship Trust, and to disburse those donations in carrying out the objects and/or purposes of the Corporation and said Trust . . .

. . .

(iv) to provide the means for collection, dissemination, and exchange of scientific and educational information concerning agriculture, in general, and the breeding, feeding, care and improvement of livestock, in particular, including support of educational institutions through programs and publications;

(v) to provide opportunities through its educational programs for interested individuals to maintain and upgrade their individual technical skills and competence in the aforementioned areas for the public benefit, thereby assisting local, state, and federal governmental entities in their responsibility for providing means of advancing their technical skills and competence in agricultural pursuits, in general, as well as with the breeding, feeding, care and improvement of livestock, in particular, thereby assisting those governmental entities in discharging their responsibilities for assuring that agricultural products enter the food chain safely and efficiently

Petitioner's Exhibit C at 8-9.

6. Petitioner maintains that WSSA is guided by its articles of incorporation and that the core educational charitable mission has not changed. WSSA derived its mission statement from its articles. "Our Mission: . . . To preserve the western lifestyle by providing a showcase for the agricultural industry through its emphasis on education, genetic development, innovative technology and offering the world's largest agricultural marketing opportunities." Petitioner's Exhibit H at 136.

7. The Western Stock Show Association Scholarship Trust ("Scholarship Trust") is an affiliated but separate entity that operates a trust for the purposes of granting scholarships to agriculture, medical, and nursing students who want to practice in rural areas of Colorado and Wyoming. The various colleges take the guidelines of the trustees and make the decision of who will be admitted. The Scholarship Trust funded 65 scholarships last year for colleges and junior colleges. The Scholarship Trust was started in 1985. Upon legal advice, the Scholarship Trust was subsequently split from the WSSA. WSSA raises approximately \$250,000.00 net proceeds for the Scholarship Trust annually, primarily through the Coors Western Art Exhibit and Sale, Citizen of the West Awards Dinner, and the Junior Livestock sale. The Junior Livestock sale contributes 10% of sales to the Scholarship Trust. Monies for the Scholarship Trust are often direct gifts; few funds come directly from WSSA.

8. Petitioner presented the following as evidence of some of their educational activities:

A. A Teachers Handbook compiled by National Western Volunteers. This handbook is for teachers to use as a guide in working with school children that come and tour WSSA in January.¹ Petitioner's Exhibit F.

B. The *Colorado Reader, Agriculture in the Classroom*, a publication by the Colorado Foundation for Agriculture (a non-profit organization), which is financially supported by WSSA. Petitioner's Exhibit G. These materials are distributed throughout classrooms.

C. The 2007 tentative Stock Show schedule. Petitioner's Exhibit H. Mr. Grant considers all the events to be educational including the rodeo events, as the foundation of the rodeo

¹ Mr. Patrick Grant, CEO and President of WSSA, had replied to Respondent that there was no Teacher Handbook when questioned at the time of exemption application. Mr. Grant testified that the handbook might be out of print but may still be used today. Respondent's Exhibit 1 at 25.

was ranching and the settlement of the west. The rodeo helps to increase the attendance at the Stock Show. The net proceeds from the Boots N' Business Luncheon go to the Scholarship Trust. The National 4-H judging competition is part of an educational function. The Catch-it-Calf is open to rural young people to learn responsibility; the animals are purchased with donor monies and the animals become the property of the young people who catch them. The Red Meat Club consists of people who support the red meat industry and is educational in nature; anyone can attend the function by paying \$25.00 for the meal. Mr. Grant believes that even the dog pull competition is educational in nature. Petitioner's Exhibit H, page 143, refers to the Tough Enough to Wear Pink activity for the benefit of breast cancer research.

D. A schedule of School Educational Outreach Programs, including the Youth Art Show and Pony Trails. Petitioner's Exhibit I. Mr. Grant testified that urban children have had no exposure to ranch animals until they visit the Stock Show.

9. Petitioner has about 600 volunteers that do customer service and other chores. In 2006 there were 534 volunteers that gave 30 hours of service throughout the year. The remaining volunteers donate less than 30 hours. There are 37-42 full time, year round employees, including those working less than full time but getting an 80% benefits qualification. There are also 800-1000 temporary employees working in January, as well as independent contractors. Seasonal superintendents are also paid to help organize the events. Salaries paid to employees are reasonable. WSSA hires Mountain States Employment each year to make sure the salaries are fair and not excessive.

10. The approximate annual Stock Show attendance for 2002 and 2003 was 600,000 people, comprised of students, general admittance tickets, ticketed performances, and season ticket holders. All attendees, other than students and complimentary tickets, pay a fee. Ticket prices are set considering the popularity of the event, location of the seat, and time of performance. Petitioner pointed out that no charitable organization can function financially without charging admission fees.

11. Each year, approximately 20,000 school children are given free tours of the Stock Show. In 2004, "admission was waived for 18,732 students and their chaperones at an estimated cost of \$41,210.40" (Respondent's Exhibit 1 at 26), or "1.2% of the gross income of \$3,404,489.00" (Respondent's Exhibit 1 at 6). There are discounts for seniors, school groups, and other charitable groups. Complimentary tickets are available to charities in good standing.

12. The primary sources of WSSA revenue are ticket sales (30%), parking revenue (20%), exhibit fees (15%), entry fees (10%), and sponsor contributions (25%). Other fees are charged for commercial exhibits and animal exhibition. About 10% of the sponsor contributions are in-kind. A significant part of the \$800,000.00, 2003 advertising budget, consisted of in-kind sponsors such as 9News, KYGO radio, and the Denver Post. Media exposure is necessary to draw and attract people to help cover Stock Show costs. If there is any net income, it is invested back into WSSA for capital improvements and maintenance of the buildings.

13. Ms. Dorothea Wieneke, Exemptions Analyst with the Division of Property Taxation ("DPT"), testified that Petitioner has no fundraising events specifically for the WSSA, and no WSSA income is used for the Scholarship Trust. Respondent's Exhibit 1 a 25. There are Thursday

discounts for senior citizens and children. Respondent's Exhibit 1 at 27. "Otherwise, there are no discounts other than the 'discount ticket packages' and school tours." Respondent's Exhibit 1 at 27. After review of the financial statements, articles of incorporation, Mr. Grant's answers to her questions, and the provided materials, she recommended denial of the application.

14. Mr. Stan Gueldenzopf, Exemptions Manager with the DPT, testified that DPT denied the property tax exemption request based on the finding that the overall program is primarily commercial, although some activities are charitable. WSSA's primary income sources are commissions from the sale of cattle, ticket sales, and vendor fees. Petitioner is not a charitable organization but is a commercial organization promoting agriculture and business. The educational aspect is there, but it is not the primary purpose of WSSA. The primary objective is trade promotion.

15. WSSA amended their articles of incorporation after DPT made the exemption determination. DPT issued their final decision in July 2005. They first received a copy of the amended articles when WSSA filed their appeal with the Board in August 2005. However, the amended articles did not change Mr. Gueldenzopf's opinion. The mission statement is posted on WSSA's website and refers to a marketing opportunity. "Our Mission: To preserve the western lifestyle by providing a showcase for the agricultural industry through its emphasis on education, genetic development, innovative technology and offering the world's largest agricultural marketing opportunities." Petitioner's Exhibit H at 136.

16. Petitioner requested property tax exemption for the subject personal property from tax year 2003 forward.

17. According to Respondent, the assigned actual value is \$1,361,495.00 for the subject personal property. Respondent's Exhibit 1 at 3, 11. The tax value year is unclear, but was taken from the assessor's web site in 2004.

18. The Colorado State Constitution states, "Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes . . . shall be exempt from taxation, unless otherwise provided by general law." Colo. Const. art. X, § 5.

19. Colorado Revised Statutes ("C.R.S.") state, "Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if: Such property is nonresidential . . ." C.R.S. § 39-3-108(1)(a) (2006).

20. Charity, as adopted by the Colorado Supreme Court, is defined as:

[A] gift, to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Board of Assessment Appeals v. AM/FM International, 940 P.2d 338, 344 (Colo. 1997), quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539, 556 (1867). The Petitioner must establish “the activity has a charitable purpose . . .” and that the subject property “is owned and used strictly for the charitable purpose.” *Institute for Research on Social Problems v. Board of Assessment Appeals*, 748 P.2d 1346, 1347-48 (Colo. Ct. App. 1987).

21. Petitioner did not present sufficient probative evidence and testimony to prove that the subject personal property meets the qualifications for a charitable tax exemption status for tax years 2003 forward. The Board is not convinced that the subject personal property was owned and used for strictly charitable purposes.

22. Petitioner contends that it provides charitable gifts to an indefinite number of persons and lessens the burdens of government. The Board agreed that Petitioner does have some charitable attributes. It supports the education of the public regarding agriculture and livestock through literature, tours, classroom programs, etc. The Board also recognized the support Petitioner gives its related entity, the Scholarship Trust, which was organized to award scholarships for the education of rural healthcare providers and other agriculture careers. However, the Board did not find these activities to be exclusive.

23. Petitioner produces the Stock Show held in January each year. The Board believes that the primary function of this event is to allow a forum and showcase for the agricultural industry to display and sell their livestock and other agriculture or agriculture related products, and to improve livestock and other agricultural production through the education of ranchers and farmers. The Board finds this to be a commercial based activity that primarily benefits the ranching and farming participants. A secondary benefit of the Stock Show is the opportunity for the general public, including urban dwellers, to learn about the agriculture industry. The Stock Show is an agricultural trade show that primarily benefits the participating private and/or for-profit entities.

24. Petitioner also contends that it lessens the burdens of government through the hiring of homeless, unemployed, and seasonally employed workers for temporary work during the Stock Show. The Board applauds Petitioner’s hiring practices, but is not convinced that such practices should be a significant consideration in the application. The Board does not find that WSSA lessens the burdens of government. The Petitioner did not present sufficient evidence to show that the Stock Show is an activity that the government would be required to do if Petitioner did not.

25. Petitioner's overwhelming activity is the promotion of agribusiness and industry. It is not solely and exclusively charitable. The Board believes the purpose of WSSA's activities is to promote agriculture; WSSA's revised articles were not persuasive.

26. The Board concludes that Petitioner is not an organization that is operated solely and exclusively for strictly charitable purposes as required under C.R.S. section 39-3-108(1)(a).

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. section 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. section 24-4-106(11).

DATED and MAILED this 22nd day of June 2007.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Diane M DeVries

Diane M. DeVries

This decision was put on the record

JUN 21 2007

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

Heather Heinlein

Heather Heinlein

