

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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WATERLOO AERIE NO. 764 OF THE  
FRATERNAL ORDER OF EAGLES

Bankruptcy No. Y88-0022OW

Debtor.

Chapter 11

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WATERLOO AERIE NO. 764 OF THE  
FRATERNAL ORDER OF EAGLES

Adversary No. X88-0232W

Plaintiff

vs.

BLACK HAWK COUNTY ASSESSOR and  
BLACK HAWK COUNTY TREASURER

Defendants.

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### MEMORANDUM OF DECISION AND ORDER RE DETERMINATION OF REAL PROPERTY TAX

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Debtor seeks a determination of its real estate tax liability to Black Hawk County, Iowa. Trial took place on April 10, 1989 in Waterloo, Iowa. The court now issues its ruling which includes findings of fact and conclusions of law pursuant to Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(0).

#### FINDINGS OF FACT

Waterloo Aerie No. 764 (AERIE) is a fraternal and charitable organization, which is affiliated with the national organization known as the Fraternal Order of Eagles. One avowed purpose of the organization is to help other people by aiding worthy causes. To that end, the Aerie has donated money over the years to local and national charities. It is aided in its giving by the national organization which makes grants to charities recommended by the Aerie. These grants are made with national rather than local funds. The Aerie also makes charitable donations with its own funds.

The level of charitable giving is affected by the ability of the Aerie to raise money in excess of its financial obligations and the cost to operate the local organization. The Aerie raises funds by conducting raffles, bake sales, dinners, dances and other types of fund raising events, and through the operation of a bar on the club premises.

The Aerie has a club house located at 202 East 1st Street, Waterloo, Iowa. It uses the building to conduct club meetings and business and for social functions.

The dimensions of the building were not introduced into evidence but it is undisputed that one-third of the building is taken up by the bar. In addition, the building contains a large meeting room and hall,

offices, restrooms and a cloak room. The bar has a kitchen which is used to prepare meals for its club members. The kitchen has been recently used to prepare monthly dinners for a local realty organization as a fund raiser for the Aerie.

Only club members, guests and prospective club members may use the bar facility. It is used primarily for the rest and relaxation of club members. As a social area, it is important to the club for the recruitment of new members. The bar is open daily during the week and on Saturdays.

For the May 31, 1986-June 1, 1987 fiscal year and the 1987-88 fiscal year, the income of the Aerie was approximately \$58,000.00 per year.

Bar receipts for the fiscal year 1986-87 were approximately \$32,000.00. For 1987-88, bar receipts totaled approximately \$39,000.00. In each of these years, club expenses were approximately \$50,000.00.

In the 1987-88 fiscal year, the Aerie donated approximately \$3,300.00 in local funds to charities and in 1986-87, the amount was approximately \$1,100.00.

There was no evidence as to total income, bar receipts or donations for 1985-1986.

The Black Hawk County Assessor assessed the Aerie's real property for the 1985-1986 and 1986-1987 fiscal years. The assessor, however, established a two-thirds value exemption because of the charitable or benevolent purposes of the Aerie. This exemption is permitted under Iowa Code § 427.1(9). It was the determination of the assessor under Iowa Code § § 427.1(9) and (23) that the Aerie was not entitled to an exemption for the bar area.

The taxes in dispute are those resulting from the lack of exemption for the bar area. The unpaid taxes for 1985-86 are approximately \$822.00 and for 1986-1987 are approximately \$1,780.00.

## **DISCUSSION**

Debtor contends that it was entitled to a full exemption from real estate tax pursuant to Iowa Code § § 427.1(9) and (23) for the tax years 1985-1986 and 1986-87. The County Treasurer argues that because of the use of the bar for pecuniary profit, the Aerie is not entitled to the exemption for one-third of the real property. Debtor seeks a determination of its tax liability under 11 U.S.C. § 505.

State law governs the resolution of this issue. Iowa Code § 427.1(9) states in part that the following class of property shall not be taxed:

"All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural and religious institutions and societies solely for their appropriate objects . . . and not leased or otherwise used or under construction with a view to pecuniary profit." \* \* \*

An organization claiming an exemption under subsection 9 must file a required statement as to the property on which the exemption is claimed. The claim of exemption may then be allowed by the assessor. Iowa Code § 427.1(23) states in pertinent part:

"If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in

proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property."

The exemption statute is to be strictly construed and any doubt is to be resolved in favor of taxation. Further, the burden of proof is on the party seeking the exemption. Dow City Senior Citizens Housing, Inc. v. Board of Review of Crawford County, 230 N.W.2d 497, 499 (Iowa 1975).

The Iowa Supreme Court in the foregoing case has discussed the rationale of the exemption as follows:

"Exemption statutes are premised on the theory that the benefits received by the community from exempted use outweigh the inequality caused by exemption of the property from taxation. They are 'a legislative recognition of the benefits received by society as a whole from properties devoted to appropriate objects of exempt institutions and the consequent lessening of burden on the government'."

Citing South Iowa Methodist Homes v. Board of Review of Cass County, 257 Iowa 1302, 1305, 136 N.W.2d 488, 490 (1975).

The focus in determining the exemption allowance is on the use of the property and not on the identity of the owner. Iowa Methodist Hospital v. Board of Review of City of Des Moines, 252 N.W.2d 390, 392 (Iowa 1977). "[A] charitable organization may be entitled to exemption on some of its property and be subject to taxation on others." Id. at 392.

The property in question is not used by the Aerie solely for the benevolent or appropriate objects of its organization. The bar area is used for the rest and relaxation of members and for the recruitment of new members. Money raised in the bar is not used for charitable donations but rather is used to defray the expenses of the organization. Only the residue of the income of the Aerie, after the payment of all expenses, is used for charitable donations. This income includes income from sources other than the bar. Substantial donations to charity are made to locally favored charities by the national organization using national funds.

A similar fact situation has been resolved against another Aerie in Iowa. Aerie 1287, Fraternal Order of Eagles v. Holland, 226 N.W.2d 22 (Iowa 1975). Aerie has failed to show that the result in this case should be any different. Despite the argument of plaintiff's brief that the cases are distinguishable, the evidence is to the contrary. Most of the money obtained from bar sales in this case is used for the defraying of bar expenses.

## CONCLUSIONS OF LAW

For the tax years in question, one-third of the real property of Waterloo Aerie No. 764 of the Fraternal Order of Eagles is not exempt from real estate taxes under Iowa Code § 427.1(9).

## ORDER

IT IS THEREFORE ORDERED that for the 1985-86 and 1986-87 fiscal tax years, Waterloo Aerie No. 764 of the Fraternal Order of Eagles is not entitled to a real property tax exemption for onethird of the value of the club house property.

IT IS FURTHER ORDERED that the complaint of the Waterloo Aerie No. 764 seeking expungement of the tax liability as recorded in the Treasurer's office is denied.

Judgment shall enter accordingly.

SO ORDERED ON THIS 2nd DAY OF MAY, 1989.

William L. Edmonds  
Bankruptcy Judge