

**PT 10-11**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

---

---

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**IRWIN'S PARK ASSOCIATION, INC.**

**Applicant**

**Docket # 09-PT-0035**

**Tax Year 2009**

---

---

**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; J. J. Moffat, *pro se*, for Irwin's Park Association, Inc.

Synopsis:

Irwin's Park Association, Inc. ("applicant") filed an application for property tax exemptions for the year 2009 for seven parcels of property located in Sangamon County. The applicant contends that the property is owned by a charitable organization and used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Sangamon County Board of Review recommended that a portion of the parcels be exempt from taxes. The Department of Revenue ("Department") disagreed with that determination and concluded that each parcel should be taxed because they are not owned by a charitable organization and are not being used

exclusively for charitable purposes. The applicant timely protested the Department's decision, and an evidentiary hearing was held. Prior to the hearing, the applicant agreed to withdraw its protest with respect to one parcel that is being used as farmland. With respect to the remaining parcels at issue, after reviewing the record, it is recommended that those parcels be exempt.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized in February 2006. (Dept. Group Ex. #1, pp. 23-24)
2. The applicant's bylaws indicate the purpose for which the applicant is organized as follows:

Irwin's Park Association is a charitable, membership organization dedicated to education and the restoration and preservation of Irwin's Park, a historically and ecologically significant parcel of land, located in Sangamon County, Illinois.... (Dept. Group Ex. #1, p. 15)

3. According to the applicant's mission statement, the applicant is dedicated to education, conservation, public use, and maintenance of Irwin's Park. (Dept. Group Ex. #1, p. 54)
4. Irwin's Park consists of the following seven parcels of property, which are located two miles north of Auburn, Illinois:

28-26-426-011  
28-26-426-012  
28-26-426-009  
28-26-426-004  
28-28-477-006  
28-26.0-480-005  
28-26.0-480-004 (Dept. Group Ex. #1, pp. 8-12, 71)

5. In 2008, the applicant received five of the parcels as a donation from Auburn Township and two of the parcels as a donation from Ernestine Swaringen. (Dept. Group Ex. #1, pp. 8-12, 61)
6. The parcel with index number ending 426-012 is approximately 36.28 acres and is used as farmland for which the applicant receives rental income. The applicant concedes this parcel is not exempt. (Dept. Group Ex. #1, pp. 4, 7; Tr. pp. 6-7)
7. The remaining parcels total approximately 31.27 acres and are open to the public for use as a park. Approximately 28 of the acres are wooded and contain walking/hiking/riding trails. The other acres are open yard space and contain the following small buildings: (1) “rock house”; (2) shed; and (3) pavilion. A creek runs through the park. (Dept. Group Ex. #1, pp. 4, 54, 61, 76-81; Tr. p. 7)
8. The rock house is approximately 800 square feet and was built in 1839-41. The house is currently in disrepair.<sup>1</sup> (Dept. Group Ex. #1, pp. 4, 55-56, 92-93; Tr. p. 26)
9. The shed is approximately 50 square feet and the pavilion is approximately 1,296 square feet. The shed is used for storage, and the pavilion is used as shelter. (Dept. Group Ex. #1, pp. 4, 60, 83, 86)
10. The park has benches, picnic tables, and playground equipment for preschool-age children. (Dept. Group Ex. #1, p. 60)
11. The park is open to the public all year from dawn to dusk, and there is no charge for using it. The public uses the park for picnics, walking, hiking, and various recreational activities. (Dept. Group Ex. #1, pp. 61-62, 76-81; Tr. pp. 13-16)

---

<sup>1</sup> Abraham Lincoln attended political party rallies on the property and visited the rock house to obtain provisions for his horse while traveling the judicial circuit as a lawyer. The applicant intends to restore the rock house. (Dept. Group Ex. #1, pp. 54-57, 70, 72)

12. In addition to the general public use of the park, during 2009 the applicant sponsored organized events. On April 11, 2009, the applicant had an Easter Egg Hunt at the park where prizes were given. On June 20, 2009, the applicant had a “June Fun Day” at the park with music, food, and activities such as face painting and balloon art. (Dept. Group Ex. #1, pp. 59, 71-72, 74)
13. There is no charge for anyone attending the organized events. (Tr. p. 10)
14. In October 2009, Boy Scout Troop #340 camped overnight at the park. (Dept. Group Ex. #1, p. 59)
15. The applicant has a single class of members. Any person who makes an annual financial or in-kind contribution to the corporation may become a member. The membership dues are currently \$20 per year. Benefits of membership are “the tax deductibility of dues” and “the satisfaction of knowing that your gift is helping to restore a piece of community history for both present and future generations.” (Dept. Group Ex. #1, pp. 15, 72; Tr. p. 10)
16. The applicant’s income and expenses for the fiscal year ending June 30, 2009 were as follows:

Income:

Farm rental income	\$7,750.00
Memberships/Donations	4,409.50
Total income	12,159.50

Expenses:

Materials	1,653.78
Advertising	300.00
Fuel	792.97
Electricity	338.15
Insurance	481.00

Miscellaneous expense	341.17
Office expense	42.00
Postage	148.53
Repairs/Upgrades	1,165.46
Property tax	1,298.38
Filing fees	44.00
Supplies	299.88
Sanitation	475.67
Food	124.95
Survey	355.50
 Total expenses	 7,861.44
 Net income	 \$4,298.06
(Dept. Group Ex. #1, pp. 51, 59)	

17. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (Dept. Group Ex. #1, pp. 21-22)

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 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity..... (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home, at 156-57. If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1<sup>st</sup> Dist. 1982).

The Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home v. Korzen, *supra*, and reiterated them in Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010). The court stated that the distinctive characteristics of a charitable institution are as follows: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home, at 156-57; Provena Covenant, at 390. For purposes of applying these criteria, the court defined charity as “a gift to be applied ... for the benefit

of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” *Id.*

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). 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.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The Department argues that the property does not qualify under the constitutional requirements for a charitable purposes exemption because the organization is not charitable and the use of the property does not rise to a level that can be considered primarily charitable. The majority of the applicant’s income is from rent for the farmland and is not from public or private donations. The Department contends that the applicant did not show that it dispensed charity to all who needed and applied for it; the applicant merely showed that some of the areas at issue were used sparingly during 2009 by a small group of people. The Department states that it cannot be established how extensively the property was used, and there was only a limited use of the subject property by the public, which does not amount to the property being primarily used for charitable purposes.

In Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4<sup>th</sup> Dist. 1988), the court held that a 40-acre sports complex was entitled to a charitable exemption from property taxes. The complex was used between May and September for

baseball games, soccer games and bicycle competitions. The court found that under the guidelines of Methodist Old Peoples Home, *supra*, both the organization that owned the property and the use of the property were charitable. When determining whether the property was exclusively used for charitable purposes, the court stated, “[i]f the providing of recreational facilities to community groups is charitable, then the property is exclusively used for charitable purposes if its primary use is to provide recreational facilities to the community.” Decatur Sports, at 712.

In the present case, the primary use of the property is to provide recreational facilities to the community. The park is used for picnics, walking, hiking, and leisure activities. Although the park was used only a few times for organized events during 2009, the remainder of the time the property was open daily for use as a public park. Charity was dispensed to everyone because the use of the park was without charge, and no obstacles were placed in the way of those who wanted to use it. Although only 36% of the applicant’s income during 2009 was from donations, this factor, by itself, is not dispositive. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4<sup>th</sup> Dist. 2008), citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967). Because the property is primarily used to provide a recreational facility for the community, the property is primarily used for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that parcel number 28-26-426-012 is not exempt from property taxes, but the remaining parcels are entitled to an exemption.

Linda Olivero  
Administrative Law Judge

Enter: September 15, 2010