

**PT 11-16**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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**FREEPORT/STEPHENSON  
COUNTY VISITORS' CENTER,  
APPLICANT**

**v.**

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

**No: 10-PT-0038 (09-89-21)**

**Real Estate Tax Exemption  
For 2009 Tax Year  
P.I.N.S 04-19-01-400-011,  
04-19-01-300-006  
Stephenson County Parcels**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Timothy B. Zollinger, Ward, Murray, Pace & Johnson, PC, on behalf of Freeport/Stephenson County Visitors' Center; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether Stephenson County Parcels, identified by property index numbers 04-19-01-400-011 and 04-19-01-300-006 (hereinafter the "subject property"), qualify for exemption from 2009 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.

This controversy arose as follows: On December 16, 2009, the Freeport/Stephenson County Visitors' Center (hereinafter the "Visitors' Center" or "Center") filed an Application for Non-homestead Property Tax Exemption with the Stephenson County Board of Review (hereinafter the "Board") seeking exemption from 2009 real estate taxes for the subject property. The Board reviewed the Application and recommended that a full year exemption be granted.

App. Ex. No. 13. On March 4, 2010, the Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2009. The Visitors’ Center filed an appeal of the Department’s exemption denial.

On March 22, 2011, an evidentiary hearing was held in this matter with testimony from Ms. Connie Sorn, a member of the Board of Directors of the Visitors’ Center, Mr. Craig Joesten, Finance Director of Freeport, Mr. Jeffrey Mikkelsen, Chairman of the Community Development Committee for the Stephenson County Board, and Mr. Jack Carey, Executive Director of the Freeport Park District. Following a careful review of the testimony and evidence it is recommended that the Department’s denial be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2009. Tr. pp. 10-11; Dept. Ex. No. 1.
2. The Freeport/Stephenson County Convention and Visitors’ Bureau (hereinafter the “Bureau”) was formed over 20 years ago to be the tourism and promotional arm for the area. The Mayor of Freeport and the Board Chairman of Stephenson County appoint members to the Bureau. Tr. pp. 18-20, 93.
3. The Bureau is exempt from income tax under Section 501(c)(6) of the Internal Revenue Code. Tr. pp. 52-56; App. Ex. No. 11.
4. The Bureau entered into an “Agreement” with Freeport on October 8, 2008. The Agreement acknowledges that Freeport (in conjunction with Stephenson County and the Village of Lena) has imposed a tax, at the rate of 5% of the gross rental receipts, on all persons engaged in the business of renting, leasing or letting rooms in a hotel.

Freeport agreed to distribute to the Bureau a portion of the hotel tax and, in turn, the Bureau agreed to be a tenant at the Visitors' Center until the earlier of December 31, 2024, or such time as the debt for the construction of the Center is repaid. Tr. pp. 19-20, 52-56, 68-70; App. Ex. Nos. 10 and 14.

5. Freeport Ordinance No. 886.04, entitled "Tourism Promotion Fund," states that 3% of the hotel tax is levied for general operational activities, such as advertising and promoting various businesses, and 2% of the hotel tax is used for the Bureau's "rental of space in the Visitors' Center" not to exceed \$40,000/year. Tr. pp. 77-79; App. Ex. No. 14.
6. The Bylaws of the Visitors' Center state that its purposes are to purchase and maintain a building, and the building shall be open to the public and used for the communication of public interest information, including informational kiosks and the dissemination of pamphlets and maps, and to educate the public, with respect to, and promote, Freeport and Stephenson County as a location for recreation, tourism, commercial and industrial interests and residential and retirement opportunities, in order to assist in the continuing economic and social improvement of the area. Tr. pp. 15-17; App. Ex. No. 4.
7. The Visitors' Center is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 22-25; App. Ex. No. 5.
8. The Visitors' Center, approximately 4,000 square feet, is located on Highway 20 which is a major, four lane, east/west route from Chicago to Iowa. The Center is open from 8:00 a.m. to 8:00 p.m. seven days/week in the summer and 8:00 a.m. to 7:00 p.m., Sunday through Friday, in the winter, when there is less traffic. Tr. pp. 25-27; App. Ex. No. 2.

9. There is no charge for any person to enter the Visitors' Center. The Center is staffed for all hours that it is open, with the staff provided by the Bureau. There is salaried and volunteer staff. Tr. pp. 28-29.
10. The Visitors' Center has a display area, which contains information and brochures. There is no charge for Freeport/Stephenson County businesses, organizations, schools and colleges, attractions or government offices to put their information in the display area. This area also contains information on residential opportunities and healthcare in the area. The Center has an "Expo Area," that exhibits different features, changing every six weeks. The Expo Area has featured tractors, airplanes, and an exhibit on the County Fair. The Visitors' Center also has offices, a small conference room, storage areas, public rest rooms and a vending machine. Tr. pp. 29-36; App. Ex. No. 6.
11. A listing of organizations that provide brochures, posters or flyers for distribution at the Center includes 85 not-for-profit and civic organizations, 11 community and government entities, 8 schools and 24 churches. Tr. pp. 37-39; App. Ex. No. 7.
12. In 2009, 24,796 visitors stopped at the Visitors' Center, 33% were local, 60% were from out of town and 7% were from unknown origins. Tr. pp. 46-48; App. Ex. No. 8.
13. In 2009, the Visitors' Center had \$88,137 in Revenue, including \$40,000 (45%) from the hotel tax, \$37,020 (42%) from "fees paid by entities that advertise at the Center," \$4,804 (5%) from "donations from vendors who sell local gifts at [the] Center," \$3,208 (4%) from "donations" and \$1,825 (2%) in "fees paid to distribute brochures from outside Stephenson County." Tr. pp. 49-52, 86-88; App. Ex. No. 9.
14. If an organization wants a larger display area, additional promotional space or more elaborate displays in the Center, there are opportunities for them to rent additional space. For example, the Freeport Park District rents a corner of the main exhibit area

for \$3,750 annually. The area contains a portion of a replica of the Park District's carousel and an exhibit on the Park District's golf course. Organizations located outside of Stephenson County must pay the Center for distribution of their brochures. Some local items are sold at the Visitors' Center and these sellers make a "donation" back to the Center. Tr. pp. 38-39, 61-63, 70-72, 103-104; App. Ex. No. 12.

15. In 2009, the Visitors' Center had \$97,190 in expenditures and ended the year with a \$9,053 loss. Expenditures included \$6,350 (7%) in real estate taxes, \$36,545 (38%) in debt service, and \$28,437 (29%) in "staffing with payroll tax." App. Ex. No. 9.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that the Visitors' Center has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2009 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution.

Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). The Visitors' Center has failed to prove, by clear and convincing evidence, that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code, absent appropriate evidence that the subject property is owned by an entity that qualifies as an "institution of public charity," that the property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (hereinafter Korzen), the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and 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 obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Applicants for exemption must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

The Illinois Supreme Court articulated the criteria in Methodist Old Peoples Home “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Com’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965).

The PTAX-300, “Application for Non-homestead Property Tax Exemption” filed by the applicant lists the “Property Owner” as “Freeport/Stephenson County Visitors’ Center, NFP.” App. Ex. No. 3. Ms. Sorn testified that the Visitors’ Center is the owner of the subject property. Tr. pp. 69-70. One of the purposes of the Visitors’ Center, according to its Bylaws, is to “purchase and maintain a building.” App. Ex. No. 4. However, no deed or other documentary evidence showing ownership by the Visitors’ Center was admitted into evidence. To qualify for property tax exemption under 35 ILCS 200/15-65, it was incumbent upon the applicant to prove

conclusively that the Visitors' Center owned the subject property. This proof is missing from the record of this case.

It should be noted that the Visitors' Center is a separate entity from Freeport and Stephenson County. In essence, Freeport and Stephenson County pay the Visitors' Center for providing a service for them, with this payment funded through the hotel tax. There is no evidence in the record that the Center was organized as an agency or a branch of Freeport, Stephenson County or any other governmental unit. The Visitors' Center is not seeking exemption as either "Taxing District Property" under 35 ILCS 200/15-60 or as property owned by a "Municipal Corporation" under 35 ILCS 200/15-75.

The Visitors' Center, approximately 4,000 square feet, is located on Highway 20 which is a major, four lane, east/west route from Chicago to Iowa. The Center is open from 8:00 a.m. to 8:00 p.m. seven days/week in the summer and 8:00 a.m. to 7:00 p.m., Sunday through Friday, in the winter, when there is less traffic. Tr. pp. 25-27; App. Ex. No. 2. There is no charge for any person to enter the Visitors' Center. The Center is staffed for all hours that it is open with both salaried and volunteer staff provided by the Visitors' Bureau. Tr. pp. 28-29. In 2009, the Center incurred \$28,437 in "staffing with payroll tax." App. Ex. No. 9. It does not appear that the Visitors' Center provides gain or profit in a private sense to any person connected with it. The Visitors' Center is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and apparently does not issue capital stock or pay dividends. Tr. pp. 22-25; App. Ex. No. 5. Although the Visitors' Center does possess these characteristics of a charitable organization, it has neither a purpose nor a use which is primarily charitable.

In determining whether an organization is exclusively charitable in its purpose, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). The Bylaws of the Visitors' Center state that its purposes are to purchase and maintain a

building, open to the public, to be used for the communication of public interest information, including informational kiosks and the dissemination of pamphlets and maps, and to educate the public, with respect to, and promote, the City of Freeport and Stephenson County as a location for recreation, tourism, commercial and industrial interests and residential and retirement opportunities in order to assist in the continuing economic and social improvement of the area. Tr. pp. 15-17; App. Ex. No. 4. The Freeport ordinance which allocates 2% of the hotel tax to the Bureau's rental of the Visitors' Center is entitled "Tourism Promotion Fund." The ordinance states that the "moneys in this Fund shall be utilized solely and exclusively for the purpose of promoting tourism in the City and the Stephenson County area." App. Ex. No. 14.

It is impossible to conclude from the provisions in the Bylaws and the "Tourism Promotion Fund" ordinance that the subject property is "exclusively" used for charitable purposes, as is required for a property tax exemption under 35 ILCS 200/15-65. Communicating public information, educating the public with respect to and promoting a location for recreation, commercial and industrial interests and residential and retirement opportunities, assisting in economic development and promoting tourism in the area, are not endeavors recognized by Illinois courts as "charitable." In fact, the word "charity" or "charitable" does not appear in Part A or B of the Bylaws of the Visitors' Center, which describe its "purposes," or in the Freeport ordinance, which describes the purpose of the hotel tax as promoting tourism.

The purpose of the Visitors' Center clearly is to promote the economic development of the Freeport/Stephenson County area, and in this regard, it is comparable to a chamber of commerce. Illinois Department of Revenue Regulations concerned with sales tax exemptions for "chambers of commerce" and "business associations" state that these organizations, "as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even

though such organizations may engage in some charitable and educational work.” 86 Ill. Adm. Code § 130.2005(f). In the instant case, I am unable to conclude that the Visitors’ Center engages in “some charitable” work as there is no evidence in the record of any expenditures by the Visitors’ Center for charitable purposes.

The record in this case forces me to conclude that the main purpose of the Visitors’ Center is to “advance the interests” of the Freeport/Stephenson County area through economic development and the promotion of tourism. Ms. Sorn testified that the geographical area was “struggling economically, and this was back even before the recession.” “So we knew we needed some way to let the public know what our community had to offer...” Tr. p. 57. Mr. Joesten testified that the dominant revenue stream in the area is sales tax. According to his testimony, economic development is important to the area. With economic development, “hopefully you create more houses, create more jobs, jobs create more disposable income which means people are going to spend more which means they’re going to generate more sales tax.” Tr. pp. 85-86.

The Visitors’ Center may assist in the economic development of the area but there is nothing inherently charitable about generating more sales tax. The focus of the Visitors’ Center is the economic development of the area. Local businesses, rather than an indefinite number of persons, benefit from this economic development. If the Visitors’ Center does help generate more sales tax in the area, the benefits to the public are indirect and incidental. The businesses generating the sales taxes from their increased sales are reaping the direct and primary benefits from the Visitors’ Center.<sup>1</sup>

The testimony with regard to the Center’s activities does not lead to the conclusion that the exclusive and primary use of the Visitors’ Center is for charitable purposes. While the

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<sup>1</sup> No evidence was offered at the hearing showing that economic development of the area had increased after the opening of the Visitors’ Center.

purposes of the Visitors' Center are commendable, they are not charitable under the law.<sup>2</sup> Because the purposes are not charitable, I cannot conclude from this record that the benefits derived are for an indefinite number of persons, that the Center's "charity" is dispensed to all who need and apply for it or that the Center does not place obstacles in the way of those who would avail themselves of the Center's "charitable" benefits. These factors are distinctive characteristics of charitable organizations, according to Korzen.

The Visitors' Center also does not possess the distinctive characteristic of a charitable organization that its funds be derived mainly from public and private charity and that the funds be held in trust for the object and purposes expressed in its charter. It appears that the reasoning behind this characteristic is that an "exclusively" charitable organization will meet its needs by soliciting and receiving donations from individuals and others with charitable impulses. The "exclusively" charitable organization then holds the donations in trust and exercises its expertise and experience to apply the donations to an identifiable charitable need.

In 2009, the Visitors' Center had \$88,137 in revenue, including \$40,000 (45%) from the hotel tax, \$37,020 (42%) from "fees paid by entities that advertise at the Center," \$4,804 (5%) from "donations from vendors who sell local gifts at [the] Center," \$3,208 (4%) in "donations" and \$1,825 (2%) in "fees paid to distribute brochures from outside Stephenson County." Tr. pp. 49-52, 86-88; App. Ex. No. 9. The record clearly shows that charitable funding does not dominate the revenue pool with approximately 50% of the Center's revenue coming from the sale of its services. There was no testimony at the hearing with regard to the \$3,208 in "donations" received from the Center. The only other "charitable" funding source appears to be

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<sup>2</sup> There was testimony at the hearing that 85 "not-for-profit and civic organizations" provide brochures, posters or flyers to the Visitors' Center. Tr. pp. 37-39; App. Ex. No. 7. My research indicates no Illinois case where an organization that displays the literature of non-for-profit organizations was itself considered a charity and entitled to property tax exemption. Although the display may be helpful to the community, it is the organization in the displayed brochure, poster or flyer that may be providing charitable service.

the “donations” from vendors who sell local gifts at the Center, constituting 5% of the Center’s total revenue. However, it is difficult to conclude that these donations are the result of a charitable impulse. Ms. Sorn was asked on cross-examination if vendors can sell gifts without making a donation. She replied: “We have had that happen. We certainly prefer a donation.” According to her testimony, the Center does not collect a donation from these vendors “more rarely than not.” Tr. pp. 71-72. The record shows that the Center does not get the majority of its funding from public and private charity. The revenue collected by the Center may be held in trust for the purposes expressed in the Center’s Bylaws but, as discussed above, these purposes are not charitable. “There is nothing in its [purposes] which requires plaintiff to devote its funds or income to purposes deemed charitable in law.” Rotary International v. Paschen, 14 Ill. 2d 480, 488 (1958).

Based on the testimony and evidence presented at the hearing, I am also unable to conclude that the subject property lessens a burden on government, which according to Korzen, is also a “distinctive characteristic” of a charitable organization. There was considerable testimony at the hearing about the efficiencies generated by the Visitors’ Center and how these efficiencies reduced a burden on government. Ms. Sorn testified that if the Visitors’ Center did not exist, government “would have to do it,” or a Chamber of Commerce “might step in and do some of that.” The Visitors’ Center, a “one-stop shop” in a “central location,” is a more efficient use of financial resources. “I think government has other things to spend their money on.” Tr. pp. 59-61. Mr. Joesten opined that the Visitors’ Center reduces a burden on Freeport “to provide the same service.” It was his opinion that the Visitors’ Center was offering its services “in a more cost-effective way than the City could.” “Given our current budget constraints and the limitations that we have as far as the revenue and the delivery of the necessary services, police, public safety, it would be highly improbable that we would find it able at this point in time to deliver

those services.” Tr. pp. 81-82. Mr. Mikkelson testified that “having a one-stop shop to facilitate peoples’ interests, whatever they are, commercial or cultural or whatever, in one place is not something that the County could duplicate for the kind of money we have...” Tr. p. 93. “There is no way that [the County] could run an operation like that or come anywhere close to providing that kind of information or that kind of facility with our budget.” Tr. p. 98.

The charitable exemption statute does not exempt property where operations are performed efficiently, without a showing that the operations are performed by a charitable institution and that the property is exclusively used for charitable purposes. Moreover, although it may be advantageous for a city or county to lessen the financial burden of its citizens by promoting economic development, I am unable to conclude that a city or county has a “burden” to do so. Neither witness delineated any legal mandate which requires Freeport or Stephenson County to operate a visitors’ center or a chamber of commerce. Additionally, Counsel for the Visitors’ Center did not refer me to, and my own research does not indicate, any Illinois statute requiring a city or county to operate a visitors’ center in order to promote itself or to promote economic development. Freeport and Stephenson County may have an interest in promoting themselves, but this interest does not rise to the level of a “burden.”

The hotel tax levied by Freeport and Stephenson County also does not prove that the City or County has a “burden” to operate a Visitors’ Center. A city or county could levy a tax for a July 4<sup>th</sup> fireworks display but the levy does not indicate that the city or county has a burden to display fireworks. I contrast this with the government’s levy of taxes to support education. Education is a governmental “burden” according to the Illinois Constitution because the State “has the primary responsibility for financing the system of public education.” Ill. Const., art. X, § 1. There is no similar provision indicating a burden to operate a chamber of commerce or to promote economic activity.

The Visitors' Center is providing a service to Freeport and Stephenson County. But this is not a service that the City or County is mandated by law to provide. Freeport and Stephenson County are paying the Center to perform this service, through the hotel tax, with third party advertisers at the Center providing the remainder of the funding. Services extended for value received do not relieve the State of a burden. Provena Covenant Medical Center v. Dept. of Revenue, 236 Ill. 2d 368, 397 (2010). I am unable to conclude from the record of this case that the subject property lessens a burden on government.

Finally, I must conclude from the record that the Visitors' Center is used with a view to profit, a use proscribed by 35 ILCS 200/15-65. In 2009, the Visitors' Center earned \$88,137 in revenue, including \$40,000 (45%) from the hotel tax, \$37,020 (42%) from "fees paid by entities that advertise at the Center," \$4,804 (5%) from "donations from vendors who sell local gifts at [the] Center" and \$1,825 (2%) in "fees paid to distribute brochures from outside Stephenson County." Tr. pp. 49-52, 86-88; App. Ex. No. 9. If an organization wants a larger display area, additional promotional space or more elaborate displays at the Visitors' Center, there are opportunities for them to rent additional space. For example, the Freeport Park District rents a corner of the main exhibit area for \$3,750 annually. The area contains a portion of a replica of the Park District's carousel and an exhibit on the Park District's golf course. Tr. pp. 103-104. In addition, organizations outside of Stephenson County pay the Center for distribution of their brochures. Some local items are sold at the Visitors' Center and these sellers make a "donation" back to the Center. Tr. pp. 38-39, 61-63, 70-72; App. Ex. No. 12. As discussed above, these "donations" are "preferred" by the Center and are not the result of a charitable impulse on the part of the vendors.

In 2009, the Visitors' Center had \$97,190 in expenditures and ended the year with a \$9,053 loss. Expenditures included \$6,350 (7%) in real estate taxes, \$36,545 (38%) in debt

service, and \$28,437 (29%) in “staffing with payroll tax.” App. Ex. No. 9. As the figures indicate, the Visitors’ Center would come close to breaking even if the property were exempt and it did not have to pay property taxes.

However, even while not making a profit, I must conclude that the Visitors’ Center is used with a view toward profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that “former decisions of this court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” The Visitors’ Center is leased for rent with rent paid by organizations that advertise at the Center, “donations” from vendors who sell local gifts at the Center and fees paid from organizations outside Stephenson County to distribute brochures. In Turnverein “Lincoln” v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Court noted, with regard to the argument that income from the rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” The Visitors’ Center is “let for a return,” and accordingly, must be liable for the burden of taxation.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted

application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, the applicant has failed to prove that the subject property falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Stephenson County Parcels, Property Index Numbers 04-19-01-400-011 and 04-19-01-300-006, should not be exempt from 2009 real estate taxes.

ENTER:

Kenneth J. Galvin  
Administrative Law Judge

July 6, 2011