

**PT 11-21**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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

v.

**HEART OF PEORIA NEIGHBORHOOD  
ASSOCIATION, INC.**

**Applicant**

**Docket # 10-PT-0030**

**Tax Year 2010**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; General Parker, *pro se*, for Heart of Peoria Neighborhood Association, Inc.

Synopsis:

Heart of Peoria Neighborhood Association, Inc. (“applicant” or “HOPNA”) filed an application for a property tax exemption for the year 2010 for a parcel of property located in Peoria 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 Peoria County Board of Review recommended that the parcel receive a partial year exemption from June 3, 2010 (the date it was acquired) through December 31, 2010. The Department of Revenue

(“Department”) disagreed with that determination and concluded that the parcel should be taxed because it is neither owned by a charitable organization nor used exclusively for charitable purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on October 14, 2003. (Dept. Ex. #1, p. 27)
2. Section 3 of Article I of the bylaws states as follows: “HOPNA is organized exclusively for charitable and educational purposes; including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code.” (Dept. Ex. #1, p. 20)
3. Section 2 of Article I of the bylaws states as follows:

HOPNA shall be an organization of neighborhood members within its boundaries who seek a better and more enduring quality of life for themselves and the residents in their community. HOPNA will focus on communication within and among its residents and other neighborhood associations. They will also strive to improve communications with government agencies. Of primary interest to HOPNA will be the strengthening of the association membership and the development of programs and activities that enrich the quality of life for all residents of the association. (Dept. Ex. #1, p. 20)

4. Article II of the bylaws, which is titled “Objective and Purpose,” states as follows:

**Section 1:** The objectives and purposes of HOPNA shall be:

- a) To enroll all persons and businesses who believe in the fundamentals of neighborhood development.

- b) To unite their efforts in creating greater interest in all community, local, state, and national civic affairs.
- c) To give help and support to all its members.
- d) To provide a forum for persons who choose to work within this neighborhood association to improve their home environment.
- e) To stimulate a sharing of their experiences in that effort and support for one another.
- f) To improve communications with government entities that affects our neighborhood.
- g) To encourage educational programs throughout this area.
- h) To give the opportunity to present a united front advocating remedies for neighborhood problems.
- i) To give financial support to projects in the furtherance of the foregoing objectives and purposes.
- j) Encourage inclusiveness by fostering new membership into HOPNA.
- k) To improve the neighborhood's appearance.
- l) To create a social and recreational atmosphere.
- m) To create a safe and desirable community.
- n) To improve the quality of life for its members and residents.
- o) To assist all its members/residents within HOPNA's boundaries which are I-74 to the south, North street to the west, Knoxville to the east and Forrest Hill to the north.
- p) To promote neighborhood awareness.
- q) To provide quality affordable housing for low to moderate income members/residents.

**Section 2:** No part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, directors, officers, or other private persons. The organization shall be authorized and empowered to pay reasonable compensation for services rendered. The organization can also make payments and distributions in the furtherance of the objectives and purposes set forth in Article II Section 1.

**Section 3:** HOPNA shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. HOPNA shall not carry out any other activities not permitted to be carried on by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, pp. 20-21)

5. On June 3, 2010, the applicant received as a donation a parcel of property located at 1507 N. Linn Street in Peoria, Illinois. The property's dimensions are

approximately 70' x 186' (13,020 square feet) and approximately 30% of an acre.  
(Dept. Ex. #1, pp. 3, 7, 17; Tr. pp. 8-9)

6. The property is a single vacant lot in the applicant's neighborhood and is used as a small park. The park was named "Dovie Park" after the donor's deceased wife.  
(Dept. Ex. #1, pp. 7, 17-18; Tr. pp. 8-9)
7. When the property was acquired, there was some garbage on the lot, and the grass was overgrown. There were also small trees on the property. It took a long time for the applicant to clear it and eliminate a rodent problem. After that, the applicant was able to maintain it. (Dept. Ex. #1, pp. 14-15; Tr. pp. 13-14, 19, 29)
8. On October 11, 2010, HOPNA issued a newsletter that notified the neighborhood that Dovie Park would be dedicated on October 17, 2010. HOPNA had its annual picnic at the park on the same day. HOPNA also had flyers that advertised the dedication and picnic. (Dept. Ex. #1, pp. 9, 16)
9. On the dedication day, a sign that says "Welcome to Dovie Park" was unveiled. The park also has two picnic tables. (Dept. Ex. #1, pp. 13-15; Tr. pp. 23-24)
10. The October 11, 2010 newsletter also indicated that clean up in the park would be on October 30, 2010. (Dept. Ex. #1, p. 16)
11. The park is used by the public for picnics and family gatherings. It is also used by the applicant for events such as the National Night Out Against Crime and the applicant's annual picnic. A person does not have to be a member of HOPNA to use the park. (Dept. Ex. #1, p. 7; Tr. pp. 13, 25, 30-31)

12. Members of the applicant are expected to pay dues of \$10 per family each year.

The applicant does not keep an income and expense statement but has its bank statements at its meetings. (Tr. pp. 11-12, 26-27)

13. The applicant has no capital, capital stock, or shareholders and 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. Ex. #1, pp. 19, 27-32)

#### CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. "The burden is a very heavy one." Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010). The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. *Id.*; Eden Retirement Center, Inc., *supra*; Board

of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290.

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 relevant 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....

Property may be exempt under this subsection 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, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987).

The Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena, *supra*. The following guidelines are characteristics of a charitable institution: (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; (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; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. 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.*

The Department argues that the use of the property during 2010 did not amount to a level that would qualify for charitable use. Since the applicant acquired the property on

June 3, 2010, other than the dedication and the general cleanup, the applicant failed to demonstrate much use of the property for charitable purposes. The Department states that it appears that much more use of the property took place during 2011. The Department also argues that the applicant did not provide evidence of its income, so it is not clear that the applicant derives its funds mainly from public and private charity, and it appears that most of the fundraising came from dues-paying members. The Department, therefore, requests that the exemption be denied.

In response, the applicant argues that after the property was acquired, it first had to be cleaned up. After trees were cut, the grass was cut, and the property was cleared, the property was ready to be dedicated in October. The applicant has continued to maintain the park. In the wintertime, most people are not outside, but the park is still there for its intended use. In the spring, the people are back in the park again, so the park is there and is being used for its intended purpose. The applicant contends that there is nothing more that it can show other than to have a news crew out there showing that there are kids playing out there every day. In addition, the applicant argues that there was testimony about the income and exactly what the assets were. The applicant believes that in order to have exempt status as a 501(c)(3), it has to be able to bring donations in from the membership, which is what the applicant has been doing. The applicant, therefore, believes that the property is entitled to an exemption.

With respect to the requirement that the property be owned by a charitable organization, the evidence is not sufficient to make this finding. Although the applicant is exempt from federal income taxes under section 501(c)(3), this is not determinative of whether an applicant is entitled to a charitable exemption for property taxes. Provena, at

389; Hopedale Medical Foundation, at 464. The applicant did present some testimony concerning the applicant's financial information. The testimony indicated that only a few people regularly pay their dues, it is difficult to collect the dues, and usually more people pay their dues during the National Night Out. (Tr. pp. 11, 26) Usually the money is used on the same day to pay for food for the event, or it is used to pay someone to cut the grass. (Tr. p. 26) The testimony also indicated that at the time of the hearing, the applicant had approximately \$132 in its bank account (*id.*), and the applicant did not receive a lot of money or pay many expenses since the dedication. (Tr. pp. 26-27) The applicant does not keep an income and expense statement, but its bank statements are brought to every meeting. *Id.* The bank statements were not presented at the hearing. The applicant also owns another park. (Tr. p. 28)

As previously mentioned, the burden of proof is on the party who seeks to qualify its property for an exemption, and the burden is a very heavy one. Provena, at 388. The party claiming the exemption must prove by clear and convincing evidence that it is entitled to the exemption. *Id.* Unfortunately, without documents verifying the applicant's financial information, it is not possible to determine whether the applicant has established clearly and convincingly that the income is primarily from charity or that the expenses are for charitable purposes.

In addition, although the applicant's bylaws state that it is organized for charitable purposes, the bylaws also indicate that the applicant is a membership organization whose primary interest is to strengthen the association membership and enrich the quality of life for all residents of the association. The applicant's purposes also include uniting members' efforts to create greater interest in civic affairs, improving communications

with government entities, and creating a social atmosphere. These purposes are laudable and public spirited, but they do not necessarily constitute charitable purposes. See Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Oak Park Club v. Lindheimer, 369 Ill. 462, 465 (1938). The Supreme Court in Rotary International v. Paschen, 14 Ill. 2d 480 (1958) stated that the objectives of a not-for-profit corporation may be commendable, but not charitable. *Id.* at 489. The Rotary International court also stated as follows:

An organization is charitable only when it exists to carry out a purpose recognized in law as charitable, and the law recognizes as charitable only those purposes which, if carried out, will benefit the public in such a way that there is a consequent relief, to some extent, of the burden upon the State to care for and advance the interests of its citizens. *Id.* at 488-489.

In Rotary International, the court found that the organization's funds were not primarily devoted to purposes that would relieve the State's burden. *Id.* at 489.

Charitable activities must be the primary function of an organization in order for the organization to be considered charitable. Oak Park Club, at 465; Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914, 919 (5<sup>th</sup> Dist. 1991). Operating a public recreational area, such as a park, has been found to be a charitable activity. Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4<sup>th</sup> Dist. 1988). Community or civic services may also be charitable, depending on the type of activity. Oak Park Club, at 465; Albion Ruritan Club, at 919. It is not clear from the record in the present case, however, that the applicant's primary activity is to provide parks for the community or to perform other charitable acts. The wording of an applicant's governing legal documents does not prove that the applicant actually operates that way. See Methodist Old Peoples Home, at 157; Albion Ruritan, at 918. The actual activities of the

organization must be considered. *Id.* The evidence presented does not clearly show all of the applicant's activities during 2010 and whether they were primarily charitable activities. Without this evidence, it cannot be found that the applicant is a charitable organization, and the exemption must be denied on this basis.

Although the exemption must be denied, the evidence does show that the property was primarily used for charitable purposes. In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. "Intention to use is not the equivalent of use." Skil at 252. Actual use for an exempt purpose, however, includes showing that the property was in the process of being adapted and developed for an exempt use. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2<sup>nd</sup> Dist. 1987).

In the present case, the property was first adapted and developed for charitable use. After acquiring the property, the applicant needed to clean it, which took several months. The applicant was then able to maintain it. The primary use of the property is to provide a recreational area for the community, which is a charitable use. Decatur Sports, *supra*. The park is clearly designated as a public park, and there are no restrictions on its use. Charity is dispensed to everyone because the park may be used without charge, and no obstacles are placed in the way of those who want to use it. Although the park was used only a few times for organized events during 2010, the remainder of the time the property was open daily for use. This evidence is sufficient to find that the property was used primarily for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption be denied.

Linda Olivero  
Administrative Law Judge

Enter: September 16, 2011