

PT 15-02

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

**ST. CLAIR COUNTY HISTORICAL
SOCIETY,**

APPLICANT

v.

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

No. 13-PT-0023

**Real Estate Tax Exemption
For 2013 Tax Year
P.I.N. 08-22.0-343-011
St. Clair County Parcel**

**Kelly K. Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. William Shannon, *pro se*, on behalf of St. Clair County Historical Society; Mr. Robin Gill, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether St. Clair County Parcel, identified by property index number 08-22.0-343-011 (hereinafter the “subject property”), qualifies for a full year exemption from 2013 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, and subsection (f), “Historical societies.” 35 ILCS 200/15-65(f).

On April 24, 2013, St. Clair County Historical Society (hereinafter “STCCHS” or “Applicant”) filed a Property Tax Exemption Complaint with the St. Clair County Board of Review seeking exemption from 2013 real estate taxes for the subject property. The Board reviewed Applicant’s Complaint and recommended that the exemption for a full year be granted.

The Department of Revenue of the State of Illinois (hereinafter the “Department”) partially reversed the Board’s recommendation in a determination dated September 19, 2013, finding that the subject property was in exempt use for 39% of the 2013 tax year, from August 15, 2013 through December 31, 2013.¹ Applicant filed a timely appeal of the Department’s partial year exemption denial. On July 17, 2014, a formal administrative hearing was held before Administrative Law Judge Linda Olivero² with Mr. William Shannon, IV, curator of STCCHS testifying. The issue of whether STCCHS is a historical society under 35 ILCS 200/15-65(f) is not in dispute. The sole issue is the date of the STCCHS’ adaptation of the subject property for exclusive use as a historical society in 2013. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be revised to grant exemption for 42% of the tax year 2013, beginning July 31, 2013 through December 31, 2013.³

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its determination that the subject property was in exempt use 39% during 2013. Tr. p, 5; Dept. Ex. 1, p. 2.
2. On April 30, 2012, Applicant acquired a building at the subject property, located at 705 E. Washington Street in Belleville, Illinois. Dept. Ex. 1, p. 9.
3. Applicant is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Dept. Ex. 1, p. 21.

¹ The Department initially granted 39% partial year exemption, supposedly beginning August 15, 2013, but the exemption percentage, instead, corresponds to on or about August 10, 2013 date. Tr. pp. 5, 18-19; Dept. Ex. 1, p. 2.

² ALJ Olivero, currently on leave, was unable to write this Recommendation. The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witness is not at issue.

³ At the hearing, the Department conceded to July 31, 2013 as the exemption date. Tr. pp. 18-20.

4. Applicant, incorporated on June 19, 1940, is a historical society organized to preserve, protect, promote, and advance the heritage of St. Clair County, Illinois, including its architecture, artifacts, history and customs. Dept. Ex. 1, p. 11.
5. On April 7, 2012, Applicant's board of directors ("board") decided to purchase the subject property. Dept. Ex. 1, pp. 24, 28.
6. On April 12, 2012, the board discussed potential future uses for the subject property. These future uses included storage space, a research library, and the offices of the STCCHS. Dept. Ex. 1, pp. 24, 29.
7. On April 30, 2012, Applicant changed the locks and posted a sign at the property detailing the future plans for the site. Dept. Ex. 1, pp. 24, 32.
8. On May 10, 2012, the board voted to accept a bid for replacement of the damaged slate roof with salvaged slates. Dept. Ex. 1, pp. 24, 32.
9. On June 14, 2012, the board discussed the bid for the replacement of the roof. Dept. Ex. 1, pp. 25, 35.
10. On July 12, 2012, the basement door to the subject property was repaired and the lock was replaced. Dept. Ex. 1, pp. 25, 38.
11. On August 9, 2012, the board first discussed the need for window repairs. Dept. Ex. 1, pp. 25, 39.
12. On October 11, 2012, the board instructed its curator Mr. William Shannon, IV, to seek bids for the repair or replacement of the windows. Dept. Ex. 1, pp. 25, 41.
13. On October 26, 2012, the board solicited an estimate and plans for the replacement of the windows. Dept. Ex. 1, pp. 25, 43.

14. On November 5, 2012, the board solicited an estimate for the replacement of windows from another vendor. Dept. Ex. 1, pp. 25, 45.
15. On November 13, 2012, Applicant submitted a design review request with the Belleville Historic Preservation Commission (“Commission”) seeking their approval of the plan to replace the windows. Dept. Ex. 1, pp. 25, 47.
16. On November 20, 2012, the Commission rejected Applicant’s design review request with a recommendation to revise and resubmit. Dept. Ex. 1, pp. 26, 47.
17. On February 14, 2013, Applicant negotiated with the Commission the rejection of the plans for replacement of the windows. Dept. Ex. 1, pp. 26, 48.
18. On March 19, 2013, the Commission approved Applicant’s design request. Dept. Ex. 1, pp. 26, 51.
19. April 15, 2013, the board discussed and approved a renovation timeline for the subject property. Dept. Ex. 1, pp. 26, 52.
20. From June 5 to June 10, 2013, Applicant solicited bids for the replacement of the roof and gutters and the repair of the porch roof. Dept. Ex. 1, pp. 27, 70-74.
21. On June 13, 2013, the board reviewed and approved the cost estimates for renovations at the subject property. Dept. Ex. 1, pp. 26, 58.
22. On June 18, 2013, the Commission approved Applicant’s design review request for the replacement of the roof and gutters at the subject property. Dept. Ex. 1, pp. 26, 63.
23. On July 31, 2013, Applicant signed a contract for the work on the roof, gutters, and porch roof with a contractor. Dept. Ex. 1, pp. 27, 75-76.
24. On August 15, 2013, architecture plans for the renovation of the subject property were created. Dept. Ex. 1, p. 27.

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant a full year exemption for the subject property from 2013 real estate taxes. Under the reasoning given below, the initial determination by the Department that the subject property does not satisfy the requirements for a full year exemption set forth in 35 ILCS 200/15-65 should be revised, as conceded at hearing by the Department, to grant exemption for 42% of the tax year 2013, beginning July 31, 2013 through December 31, 2013. 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 (1st 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 (1st 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 (4th Dist. 1994). Applicant has proven, by clear and convincing evidence, that the subject property falls within the statutory requirements for a partial year 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.

(f) Historical societies.

35 ILCS 200/15-65.

Property may 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. Chicago patrolmen's Association, v. Department of Revenue, 213 Ill.2d 273, 285 (2004). Whether the 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, 157 (1968). If the primary use of the property is charitable, then property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st 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 3rd Dist. 1987).

The Illinois Supreme Court decided that evidence that land 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 to use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965). However, where property is in the actual process of development and adaptation for exempt use, it will be treated as being devoted to that use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 273 (1971); Weslin Properties, Inc., v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). It must be determined whether the applicant’s activities constitute development and adaptation for an exempt use. Weslin Properties, Inc. at 584. Development and adaptation of the subject property must be judged in light of the ultimate intended use. Lutheran Church of Good Shepherd Bourbonnais v. Department of Revenue, 316 Ill.App.3d 828 (3rd Dist. 2000).

Solely at issue is the date of adaptation or development for an exempt use of the subject property. The Department argues that Applicant has failed to take sufficient steps toward the renovation of the property to warrant exemption for the whole year in 2013. It contends that from the property purchase date in April 2012 until the contract was signed on July 31, 2013 with the general contractor to begin renovations, the vast majority of the activities dealt with planning for the renovation of the subject property. It further contends that until that date, Applicant’s activities remained as a mere intention to convert the property for an exempt use. Tr. pp. 5, 20. Conversely, Applicant asserts that its activities in 2013 constituted substantive

steps towards the eventual beginning of the renovation, thus, qualify for exempt use under the adaptation and development exception. Tr. pp. 21-22.

In Weslin Properties, Inc., the court found that as soon as the applicant purchased the property, it proceeded quickly through the planning and design stages for constructing the medical complex and began physical adaptation of the property through landscaping and construction of berms. It also expended large sums of money in the process. The court concluded that these facts constituted more than the “mere intention to convert the property for an exempt use, and actually constituted development and adaptation for such use.” Weslin Properties, Inc. at 586. In Lutheran Church of Good Shepherd Bourbonnais, the applicant acquired property that was to be used as an extension of the church’s existing yard area. The court indicated that the efforts at developing and adapting the property must be judged in light of the ultimate intended use. The court stated that, unlike the Weslin Properties, Inc., the ultimate use of the property as a yard did not require extensive planning or construction. The court, therefore, found that the applicant’s decision to not to plant crops on the land and the applicant’s mowing and tilling of the land were enough to find that the property was in the process of being adapted for an exempt use. Lutheran Church of Good Shepherd Bourbonnais at 834.

In the present case, the ultimate intended uses of the subject property as a research library, archives and museum collection storage, and the offices of a historical society require extensive planning and renovation. Applicant’s activities towards adaptation, therefore, can be compared to those in Weslin Properties, Inc. In that case, after acquiring the property, the applicant immediately began the planning and the development of a master site plan along with physically adapting the property and spending large sums of money in the process. In the present case, unlike Weslin Properties, Inc., there is no evidence of physical adaptation that

occurred during the dates at issue. Importantly, Applicant did not spend a large amount of money towards renovation until it signed a contract with the general contractor to begin actual renovations, at which time Applicant was contractually obligated to pay for the work to be performed. Until then, other than changing the locks on April 30, 2012, and repairing the basement door and lock on July 12, 2012, for which Applicant did not submit the cost of repairs nor specifically claim they constitute physical adaptation for exempt use, the record contains no evidence of additional expenditure. Prior to July 31, 2013, Applicant's activities demonstrated a clear intent to renovate the property, but they did not constitute more than the mere intention until July 31, 2013 when Applicant clearly and convincingly began to adapt the subject property for an exempt use. Planning in the present case involved board discussions, solicitations for contract bids, and submissions for approval of permits. Those activities fall under a clear intent to renovate the subject property, but those activities, alone, do not rise to the level necessary to show adaptation of property that requires extensive renovation. Considering all of Applicant's efforts, the Applicant's activities met the clear and convincing standard of exempt use on July 31, 2013, when the actual development and adaptation began.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination, which allowed exemption for 39% of the tax year 2013, be revised to grant exemption for 42% of the tax year 2013, beginning July 31, 2013 through December 31, 2013, of St. Clair County Parcel, identified by property index number 08-22.0-343-011.

Kelly K. Yi
Administrative Law Judge

February 17, 2015

