

**PT 99-1**

**Tax: PROPERTY TAX**  
**Issue: Charitable Ownership/Use**

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

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**CHICAGO RIDGE  
MEMORIAL POST  
NO. 2255,  
VETERANS OF  
FOREIGN WARS  
OF THE UNITED STATES,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 95-16-672**

**Real Estate Tax Exemption  
for 1995 Assessment Year**

**P.I.N.: 24-17-114-027**

**Cook County Parcel**

**Alan I. Marcus  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**SYNOPSIS:** This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 24-17-114-027 (hereinafter the "subject property") qualifies for exemption from 1995 real estate taxes under 35 **ILCS** 200/15-145, which states as follows:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 **ILCS** 200/15-145.

The controversy arises as follows:

The Chicago Ridge Memorial Post No. 2255 Veterans of Foreign Wars of the United States (hereinafter the "applicant") filed a Real Estate Tax Exemption Complaint

with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on January 17, 1996. Dept. Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept. Group Ex. No. 1, Doc B.

The Department accepted this recommendation via a determination dated May 23, 1996. Said determination found that the subject property was not in exempt ownership and not in exempt use. Dept Ex. No. 2. Applicant subsequently filed a timely appeal as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

**FINDINGS OF FACT:**

A. Preliminary Matters and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was not in exempt ownership and not in exempt use, are established by the admission into evidence of Dept. Group Ex. No. 1.
2. The subject property is located at 10537 South Ridgeland Ave, Chicago Ridge, IL 60415. Dept. Group Ex. No. 1, Docs. A, B.
3. The subject property is improved with a one-story building. This structure occupies 4,144.24 square feet and also contains a basement. Dept. Group Ex. No. 1, Doc. B.
4. According to the Application for Property Tax Exemption filed with the Department on May 2, 1996, this building was used for the following purposes during the 1995 assessment year:

Canteen (bar) open 7 days/wk. Using 50% of basement. Other 50% of basement is office and storage space. Hall Rentals/Post

Auxiliary, Jr. Girls Unit and District, Department activities use the main floor space for their monthly meetings, or as needed, or rented. Used through the year for fund raising, Turkey Shoots, Christmas and other Holidays, as scheduled. [sic]

Dept Group Ex. No. 1, Doc B.

B. Applicant's Organizational and Financial Structure

5. Applicant is affiliated with the Veterans of Foreign Wars of the United States (hereinafter "VFW"), a national veteran's organization. Tr. p. 11.
6. The national VFW operates through various State organizations, or "Departments", which in turn operate through various local posts, of which applicant is one. Applicant Ex. No. 7; Tr. p. 11.
7. The national VFW has its own organizational structure and operates under its own constitution. Tr. pp. 11-13.
8. The State Departments also operate under their own respective constitutions, each of which must be consistent with the national organization's constitution. Tr. p. 11.
9. Applicant did not submit the national constitution into evidence. Nor did it submit the Illinois State Departmental Constitution.
10. Applicant did, however, submit the Articles of Amendment to its original Articles of Incorporation. This document, dated May 15, 1970, indicates that applicant was originally incorporated under the General Not for Profit Corporation Act of Illinois" on an unspecified date. Applicant Ex. No. 2.
11. This amendment also indicates that applicant's original corporate name, "Park Manor Post No. 2255, Veterans of Foreign Wars of the United States," was changed to "Chicago Ridge Memorial Post No. 2255 Veterans of Foreign Wars of the United States" as of May 15, 1970. *Id.*

12. Applicant also submitted its by-laws, which are derived from the national VFW and Illinois State Departmental Constitutions. These by-laws indicate that applicant's organizational purposes are to: contribute and participate in charitable, educational, and patriotic projects; provide and maintain educational, patriotic and recreational facilities for charitable, educational and patriotic organizations, including the members of Chicago Ridge Memorial Post No. 2255 of the Veterans of Foreign Wars of the United States, its auxiliary, subsidiary, allied and affiliated organizations; participate in various fundraising activities for organized charities; and, donate the use of its facilities to deserving and recognized charities, not, however, including the care of neglected or dependent children. Applicant Ex. No. 3.
13. Applicant's by-laws also state that its daily business affairs are controlled and managed by a 9-member Board of Directors, none of whom receive a salary or other remuneration in exchange for their services. *Id.*
14. Applicant is exempt from federal income tax pursuant to a supplemental ruling that the Internal Revenue Service issued to the Illinois Department of the Veterans of Foreign Wars on May 27, 1964. The Service based this ruling, which was in full force and effect throughout the 1995 assessment year, on its conclusion that the Illinois Department of the Veterans of Foreign Wars, and its subordinate posts, qualified as organizations described in Section 501(c)(4) of the Internal Revenue Code. Applicant Ex. No. 7.
15. Applicant did not submit any audited financial statements or tax returns demonstrating its financial structure for the tax year in question. It did, however, indicate on the Real Estate Tax Exemption Complaint and also on the Application for Property Tax Exemption that it derives income

from the subject property and that 1/3 of that income comes from hall rentals. It also indicates on these documents that another 1/3 was attributable to canteen revenues and that the remaining balance came from unspecified fund raisers. Dept. Group Ex. No, 1, Docs. A, B.

16. Applicant also submitted an untitled document indicating that it received \$94,015.51 in "sales" revenues between January 1 and April 30, 1995. This document verifies that applicant's expenses for the same period were \$120,693.59. Applicant Ex. No. 6-A.
17. Approximately \$2,000 of the sales revenues were attributable to poppy sales. Most of the remainder came from hall rentals.<sup>1</sup> Tr. pp. 29, 31-32.
18. Nearly all of the expenses were attributable to mortgage payments, utilities and other building maintenance costs. *Id.*
19. Applicant also submitted checks evidencing the following disbursements:

<b>PAYEE</b>	<b>DATE</b>	<b>AMOUNT</b>
Cerebral Palsy	1/5/95	\$10.00
Death Benefit for Widow of Deceased Member	2/1/95	\$200.00
Death Benefit for Widow of Deceased Member	2/4/95	\$200.00
Death Benefit for Widow of Deceased Member	2/4/95	\$200.00
Death Benefit for Member Whose Spouse Had Died	2/22/95	\$100.00
Death Benefit for Member Whose Spouse Had Died	2/22/95	\$100.00
<b>Total</b>		<b>\$810.00</b>

Applicant Ex. No. 8; Tr. p. 24.

20. Applicant also donated clothing, having an approximate resale value of \$2,354.00,<sup>2</sup> to the Military Order of the Purple Heart during 1995. *Id.*

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1. For further information about these rentals, *see*, Findings of Fact 26-29, *infra* at pp. 7-8.

2. The document evidencing these donations shows that the total resale value was "\$2,364.00". However, my independent tabulation of the numbers shown thereon

C. Ownership and Use Issues

21. Applicant acquired ownership of the subject property on April 22, 1969. Applicant Ex. No. 5, Doc. A.<sup>3</sup>
22. Applicant held various meetings at the subject property throughout the 1995 assessment year.<sup>4</sup> It also rented the upstairs portion to private individuals at different times during that period. Tr. pp. 19-20.
23. Applicant's monthly meetings, and those of its affiliated organizations, were held according to the following schedule:

ENTITY	TIME	APPROXIMATE ATTENDANCE
Post Board of Directors	First Tuesday of Each Month	10 People All of Whom Were Board Members
Post Membership	Second Thursday of Each Month	20 People All of Whom Were Post Members
Women's Auxiliary	Second Monday of Each Month	10-15 People All of Whom Were Auxiliary Members
Junior Girls Unit	First Saturday of Each Month	8-10 People All of Whom Were Unit Members

Tr. pp. 22-27.

24. Applicant allowed "Tough Love," a not-for-profit organization devoted to helping parents with incorrigible children, to use the building for meetings once per month at no charge. Tr. pp. 20-21

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produces a sum of "\$2,354.00". Therefore, I shall use that sum in any subsequent discussion of these donations. *See*, Applicant Ex. No. 8.

3. The Affidavit of Title (Applicant Ex. No. 5, Doc B) evidencing applicant's ownership interest indicates that "no agreement or contract for conveyance or deed ... affecting ... title to the [subject property]" appeared on the relevant county records before April 22, 1969. Based on this statement, I conclude that applicant assumed ownership of the subject property on that date.

4. Unless context clearly indicates otherwise, the "uses" described in this and all subsequent Findings of Fact shall be uses that took place during the 1995 assessment year.

25. Applicant also permitted other organizations, such as the Village of Chicago Ridge and various local churches, to use the building free of charge on one or two occasions during 1995. Tr. p. 20-21.
26. Applicant made the upper portion of the building available for rentals, but only on weekends. It averaged only one rental per weekend for 17 weekends<sup>5</sup> in 1995. Tr. pp. 19-20.
27. Applicant rented to private individuals who held birthday parties and other occasions at the subject property. Tr. pp. 19.
28. Anyone wishing to rent the upstairs was required to enter into a rental contract. Each contract set forth the sums certain that applicant charged for the hall rental, security deposit, and other services.<sup>6</sup> Applicant Ex. No. 6.
29. Each contract also provided, *inter alia*, that: prices were subject to change commensurate with the prevailing costs on the date of the affair; all final bills must be paid in cash; and, the downstairs or basement portion of the subject property was reserved for Post members and their guests, and therefore, "off limits" while the event in question was in progress. *Id.*
30. The subject property was not used at all during the times it was not being rented or used for meetings. Tr. p. 28.

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5. Applicant's past commander, Stanley Janners, testified that applicant had rentals during "one third" of the 52 weekends in 1995. Tr. pp. 19-20, 28-29. Thus,  $52 \times .333 = 17.3316$ , which amounts to a rounded figure of 17.

6. For a sample rental contract which contains a complete price schedule and listing of services, *see*, Applicant Ex. No. 6.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-145 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, 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).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.* The presently-relevant provisions of that statute are found in Section 15-145, which states as follows:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 ILCS 200/15-145.

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); 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).

Here, the appropriate exemption pertains to "property of veteran's organizations". Consistent with the above rules, our Supreme Court has interpreted that exemption very narrowly and limited its application to the following circumstances:

... In order to qualify its property for exemption the party seeking it must prove that it is the type of organization or institution described in the applicable exempting statute and that its property is exclusively used for the purposes set forth in the act. [citations omitted]. Specifically, the plaintiff need not here prove that it is a charitable institution but rather *that it is a veteran's organization and that its property is used exclusively for charitable, patriotic and civic purposes.*

North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967) (hereinafter "Post No. 21"). (Emphasis added).

This applicant's primary barrier to exemption under the above criteria stems not from its failure to qualify as a "veteran's organization", but rather, from the confusing and contradictory nature of its evidence as to exempt use. This evidence must be measured against the well-settled principles that first, the word "exclusively," when used in section

15-145 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose" (Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)), and second, that applicant can not obtain a property tax exemption unless it clearly and convincingly proves that the subject property was actually used for exempt purposes during the tax year in question. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The above standards are important herein because the evidence contained in this record is very confusing. For instance, the Application for Property Tax Exemption (Dept. Group Ex. No. 1) indicates that the canteen or bar was open 7 days per week. However, applicant's past Commander, Stanley A. Janners, testified that applicant closed the bar during 1995. Tr. pp. 18, 21.

Even if applicant's evidence were not confusing, any of the active uses fail to qualify as exempt as a matter of law. The meetings of applicant's post and its affiliated organizations were, without exception, attended solely by the members of those organizations. Consequently, the primary beneficiaries of any business discussed or transacted at these meetings were the members themselves and not the general public. As such, the uses associated therewith fail to qualify as "charitable" or "beneficent" within the meaning of Illinois law. Rogers Park Post No. 108 v. Korzen, 8 Ill.2d 286 (1956) (hereinafter "Rogers Park"); Post No. 21, *supra*; Morton Temple Association v.

Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991).

Moreover. Commander Janners testified that applicant allowed Tough Love and other organizations to use the subject property on what he described as a "very" occasional basis. Tr. p. 18. Based on this testimony, I conclude that Tough Love and the other organizations were but incidental users of the subject property. Therefore, any meetings they conducted at the subject property were legally insufficient to establish that the subject property was "primarily" used for exempt purposes during the 1995 tax year. Rogers Park, *supra*; Post No. 21, *supra*; Morton Temple Association, *supra*; Albion Ruritan Club, *supra*.

The rental uses also appear to be incidental, as Commander Janners indicated that applicant averaged only one rental per weekend during 17 to 20 weekends throughout 1995. Tr. pp. 19-20. Assuming, however, that they were not incidental, such rentals and the sample rental agreement submitted as Applicant Ex. No. 6, prove that applicant used the subject property for the non-exempt purpose of producing income for its owner during the tax year in question. *Accord*, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

Whether this inherently commercial use was the primary one to which the subject property was put during 1995 remains an open question, at least on this particular record. Analysis of the evidence pertaining to applicant's financial structure, limited though it

may be, reveals that applicant derived no less than 33%<sup>7</sup> and possibly as much as 98%<sup>8</sup> of its income from rentals during 1995.

This evidence also indicates that nearly all of these expenses were attributable to mortgage payments, utilities and other building maintenance costs. Furthermore, any "charitable" disbursements applicant made in the form of contributions to cerebral palsy and/or "death benefits" amounted to \$810.00, or approximately 1%<sup>9</sup> of applicant's total expenses. Moreover, applicant's contributions of used clothing to the Military Order of the Purple Heart amounted to \$2,354.00, or approximately 2%,<sup>10</sup> of its total expenses. Thus, the combined value of applicant's "charitable" disbursements and clothing donations was \$3,164.00 or only 3%<sup>11</sup> of its total expenses.

These expenditures are *de minimus*, and therefore incidental, to those applicant incurred as a result of operating the building. *Accord, Rogers Park, supra*. In light of

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7. See, Dept. Gr. Ex. No. 1, Docs. A, B.

8. Per Applicant Ex. No. 6-A and Tr. pp. 29, 31-32:

SOURCE/FUNCTION	NUMERICAL EQUIVALENT
1. Total "Sales" Revenues (Applicant Ex. No. 6-A)	\$94,015.51
2. Less Portion of "Sales" Revenues Not Attributable to Rentals (Tr. pp. 29, 31-32)	- 2,000.00
3. Equals Total Revenues "Sales" Revenues Attributable to Rentals	\$92,015.51
4. Divided by Total "Sales" Revenues	/\$94,015.51
5. Equals Percentage of "Sales" Revenues Attributable to Rental Income	0.9787 (rounded) or 98%

9.  $\$810.00/\$120,693.59 = .0067$  (rounded) or approximately 1%.

10.  $\$2,354.00/\$120,693.59 = .0195$  (rounded) or approximately 2%.

11.  $\$810.00 + \$2,354.00 = \$3,164.00/\$120,693.59 = .0262$  (rounded) or approximately 3%.

this and all the aforementioned considerations, I conclude that the subject property was not "used exclusively for charitable, patriotic and civic purposes", during 1995. Therefore, that portion of the Department's determination denying said property exemption from 1995 real estate taxes because of failure to satisfy the exempt use requirement contained in section 15-145 of the Property Tax Code should be affirmed.

Applicant's exemption from federal income tax does not alter the above conclusion. This exemption does not establish that the subject property was actually used for exempt purposes during the year in question. In re Application of Clark v. Marion Park, Inc., 80 Ill. App.3d 1010, 1012-13 (2<sup>nd</sup> Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Furthermore, while the exemption from federal income tax establishes that applicant is an exempt organization for purposes of the relevant sections of the Internal Revenue Code, these sections do not preempt the exemption requirements contained in section 15-145 of the Property Tax Code. For these reasons, applicant's exemption from federal income tax can not provide a legally sufficient basis for exempting the subject property from 1995 real estate taxes under the relevant statute.

Applicant Ex. No. 8 contains a plethora of information indicating that applicant's members spoke at area grade schools, sponsored an essay contest for youth, provided assistance at a local Veteran's Administration Hospital and engaged in many other activities that benefited its community throughout 1995. Nevertheless, my previous analysis sets forth a number of factors which prove that the subject property was not primarily used in furtherance of these pursuits during that tax year. Therefore, the

Department's initial determination denying said property exemption from 1995 real estate taxes under section 15-145 of the Property Tax Code should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 14-17-114-027 not be exempt from 1995 real estate taxes.

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Date

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Alan I. Marcus  
Administrative Law Judge