

PT 95-14
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

UNITED MORAVIAN SOCIETIES) Docket No.(s) 92-16-1518
)
Applicant) PI No.(s) 16-19-425-019
) (Cook County)
v.)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS) George H. Nafziger
) Administrative Law Judge
)

RECOMMENDATION FOR DISPOSITION

APPEARANCES Mr. Larry C. Jurgens, attorney for Applicant, appeared on behalf of Applicant.

SYNOPSIS A hearing was held in this matter on November 16, 1994, to determine whether or not the parcel here in issue and the building thereon, qualified for exemption from real estate tax for the 1992 assessment year.

Is Applicant a charitable organization? Did Applicant own the parcel here in issue and the building thereon, during the 1992 assessment year? Did Applicant use the parcel here in issue and the building thereon, for charitable purposes during the 1992 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that Applicant is a charitable organization, that it owned the parcel here in issue and the building thereon, during all of 1992, and that it used said parcel and building for charitable purposes during the 1992 assessment year.

FINDINGS OF FACT The Department's position in this matter, namely that Applicant failed to establish that this property was owned by a charitable organization and used for charitable purposes during 1992, was

established by the admission in evidence of Department's Exhibits 1 through 5.

Mr. Joseph Borysek, president of Applicant, was present at the hearing, and testified on behalf of Applicant.

On July 2, 1993, the Cook County Board of Appeals forwarded a Statement of Facts in Exemption Application, concerning the parcel here in issue and the building thereon, for the 1992 assessment year, to the Illinois Department of Revenue (Department's Exhibit 2). On August 18, 1994, the Department of Revenue notified Applicant that it was denying the exemption of the parcel here in issue and the building thereon, for the 1992 assessment year (Department's Exhibit 3). On August 25, 1994, Applicant's attorney wrote a letter to the Department of Revenue, requesting a formal hearing in this matter (Department's Exhibit 4). The hearing held on November 16, 1994, was held pursuant to that request.

Applicant was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois, on July 31, 1964, for the following purposes:

"Keeping up the costumes of our native land, folk dancing and singing, cultural and benevolent work."

On December 19, 1988, Applicant amended the purpose clause of its Articles of Incorporation to read in part as follows:

"IT IS HEREBY RESOLVED that the purposes for which our corporation was organized are amended as follows: To keep up the customs of our native land, folk dancing and singing, cultural and benevolent work; to act as a social and cultural nucleus for those Moravian organizations and persons of Moravian descent in the United States of America and Canada; to propagate and perpetuate Moravian folklore, heritage and traditions; to advocated among its members, the value of American Citizenship which is enhanced by the appreciation of a background of Moravian Culture to recognize and appreciate the contributions to Moravian culture, language, folklore and heritage that have been made and that are being made by individuals and by other organizations, including individual and organizational members of the United Moravian Societies;...."

Applicant acquired the parcel here in issue and the building thereon,

by a warranty deed, dated November 17, 1988. Said parcel is improved with a one-story commercial building, which contains approximately 4,375 square feet. The building for all practical purposes covers the entire lot. The building contains a kitchen, a large dance rehearsal room, several rooms containing museum displays, several storage rooms, a general meeting room, which is also used as a classroom, and two restrooms.

During an average month, the Czechoslovak Society of America meets in the building on the first, second, and third Tuesdays, at 7:00 P.M. On the first and third Tuesdays, the 1/2 and 1/2 singers practice, and on the second Tuesday, the cultural division meets. At 7:00 P.M., on the first Thursday of each month, the Czech American Congress meets at 7:00 P.M.. This organization consists of 42 Czech-American organizations in the Chicago area. On the third Thursday of the month, SVU meets in the building from 7:00 P.M. to 10:00 P.M. Mr. Borysek described this organization as a meeting of Czech intellectuals. Every Monday evening, during the school year, a beginners' Czech language class meets from 7:00 P.M. to 9:00 P.M. Every Saturday morning during the school year, an intermediate Czech language class meets from 9:30 A.M. to 11:00 A.M. On the second, third, and fourth Thursday evenings, during the school year, a Czech history class meets in the building from 7:00 P.M. to 9:00 P.M. Applicant holds its monthly meetings in the building on Friday evenings at 8:00 P.M. Applicant's dance groups rehearse in the building on the parcel here in issue, from 6:30 P.M. to 9:30 P.M., every Wednesday evening. Applicant has three dance groups: the beginners, who are ages three to eight; the intermediate group, who are ages nine through 14; and the young people's group, who are ages 15 and up. During 1992, there were 36 in the beginners' group, 18 in the intermediate group, and about 16 in the young people's group. These dance groups perform Moravian or Czech folk dances. They all perform in authentic costumes. Applicant also sponsors a singing

group, which contains about 30 singers who sing folk songs in the Czech language. The folk dancers and singers perform on request, at various folk festivals, and other activities, as well as at the Illinois State Fair in Springfield. While Applicant does not charge for these appearances, donations are accepted to help defray travel expenses, and also to help maintain the costumes.

The building on the parcel here in issue also contains the Moravian Folklore Museum. The museum is open on Wednesday evenings and Saturday mornings, and at other times by appointment. During 1992, there was no charge to view the museum. When folk festivals or cultural events are held at the building, there is no admission charge to those activities, but contributions are accepted.

The Czech language and history classes, which are held at the building on the parcel here in issue, are provided at no cost to anyone who is interested. They are taught by Mr. Anthony Jandacek, who is a retired high school teacher. He provides the books for the students. Membership dues to belong to Applicant are \$6.00 per year. Applicant waives dues for senior citizens. Applicant has no capital, capital stock, or shareholders, and no one profits from the enterprise. Applicant's primary sources of funds are proceeds of fund raising events, contributions, and donations.

1. I find that Applicant owned the parcel here in issue during all of the 1992 assessment year.

2. I find that since Applicant provided the use of the building, the performances in the building, the performances by the folk groups, the language and history classes, and admission to the museum, either for donations or at no cost, that the benefits of Applicant's activities were available to an indefinite number of persons, that charity was dispensed to all who needed and applied for it, and that no obstacles were placed in the way of those seeking the benefits.

3. I find that Applicant had no capital, capital stock, or shareholders during 1992, and did not profit from the enterprise.

4. Applicant's funds were primarily derived from public and private charity, and were held in trust for the objects and purposes expressed in its charter during 1992.

5. I find that Applicant used the parcel here in issue and the building thereon, for charitable purposes during the 1992 assessment year.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, 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."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *Crerar v. Williams*, 145 Ill. 625, 643 (1893), the Illinois Supreme Court defined the term charity in part as follows:

"A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burthens of government."

In the case of Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108, 113 (1919), the Court defined charity as follows:

"Charity, in the legal sense, is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man."

Preserving and passing on the Moravian and Czech culture, customs, heritage, and language, through the teaching and practice of the Czech language and the teaching and performance of Moravian and Czech folk songs and folk dancing, I conclude, falls within the foregoing definitions of charity. See also the case of People ex rel. Scott v. Harding Museum, 58 Ill.App.3d 408 (1978) where the Court held that the operation of a museum was a charitable purpose.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that Applicant met each of

the foregoing six guidelines.

Based on the foregoing, I conclude that Applicant is a charitable organization, and that it owned the parcel here in issue and the building thereon, during the entire 1992 assessment year.

I further conclude that Applicant used the parcel here in issue and the building thereon, for charitable purposes during the entire 1992 assessment year.

I therefore recommend that Cook County parcel No. 16-19-425-019 be exempt from real estate tax for the 1992 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995