

PT 95-53
Tax Type: PROPERTY TAX
Issue: Parking Lot Exemption

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

RIVERFRONT MUSEUM PARK, INC./)
ROCKFORD PARK DISTRICT)
Applicant) Docket Number 92-101-99
) Parcel Index Number 203B-803H
versus)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Michael Scheurich, attorney for applicant

SYNOPSIS: The Winnebago County Board of Review filed an Application for Property Tax Exemption To Board of Review - Statement of Facts with the Illinois Department of Revenue (the "Department") for Permanent Parcel Index Number 203B-803H for Riverfront Museum Park, Inc./Rockford Park District (the "Applicant"). The Department denied the application finding that the property was not in exempt use. The applicant filed a protest to the findings of the Department and requested a hearing. At the hearing it was established that the subject property is a parking lot that is owned by Riverfront Museum Park, Inc. The property is leased to the Rockford Park District and will be conveyed to them once the existing mortgage is extinguished. The Park District leased in the aggregate, from all sources, more than 20 acres in 1992. It is recommended that the decision of the Director of the Department be that the parcel in question was not in exempt ownership and use and should remain on the tax rolls for 1992.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Winnebago County permanent parcel index number 203B-803H should not be exempt from

property tax for the 1992 assessment year was established by admission into evidence of Dept. Ex. Nos. 1-8.

2. For the taxable year in question, 1992, the subject property was used as an exterior component of Riverfront Museum Park, Inc.'s operation of outdoor classes for the Art Museum and Discovery Center, for display of a large sculpture exhibit and parking for vehicles of employees and visitors of the museum groups occupying the adjacent building. (Tr. pp. 25-27)

3. The property is a blacktop parking lot that has been enhanced with planting beds and vegetation. It is owned by Riverfront Museum Park, Inc. (Dept. Ex. No. 2; Tr. p. 15)

4. The predecessor to Riverfront Museum Park, Inc. was Arts & Science Park, Inc. which was incorporated under the General Not for Profit Corporation Act of Illinois on August 17, 1988. The name was changed to Riverfront Museum Park, Inc. on July 18, 1989. (Dept. Ex. No. 2; Tr. p. 13)

5. Arts & Science Park, Inc. is exempt from federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 2)

6. The purpose of Riverfront Museum Park, Inc. is:

To provide area museums, arts and science organizations with opportunities for the shared resources, joint programming and enhanced visibility that result from a centrally located, coordinated home; and to enable those organizations to expand their impact on the community through educational and cultural programs; and to continue to reach out to populations which may not otherwise enjoy access to the available enrichment programs. (Dept. Ex. No. 2)

7. Riverfront Museum Park, Inc. is comprised of six member organizations: the Discovery Children's Center Museum, Rockford Art Museum, Rockford Film Project, Rockford Symphony Orchestra, Rockford Dance Company and Northern Public Radio. (Tr. p. 13)

8. Applicant's board is made up of representatives of each of its six member organizations. (Tr. p. 13)

9. Each member organization, except Northern Public Radio, is exempt from federal taxation pursuant to 501(c)(3) designations granted by the Internal Revenue Service. (Tr. p. 14)

10. Northern Public Radio is affiliated with Northern Illinois University, a State University. (Tr. p. 13)

11. The property in question was at one time the parking lot for a Sears and Roebuck retail store. The store, parking lot and surrounding land were donated to the Rockford Art Museum and to the entity known as the Rockford Park District. That property was subsequently divided, not equally, into two parcels, one portion given to Rockford Park District and the other portion given to the Rockford Art Museum. (Tr. pp. 16-17)

12. The parcel and building that the Rockford Art Museum received was too large for the museum's immediate needs, so with the cooperation of the Rockford Park District a community advisory committee, the Riverfront Museum Park, Inc. was formed. (Tr. p. 17)

13. The building required extensive asbestos abatement and interior remodeling which was paid for largely through community fundraising efforts and an industrial revenue bond obtained through Amcore Bank. (Tr. pp. 20-21)

14. The security for the bond was a mortgage on the parking lot. The building was a negative value and it was determined that the parking lot was worth more without the building than with it. (Tr. p. 21)

15. The building was subsequently deeded to the Rockford Park District. The parking lot was deeded to Riverfront Museum Park, Inc. on December 11, 1990. (Dept. Ex. No. 2; Tr. p. 22)

16. During the taxable year in question, the parking lot was leased to the Rockford Park District. The lease between Riverfront Museum Park,

Inc. and the Rockford Park District, executed on August 11, 1992, stated that it would continue during the existing mortgage on the lot to Amcore Bank. Upon the payoff of the release of the mortgage, Riverfront Museum Park, Inc. guaranteed to convey the premises to the Rockford Park District for no further consideration. (Dept. Ex. No. 2)

17. The good and valuable consideration referred to in the lease is the payment of taxes, insurance, maintenance of the property, upkeep, security and general care for the premises. (Dept. Ex. No. 2)

18. Rockford Park District leases 848.35 acres from different entities. (Dept. Ex. No. 2)

19. The Board of Commissioners of the Rockford Park District did not want to accept ownership of the parking lot as long as it was encumbered with a mortgage. (Tr. p. 23)

20. It was always contemplated that once the mortgage was paid off that the Rockford Park District would be the ultimate owner of the parcel. (Tr. p. 24)

21. In its capacity as the administrator for the various museum groups, Riverfront Museum Park, Inc. is responsible for the marketing, fundraising aspects of the volunteer coordination and some joint programming as the catalyst for the member groups. They also administer funding from the Rockford Park District. (Tr. pp. 18, 29, 33)

22. The Rockford Park District has chosen not to conduct museum operations. Instead they developed working relationships and direct agreements with not-for-profit organizations to manage and run the museum facilities for them. (Tr. p. 40)

23. The applicant applied for a property tax exemption under 35 ILCS 205/16, 18 or 7. (Dept. Ex. No. 2)

CONCLUSIONS OF LAW: Article IX, 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.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 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, all property of old people's homes and facilities for the developmentally disabled, ...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;...All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

Some exemptions for parking areas are enumerated in 35 ILCS 205/19.16 which states, in part, as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore and owned by any school district, non-profit hospital or school, or religious or charitable institution which meets the qualifications for exemption.

In order for the applicant to qualify for the above exemption, it would be necessary to find that the applicant is a school district, non-profit hospital or school, or religious or charitable institution. The applicant has failed to establish that they are in fact one of those organizations.

Other exemptions are listed in 35 ILCS 205/19.18 which exempts certain property from taxation as follows:

All property of every kind belonging to any park or conservation district having a population of less than 1,000,000 inhabitants by the last preceding Federal Census, and all property leased to a park district, not exceeding the aggregate of 20 acres for each such park district, for an annual rent of not more than \$1 and

used exclusively as open space for recreational purposes, and all property of public school districts or public community college districts not leased by such school or community college districts or otherwise used with a view to profit.

The property at issue was not owned by a park district during the taxable year in question. Therefore, the applicant has failed to prove that they qualify for the above exemption.

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 (1941). 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 *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are 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 objectives and purposes expressed in its 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.

Applicant's argument that the Rockford Park District is the equitable

owner of the property and Riverfront Museum Park, Inc. is just the legal owner is not supported by the facts, documents and evidence submitted. According to testimony, the Rockford Park District refused to accept the parcel as long as it had the outstanding mortgage on it. Once the mortgage was paid, the Rockford Park District did in fact acquire the parcel. This was done after the taxable year in question.

The statutes have provisions for leases to park districts and the legislature has given a limit to the amount that can be leased to a park district and granted an exemption. That limit is 20 acres in aggregate. In 1992, the Rockford Park District had already been given an exemption for 20 acres that were leased from other entities.

Conversely, applicant argues that Riverfront Museum Park, Inc. is a charitable organization. This also has not been substantiated by the facts and evidence. Riverfront Museum Park, Inc. is an administrative arm of six entities, one of which, as a public radio station for a State university, is a designee of the State of Illinois. The other five entities are 501(c)(3) tax exempt entities. The Riverfront Museum Park, Inc. is also a 501(c)(3) tax-exempt entity. However, Illinois law is very clear that just because an applicant for property tax exemption has a 501(c)(3) designation from the Internal Revenue Service, that is not sufficient to exempt the entity from Illinois property tax. *People ex rel. County Collector v. Hopedale Medical Foundation* 46 Ill.2d 250 (1970).

The attorney for the applicant submitted a post-hearing brief that relied on *Evangelical Hospitals Corporation v. Department of Revenue* 223 Ill.App.3d 225 (2d Dist. 1992), *Evangelical Hospital Association v. Novak* 125 Ill.App.3d (2d Dist. 1984) and *Association of American Medical Colleges v. Lorenz* 17 Ill.2d 125 (1959) for the proposition that when administrative and fund-raising activities of charitable organizations are separated from other more traditionally recognized charitable endeavors, the

administrative and fund-raising activities qualify as charitable. The proposition is correct but the situations in the cases relied upon are not the same as the circumstances here.

Evangelical Hospitals Corporation v. Department of Revenue can be distinguished from the case at hand because the issue of whether the Hospital itself was a charitable organization was not before the Court. As stated at 230, "the parties do not dispute that the owner of the property, EHC, is a charitable organization....". In Evangelical Hospital Association v. Novak, the question of whether the Hospital was a charitable organization was again not at issue.

At issue here is the question of whether Riverfront Museum Park, Inc. itself is a charitable organization, not whether the administrative offices of a charitable organization can be found to be exempt. The applicant has failed to prove that all six of the member organizations are in fact charitable organizations. As stated previously, the fact that the organizations have a 501(c)(3) designation from the federal government is not sufficient under Illinois law to find that an organization is charitable.

Judicial notice is taken of the fact that the Department issued a property tax exemption to the building and parking lot of the Rockford Art Museum for the 1985 tax year. In that decision, the administrative law judge found that Rockford Art Museum was a charitable organization and the parking lot was owned and used for charitable purposes. The recommendation carried a caveat that the supervisor of assessments and Board of review re-examine the use of the building and parking lot on an annual basis. I therefore find that the Rockford Art Museum is a charitable organization, however, Rockford Art Museum did not own the property during the taxable year in question.

Applicant's assertion that Association of American Medical Colleges v.

Lorenz is pertinent is not supported by the facts at issue. In Association of American Medical Colleges, the applicant requested a property tax exemption as a school or educational institution. The legal analysis under that section of the statutes and case law is different than the standards and analysis done for a charitable exemption.

The applicant has established only that it is a 501(c)(3) federally tax-exempt entity and that it is the administrative arm for six organizations, one of which is a charitable organization. Of the remaining five, four have federal 501(c)(3) tax-exempt status and one is a university radio station. Since the applicant failed to establish its members' charitable status under Illinois law, it is necessary that it establish its right to such an exemption pursuant to its own qualifications. Applicant has failed to do so, as it has not shown that it satisfies the six prong test enumerated in Methodist Old Peoples Home. Nor has the applicant established that they qualify for an exemption under another statutory provision.

It is therefore recommended that the Director of the Department find that Winnebago County Parcel Index Number 203B-803H should remain on the tax rolls for the 1992 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

November 7, 1995