

PT 95-72
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

CENTRAL ILLINOIS LANDMARKS)
FOUNDATION)
Taxpayer) Docket # 93-72-143
) Parcel Index # 1809227001001C16
v.)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: James D. Broadway, Attorney for Applicant

SYNOPSIS: The Peoria County Supervisor of Assessments forwarded an Application for Property Tax Exemption for Central Illinois Landmarks Foundation (the "Applicant") to the Illinois Department of Revenue (the "Department") for the 1993 assessment year. The Department received the application on December 23, 1993. On August 18, 1994, the Department denied the application finding that the property was not owned and used by a charitable organization. The applicant filed a protest to the findings of the Department and requested a hearing in the matter. The hearing was held pursuant to that request. It is recommended that the Director of the Department of Revenue uphold the denial of the application for exemption.

FINDINGS OF FACT:

1. The Department's prima facie case was established by admission into evidence of Dept. Ex. Nos. 1-5.
2. Applicant acquired the property herein issue by a warranty deed dated December 8, 1992. (Dept. Ex. No. 1)
3. Applicant was incorporated under the General Not-for-Profit Corporation Act of the State of Illinois on June 5, 1973. The articles

state that the purposes for which the applicant was organized are:

- a. The purpose of this organization is to promote the general improvement and welfare of Central Illinois.
- b. To encourage and foster preservation of historical buildings and landmarks in Central Illinois.
- c. To restore and renovate buildings and landmarks of historical significance in Central Illinois.
- d. To gather, compile and disseminate information concerning the history of buildings and landmarks in Central Illinois.
- e. To accept funds by public subscription or otherwise, to support the above described purposes. (Dept. Ex. No. 1)

4. Applicant obtained a 501(c)(3) designation from the Internal Revenue Service and is exempt from payment of federal income tax (Dept. Ex. No. 1, App. Ex. No. 1)

5. The purposes for which the applicant acquired this property was to build a Veterans Memorial Park. (Dept. Ex. No. 1)

6. During the taxable year in question, the property was being developed for the construction of the park. (Tr. p. 24)

7. The applicant was issued an exemption from payment of Illinois sales tax by the Department on July 25, 1978. (App. Ex. No. 1)

8. The property in question is a beautiful park in downtown Peoria, open to the public, with park benches and trees planted around the perimeter. (Dept. Ex. No. 1)

9. Administrative notice is taken of the fact that the Department found the applicant to be a non-exempt, primarily civic organization pursuant to Docket number 86-72-118. The case concerned another parcel owned by the applicant for which a property tax exemption was denied. The applicant did not appeal that decision. At this hearing, the applicant did not bring any evidence to sustain their burden of proving that they were a charitable organization.

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,...

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).

The property at issue is a park dedicated to the veterans of the United States. There is no charge for admission and the applicant makes no profit from the venture. The applicant failed to establish that there had

been any change in the organization, the organizational structure or the bylaws to establish that the applicant was no longer a non-exempt, primarily civic organization as decided in the decision of Docket number 86-72-118, issued August 22, 1991. The use of the property is charitable and the applicant has created a beautiful park in an area that was once an eyesore in the Peoria community. The applicant is to be commended for the efforts. However, the law mandates both charitable ownership and use for an applicant to qualify for a property tax exemption. The applicant has failed to meet that statutory burden.

I find that I am constrained by the law itself to hold that the applicant is a non-exempt, primarily civic organization. Therefore, this property does not qualify for a property tax exemption. It is recommended that the Director of the Department uphold the denial of the property tax exemption for Peoria Parcel Index number 1809227001001C16 for the 1993 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

October 6, 1995