

**PT 99-65**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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<b>PLAYCRAFTERS BARN THEATRE, INC.</b> )	<b>A.H. File #</b>	<b>98-PT-0053</b>
<b>Applicant</b> )	<b>Docket #</b>	<b>97-81-95</b>
<b>v.</b> )		
) )	<b>Legal description: Lot one (1) in</b>	
) )	<b>Playcrafters 1<sup>st</sup> Addition to the</b>	
<b>THE DEPARTMENT OF REVENUE</b> )	<b>City of Moline, Rock Island</b>	
<b>OF THE STATE OF ILLINOIS</b> )	<b>County, Illinois</b>	
) )	<b>Barbara S. Rowe</b>	
) )	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Jonathon C. Fox, Califf and Harper, P.C. for Playcrafters Barn Theatre, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois on January 28, 1999, to determine whether or not Rock Island County Parcel known as South Moline Twp. 14550 qualified for exemption during the 1997 assessment year.

Mr. Kimber L. Eastland, General Manager; Ms. Regina Holly Lange, Chairperson of the Fundraising Committee; Ms. April R. Adamson, Fundraising Committee member and President in 1997 of Playcrafters Barn Theatre, Inc. (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for charitable purposes during the 1997

assessment year. Following the submission of the evidence and a review of the record, it is determined that the applicant owned this parcel during all of the 1997 year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used this parcel for charitable purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Rock Island County parcel known as South Moline Twp. 14550, legally described as Lot one (1) in Playcrafters 1<sup>st</sup> Addition to the City of Moline, Rock Island County, Illinois, did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 6. (Tr. p. 11)

2. On September 9, 1997, the Department received a property tax exemption application from the Rock Island County Board of Review for Permanent Parcel Index No. "S. Moline Twp. 14550". The applicant had submitted the request and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-81-95 to the application. (Dept. Grp. Ex. No. 2)

3. On June 18, 1998, the Department denied the requested exemption application finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on January 28, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject property by a trustee's deed dated October 9, 1996. The area is comprised of 2.46 acres and is commonly known as 4950 35<sup>th</sup> Avenue, Moline, Illinois. (Dept. Grp. Ex. No. 2 pp. 4-6)

7. The applicant took possession of the property in issue in 1958. The building on the premises was donated to the applicant at that time. After two years of renovation, the applicant staged its first production, *Born Yesterday*, in the building in October 1960. Since that

time, the property has been continuously used as a community theatre. (Dept. Grp. Ex. No. 2 p. 13; Tr. pp. 12, 38-42)

8. In 1990 an installment contract for the sale of the underlying real estate was executed. The deed conveying the property to the applicant was executed on October 9, 1996, and recorded on January 6, 1997. (Dept. Ex. No. 2 pp. 4-6; Applicant's Ex. No. 1(c); Tr. p. 12)

9. Located on the subject property is applicant's community theatre, a 12,900 square-foot two-story barn building with a large parking lot. (Dept. Grp. Ex. No. 2 p. 1)

10. The first floor of the building contains the existing lobby, an electric closet, two sets of men's and women's rest rooms, six storage areas, an elevator and elevator lobby, a coat room, men's and women's dressing rooms, an office, a ticket booth, and a work shop. (Dept. Grp. Ex. No. 2 p. 8)

11. On the second floor are three storage areas, a rehearsal room, a mechanical room, the elevator and elevator lobby, the existing upper lobby, the stage and back stage, and three seating areas. (Dept. Grp. Ex. No. 2 p. 9)

12. The applicant began to add a new addition on the west side of the existing theatre in 1997. The addition was inevitable because the property was annexed by the city, which necessitated that they attach to the city sewer and water lines, re-wire the entire complex, and put in a sprinkler system. The applicant also wished to be in compliance with the Americans with Disabilities Act. A woman donated \$10,000.00 for a new elevator. That donation was the impetus for the project. The new addition added a new lobby, a handicap accessible elevator, and handicap accessible restrooms. The addition cost the applicant close to ½ million dollars. (Dept. Grp. Ex. No. 2 p. 10; Applicant's Ex. No. 1(b); Tr. pp. 47-48, 84-87)

13. The applicant is exempt from the payment of federal income taxes because the Internal Revenue Service has determined that the applicant qualifies as a charitable organization under section 501(c)(3) of the Internal Revenue Code. (Dept. Grp. Ex. No. 2 p. 11)

14. The Department granted the applicant an exemption from the payment of Retailers' Occupation and related taxes because it was determined to be a charitable organization for sales tax purposes. (Dept. Grp. Ex. No. 2 p. 12)

15. The applicant was organized under the Illinois General-Not-for-Profit Corporation Act on May 7, 1956. The articles of incorporation state that the purpose of the organization is “To conduct professional civic theatrical productions and carry out educational, civic literary purposes, including, but not exclusive of, the encouragement and cultivation of the public taste and appreciation for all the fine arts.” (Dept. Grp. Ex. No. 2 pp. 44-46)

16. The applicant does not have any capital stock or shareholders. (Tr. p. 93)

17. The by-laws of the applicant state that:

The purposes for which the corporation is organized are exclusively literary in nature, and include

(a) forming a body of persons interested in all branches of art related to the theatre:

(b) encouraging and cultivating public understanding and appreciation of said art:

(c) performing dramatic productions including each and every thing necessary or helpful to staging such productions, such as:

(I) erecting, maintaining, purchasing, renting, leasing or otherwise acquiring or disposing of any real estate or personal property necessary for said purposes, including acquiring real or personal property by gift, devise, bequest or otherwise, and investing and disposing of same in order to further the purposes of this corporation including the order to aid and assist worthy persons in the advancement of said purposes; and

(II) utilizing only volunteers or independent contractors to achieve such purposes;

(d) doing any and all other things permissible under the laws of the State of Illinois governing not-for-profit corporations. (Dept. Grp. Ex. No. 2 pp. 23)

18. Applicant’s by-laws state that membership is open to any person eighteen (18) years or older who subscribes to the by-laws, expresses a desire to further the objectives of the organization, submits an application to the membership chairperson with the fee, participates in some facet of the organization’s activities at least once a year, and possesses a membership card which entitles the holder to a specified rate for any production. As an added incentive, the applicant allows its members to go to an opening weekend show for \$3.00. (Dept. Grp. Ex. No. 2 p. 25; Tr. p. 59)

19. Applicant’s membership fee is \$5.00. Applicant’s members are from the Quad Cities area. The membership fee helps to offset the bi-monthly newsletter sent by the applicant. The applicant also sends the newsletters to associate members who do not pay the \$5.00

membership fee. The newsletters are used to notify recipients of upcoming events and to thank volunteers for donations and time. Members of the applicant have the opportunity to volunteer for directing, acting, production, and all other jobs associated with the plays. The applicant relies heavily on volunteer labor. The applicant estimates that at least 20,000 volunteer hours are donated every year. (Applicant's Ex. No. 1(e), 1(f), 2, 3; Tr. pp. 43-47, 59-62, 70-72, 99-100, 108-109)

20. The applicant's members are available to speak to local groups and schools advising them about productions. The applicant loans costumes and items necessary for productions to other local entities that have performances. The applicant works with the organizations and people in the community in order to satisfy its particular needs for a production, as well as helps other groups with their needs. Getting involved with the applicant often becomes a family venture. (Tr. pp. 57-58, 72-73, 75-78, 79)

21. The 7-member board of directors of the applicant is made up of volunteers that commit themselves to a 3-year term. (Tr. pp. 56-57)

22. The applicant currently employs a general manager. During 1997 he became the liaison between the Board of Directors and the construction project for the addition. He has been a member and associate of the applicant since 1973. (Tr. pp. 13-14)

23. During the calendar year 1997, the applicant presented *Beau Jest* in January, *Noises Off* in March; *You're a Good Man Charlie Brown* in May, *Bus Stop* in July, and *Tony 'N Tina's Wedding* in October and November. All of the plays were presented in the building on the subject parcel except *Tony 'N Tina's Wedding*, which was performed at the Villa in Rock Island. For the applicant, 1997 was a short year because the theatre was closed for construction of the new addition. (Dept. Grp. Ex. No. 2 pp. 37-39; Tr. pp. 64-67)

24. Prior to 1998, the applicant operated on a fiscal year. The fiscal year was from August 1<sup>st</sup> through July 31<sup>st</sup>. During the period ending July 31, 1997, the applicant had income from six (6) plays<sup>1</sup> in the amount of \$53,109.28 which represents 50.8% of its total revenue for

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<sup>1</sup> In 1996 the applicant presented *If its Monday This Must Be Murder* in September and *Witness For The Prosecution* in November. The proceeds from those productions as well as the proceeds from the 1997 productions of *Beau Jest*,

that period. Additional revenue came from membership fees of \$1,427.55 or 1.4% of its net income; concession income of \$3,323.00 for 3.2% of the income; fund raising of \$46,399.81 or 44.3% of the income; and interest income and gains on securities of \$364.96 or .4% of the income. Applicant's total income for the period was \$104,634.60. (Applicant's Ex. No. 4; Tr. p. 50-52)

25. The applicant's productions are open to anyone. They have people of all different social strata and ages attending. Applicant's regular audience is made up mostly of senior citizens. (Tr. p. 14)

26. The applicant is the only community theatre in the Quad Cities area that operates all year long. The applicant normally produces six (6) plays per year. Each show has fifteen (15) performances. Currently, the ticket prices are \$8.00 for Friday and Saturday night performances and \$7.00 for the Sunday matinee. In 1997 the prices were \$7.00 for Friday and Saturday performances and \$6.00 for the Sunday matinee. The price hike in 1998 was the first in 10 years. (Tr. pp. 15-16, 19, 108)

27. The majority of applicant's audience attendees are on fixed or reduced incomes. In keeping with community theatre purposes, the applicant strives to keep the prices low in order to make their productions available to the widest range of people. (Tr. pp. 16-17)

28. The applicant's largest expenses are for production costs, operations costs, and the salary for the director of services. Applicant's expenses for the fiscal year ending July 31, 1997, were \$101,536.92. That fiscal year they made a profit of \$3,097.68. (Applicant's Ex. No. 4; Tr. pp. 18-21)

29. During the taxable year in question, the applicant was closed for renovations for ½ of the year. The applicant's season started in September 1996 and ended in July 1997. The applicant chose, during the time it was closed, to go from fiscal year accounting to calendar year accounting. Therefore, starting in 1998, applicant's season ran from January through November.

There was no account balance sheet prepared for the five-month period from August 1, 1997, through December 31, 1997. (Dept. Grp. Ex. No. 2 pp. 14, 37; Tr. pp. 22-23, 81, 90-91)

30. The applicant's plays are light comedies, murder mysteries, or courtroom dramas. By trial and error, they have learned that is what sells and what the audience prefers. (Tr. p. 24)

31. Of the fifteen performances of each show, nine are open to the public. One is what the applicant calls its invited dress. The remaining five are "benefits." The applicant has a list of 100 to 110 different groups that have contacted the applicant about hosting a "benefit" program. Each year the applicant performs approximately thirty "benefit" performances. (Tr. pp. 25-26)

32. For other than weekend performances the applicant makes the building available to not-for-profit groups, (hereinafter "host groups") for what they call a sponsorship night performance, or "benefit." This is an aid that the host group can use for fundraising. The cost of booking a benefit is \$500.00, which includes the use of the building by the host group and the presentation of the play by the applicant. The \$500.00 fee barely covers the applicant's expenses and the applicant receives no profit from the benefit performances. The host group is responsible for printing and selling the 300 tickets to the performance, any and all advertising, and may provide the refreshments to be served. Beyond the \$500.00 fee, paid to the applicant, the host group keeps any profits. Often times a profit of \$1,900.00 or more is made by the host group. (Applicant's Ex. No. 1 (g); Tr. pp. 25-28).

33. The host groups that took advantage of this opportunity in 1997 were: the Civil Air Patrol, Friends of the Moline Public Library, Seton Catholic School of Moline, Red Shoes Pre-Kindergarten, the Plus 60 Club, the Maternal Health Center, Lutheran Social Services of Illinois, C.T. Goodwill Committee, Plow Capital Chapter – ABWA, Pathway Hospice of VNHA, Friends of the People of Haiti, District 4 X Ray Society, Zonta, Tri City Jewish Center, the Exchange Club of East Moline, and the Solo Stepper Square Dance Club. (Applicant's Ex. No. 1 (g); Tr. pp. 25-28).

34. In 1997, the applicant donated tickets for its performances to various organizations including Live Theatre for the Quad Cities Region, Western Illinois Area Agency

on Aging, the Rainbow Parent's Club, and High Schools and Colleges in the Quad Cities area. Complementary tickets are sent to the theatre departments of the schools for every show. The applicant also offers a block discount for groups of 20 or larger. The representative of the applicant testified that if someone came to the door and could not afford the entrance fee, the applicant would let them observe the production for free. (Applicant's Ex. No. 1(d); Dept. Ex. No. 2 pp. 40-43; Tr. pp. 28-33, 37, 49, 108)

35. Many theatre students from the area schools attend the performances free of charge thanks to the donated tickets. After the production, the students often talk to the applicant's director, lighting designer, and actors about performing and production. Often the schools send students to the applicant to learn. (Tr. pp. 29-33)

36. The applicant works closely with the theatre tech class of Blackhawk Community College. Students can get credit for time spent working with the applicant. (Tr. pp. 54, 63)

37. Applicant's actors respond to audition notices placed in the area newspapers. The actors are not paid. The directors receive \$200.00 per show. The producer and stage manager each receive \$100.00. Most of those people return the money back to the organization. (Tr. pp. 52-54, 68-70)

38. For each show, the lighting director and sound director each get \$150.00 and the set director receives \$700.00. (Tr. p. 54)

39. The "invited dress" is held the night before the first benefit scheduled for the production. It is held exactly like the production of the show. The audience is usually composed of mentally challenged people and senior citizens that are not charged to view the production. Groups that took advantage of applicant's "invited dress" in 1997 included Robert Young Mental Health Care Center, the Association for Retarded Citizens, and various housing complexes for the elderly. The audience is usually at least 150 people. (Tr. pp. 34-37, 80-81)

40. The applicant operates a concession stand on the premises. They have soda pop machines and sell candy bars. They sell the candy bars and sodas for \$.50. Volunteers do not have to pay for concession products that they consume. (Tr. pp. 37-38)

41. Applicant's fundraising activities are any event that occurs for the applicant that is not a normal production. The financial statement does not differentiate between grants, extra productions, and monies granted from other organizations in the amount shown for fund raising. (Applicant's Ex. No. 4; Tr. pp. 48-49, 101-107)

42. In 1997, as a fundraiser, the applicant hosted a comedy reprise. A number of strong comedic scenes were chosen from plays that the applicant had previously produced. Volunteers brought food so snacks were provided. The audience would come to see the production and get a snack during the intermission. The applicant raised under \$2,000.00 for the production. The applicant considers *Tony 'N Tina's Wedding* another special event. The applicant earned approximately \$18,000.00 for *Tony 'N Tina's Wedding*. (Tr. pp. 73-74, 91, 101)

43. The applicant also sent volunteers to work at an event in Moline, Illinois called Riverfest. Riverfest takes the profits from the event and makes donations to smaller groups. The applicant received over \$600.00 from Riverfest. Members of the applicant also solicited pledges from friends and relatives for a golf tournament called the "Quad City Open." The people pledged a penny for each birdie. The applicant did not earn much for that event. In 1997, the City of Moline gave the applicant \$30,000.00 for a matching grant that the applicant raised. The city also gave them a \$40,000.00 low-interest loan that became effective in October. The applicant still owes \$36,000.00 on that loan. (Tr. pp. 81-87, 94)

44. Applicant's fundraising monies are not only used to pay for the debt incurred for the addition. The monies are also used to help keep the applicant operational. If money is earmarked for a particular area, it is designated for use there. However, if money is not designated for a particular use, the applicant will use it for operating costs or where it is needed. During the past three years, the applicant has raised over \$300,000.00 by what it terms fundraising. (Tr. pp. 87-88, 92-95, 100-101)

45. The applicant has accepted donations from individuals, foundations, and corporate contributors. The applicant has received a few matching grants over the lifetime of the

corporation. The John Deere Foundation has twice given the applicant \$25,000.00, the last time in 1998. (Tr. pp. 88-89, 94-101)

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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the 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). Further, 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)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[,]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

In People ex. rel. Hellyer v. Morton, 373 Ill. 72 (1940), the Court stated

A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well being of society.

The Illinois Supreme Court has effectuated the definition of a charity by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home at 157.

In addition, in order to qualify for a charitable exemption for property tax purposes, the primary use of the property must be for charitable purposes.

I find that the applicant has established that because they qualify for exemption from payment of federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service that they have no capital stock or shareholders. The applicant received a \$10,000.00 donation from a private individual for a new elevator during the taxable year in question. A grant in the amount of \$30,000.00 was received from the city of Moline in 1997. The applicant sends its newsletters, virtually the only benefit of being a member of the applicant organization, to associated members who do not pay the applicant's membership fee. Tickets to applicant's productions are distributed to various organizations at no charge. Benefit productions are performed for a minimal fee for other not-for-profit organizations.

I therefore find that the applicant has established that they have no capital stock or shareholders, that they earn no profits or dividends, and derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charter, that they dispense charity to all who need and apply for it, that they do not provide gain or profit in a private sense to any person connected with applicant's organization, and that they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits that the applicant dispenses.

The representative of the applicant stated that if a person were unable to pay to see a performance, the person would be allowed to view the performance at no charge. I find his testimony credible.

In its brief, the attorney for the applicant distinguishes the activities of the applicant from the activities of the DuPage Art League, which was denied a property tax exemption in DuPage Art League v. The Department of Revenue, 177 Ill.App. 3d 895 (2<sup>nd</sup> Dist. 1988). I agree that the circumstances cited in DuPage Art League are different from the facts before me and that the Court's opinion in DuPage Art League is distinguishable from this matter.

I find that the applicant has established that the guidelines of Methodist Old People's Home have been met. I also find that the primary use of the property in question is charitable. It is noted that the applicant's volunteers are dedicated and very enthusiastic about the applicant's programs.

For the aforementioned reasons, I find that the applicant is a charitable organization and that Rock Island parcel legally described as Lot one (1) in Playcrafters 1<sup>st</sup> Addition to the City of Moline, Rock Island County, Illinois was used for charitable purposes during the 1997 assessment year. It is therefore recommended that Rock Island parcel legally described as Lot one (1) in Playcrafters 1<sup>st</sup> Addition to the City of Moline, Rock Island County, Illinois, be exempt from taxation for the 1997 assessment year.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
August 11, 1999