

PT 07-5
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 06-PT-0006
v.)	PIN C16 18-09-227-002
)	Tax Year 2005
CENTRAL ILLINOIS LANDMARKS)	
FOUNDATION)	Dept. Docket # 05-72-94
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Bruce Thiemann of Kavanagh, Scully, Sudow, White & Frederick, P.C. for Central Illinois Landmarks Foundation.

Synopsis:

The Central Illinois Landmarks Foundation (“applicant”) filed an application for a property tax exemption for the year 2005 for a parcel of property located in Peoria County. The applicant alleges that the property should be exempt pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/15-65) on the basis that the property is owned by a charitable organization and used exclusively for charitable purposes. The County Board of Review recommended that the exemption be granted, but the Department of

Revenue (“Department”) determined that the exemption should be denied.¹ The applicant timely protested the Department’s determination, and an evidentiary hearing was held on November 28, 2006.² The property contains a building that is known as the Grand Army of the Republic Greenhut Memorial Hall (“GAR Hall”) that is used for various purposes. The Department contends that the applicant has met neither the ownership nor the use requirement for the charitable purposes exemption. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is a not-for-profit corporation that was incorporated on June 5, 1973 to aid in the preservation and appreciation of historic structures in the Peoria area. (Joint Ex. #1, App. Ex. #8)
2. In 1998, the applicant acquired the property through a tax sale. The applicant does not own any other buildings. (Joint Ex. #1; Tr. pp. 17, 19-20)
3. In 1999, a committee known as Friends of the GAR Hall was formed to be in charge of the day-to-day operation of the building. The committee was not formally organized and does not have bylaws or a constitution. (Tr. p. 11)
4. During 2005, the applicant had approximately 100 to 200 members. The dues for membership start at \$15, but members may donate whatever they want to donate. A person must make a contribution before becoming a member. (App. Ex. #8; Tr. pp. 23, 47, 118)

¹ The applicant previously applied for an exemption for the year 1986. After an administrative hearing, a complaint was filed in circuit court. The case was remanded, and after the remand hearing, the exemption was denied. (Docket #86-72-118, July 24, 1991).

² Administrative Law Judge (“ALJ”) Barbara Rowe presided over the hearing. She has since retired from her employment with the Department. Witness credibility is not an issue in this matter.

5. During 2004, the dues from membership totaled \$3,790. (Dept. Ex. #3; Tr. p. 101)
6. Anyone may be a member of the applicant. Membership is not necessary in order to use the GAR Hall or participate in the applicant's activities. (Tr. pp. 47, 118)
7. There are no special benefits to being a member. Members receive newsletters, but the applicant's general mailing list is twice the size of its membership list. (Tr. pp. 47-48)
8. The first floor of the GAR Hall has 2,956 total square feet, and the basement has 2,702 total square feet. (Joint Ex. #4)
9. The first floor has two offices, one with 200 square feet and the other with 262 square feet. The first floor also has a lobby, ticket office, auditorium, stage, and a small room for storage. The auditorium seats approximately 140 people. (Joint Ex. #4, 5; Tr. p. 42)
10. The basement has an office (also known as the Club Room), kitchen, dining and exhibit area, mechanical room, and storage. The kitchen is not usable and does not have running water. (Joint Ex. #5; Tr. pp. 42-43, 85-86)
11. On July 15, 2003, the applicant entered into a Rental Agreement ("Agreement") with Opera Illinois for the use of part of the GAR Hall. The Agreement states that the term is effective from August 1, 2003 to July 31, 2004 and shall thereafter be renewed for periods of one year unless either party gives 30 days notice of intent to terminate or modify the Agreement. (App. Ex. #17)
12. The Agreement was in effect during 2005. (Tr. p. 84)

13. The Agreement states that it is the intent of the parties that the rental “be on a shared use basis, and that the rent be sufficient to cover the costs associated with the operation of the Hall other than capital improvements.” (App. Ex. #17)
14. Under the Agreement, Opera Illinois has exclusive use of the Hall’s two offices on the main level and the adjoining ticket booth. (App. Ex. #17)
15. The parties agreed that the shared use of the main auditorium should be as flexible as the needs of the parties require for special events. Opera Illinois has use of the main auditorium Mondays through Fridays subject to the right of the applicant to lease the premises, excluding the offices and ticket booth, to other parties. The Agreement also states as follows:

[The applicant] reserves the right to use the main auditorium on weekends and for certain special events, including Yule Like Peoria, Memorial Day (May 30th) and the evening of the Courthouse [P]laza Christmas Sing. If [the applicant] desires to use the main auditorium on a Monday-Friday other than on the occasions previously designated, it shall give 30 days notice to Opera Illinois. [The applicant] will make every effort to avoid a request that would interfere with an Opera rehearsal. Similarly, Illinois Opera may request to use the main auditorium on specific weekends with 30 days notice to [the applicant]. (App. Ex. #17)

16. The Agreement further states as follows:

Upon renovation of the lower level hall Opera Illinois shall have shared use of this area for a costume shop within a designated space, with the remaining space for the use of [the applicant] as a museum and meeting room. The two bathrooms in the Hall shall be on a shared use basis. [The applicant] retains exclusive use of the room designed as The Club Room, and the kitchen area which presently is in need of restoration. (App. Ex. #17)

17. In consideration for the use of the facilities, Opera Illinois agreed to reimburse the applicant on a prorated 80% basis for the cost of utilities, real estate taxes and insurance plus a \$500 yearly maintenance fee, provided, however, that Opera

Illinois' obligation shall be no less than a minimum of \$650 and no greater than a maximum of \$700 per month. (App. Ex. #17)

18. The reimbursement is payable monthly on an estimated basis of \$650 per month. From January 2005 to September 2005, the applicant received rent payments totaling \$9,750 to cover the rent for the months of July 2004 through September 2005. (App. Ex. #17)

19. On January 23, 2006, the applicant received the rent for October 2005. In February and March it received rent for November and December 2005 and January 2006. As of June 15, 2006, Opera Illinois had not made additional rent payments. (App. Ex. #17)

20. When the rent is in arrears, the applicant contacts Opera Illinois to find the reasons why it is in arrears, but no further action is taken. (Tr. pp. 60-61, 91)

21. The applicant's expenses for the 12-month period ending June 28, 2005 were as follows:

Insurance	\$2,858.00
Repairs	1,439.00
Property taxes	1,889.64
Utilities	<u>4,281.20</u>
Total	\$10,467.84 (App. Ex. #17)

22. Under the Agreement, Opera Illinois paid a security deposit of \$1,000. Opera Illinois is also responsible for the installation of telephones and payment of monthly telephone bills. It is Opera Illinois' responsibility to provide any desired janitorial services. Subleasing is not allowed by Opera Illinois without the written permission of the applicant. (App. Ex. #17)

23. The Agreement states, “[n]otwithstanding the use of the term “rent” in this agreement, payment hereunder shall be considered by [the applicant] as a donation to [the applicant], rather than rent of an asset.” (App. Ex. #17)
24. Opera Illinois uses the offices on the first floor for administrative purposes. It also uses the building for opera rehearsals and to sell tickets. Operas are not performed in the building. (Tr. pp. 41, 81-83)
25. Opera Illinois uses part of the basement for its costume shop. It has sewing machines and desks to sew and make costumes. Opera Illinois also uses part of the basement for storage. (Tr. pp. 81-85)
26. The applicant uses the Club Room for storage. The applicant’s storage includes artifacts that relate to the Civil War and the GAR Hall. (Tr. pp. 43-44, 89)
27. The applicant intends to use part of the dining and exhibit area of the basement as a museum. At the time of the hearing, the museum was not well developed. The applicant had three display cases and pictures hanging on the wall. (App. Ex. #14; Tr. pp. 55-57, 126-127)
28. The applicant is a resource for people who want to preserve buildings and those who wish to have their building be placed on the national register of historic buildings. The applicant has a depository for historic sketches and blueprints, and it has published books on historic homes in Peoria. (Tr. pp. 70-71)
29. The applicant has a “marker program” whereby it gives plaques to individuals who have historic buildings. The applicant also assists neighborhood groups in forming historic districts. (Tr. p. 70)

30. The applicant prints a brochure of Walking Tours for the Peoria and surrounding areas to further its goal of educating the public to appreciate historic and significant buildings. (App. Ex. #10; Tr. p. 49)
31. Once a year the applicant participates in Yule Like Peoria, which is a program that the city of Peoria organizes to encourage businesses to open at night. The applicant is open that night and for the past several years has had Civil War dancing in the main auditorium during the night. The Civil War Dance Society performs the dances. (Tr. pp. 65, 113-114, 124)
32. Once a year the applicant participates in the Christmas Sing in the Courthouse Plaza. On that night the applicant opens the GAR Hall and offers cookies and hot drinks free of charge. (Tr. p. 65, 124)
33. During the year the applicant has a Memorial Day program and a Veterans Day program. (Tr. pp. 42, 125)
34. Programs that were held on the property during 2004 included a re-enactment of the Lincoln-Douglas debates. The applicant sold tickets to this event. The applicant usually has one ticketed event per year. (Dept. Ex. #3; Tr. pp. 56-57, 102-105, 125-126)
35. The applicant allows community groups to use the GAR Hall for free as long as the activity is cultural, educational, or historical. (Tr. pp. 31-32)
36. The community groups that regularly use the Hall include the Peoria Civil War Round Table, which meets on the fourth Thursday of each month in the main auditorium of the Hall. Each meeting features professional and amateur historians

who lead presentations and educational forums about topics related to the Civil War and local Peoria history. (App. Ex. #15, 16; Tr. pp. 57-59, 115)

37. Another community group, The Col. John Bryner Camp #67 Sons of Union Veterans of the Civil War (“SUVCW”), meets monthly in the main auditorium of the GAR Hall. The Peoria and Metamora Civil War Dance Society uses the GAR Hall for its twice-monthly practices and occasional events, including dancing at the Yule Like Peoria event. The Executive Board of the Peoria Jaycees uses the main auditorium for its monthly board meetings. (App. Ex. #15, 16; Tr. pp. 57-59, 111-114, 116-117)

38. The applicant has occasionally allowed the use of the Hall for a wedding and charged approximately \$100 for cleanup. Approximately three weddings have taken place at the Hall in the past 10 years. The applicant does not advertise the Hall’s availability, and food cannot be served. (Tr. pp. 94, 122-123)

39. The applicant does not have enough volunteers to maintain regular hours for the Hall, and it is not open daily for tours. It is open by appointment. (Tr. pp. 65, 120-121)

40. The applicant provided an un-audited “balance sheet” that lists the following accounts for the Friends of GAR Hall as of November 20, 2006:

General Account	\$(2,916.15)
Renovation Account	9,742.75
Parapet Fund	(8,095.00)
Bryner Book Fund ³	520.00
GAR Marker	677.00
Caterpillar Grant	<u>5,000.00</u>
Total	\$4,928.60 (App. Ex. #18)

³ This was a special project to republish an out-of-print book written by B. C. Bryner. (Tr. p. 105)

41. The applicant's un-audited "balance sheet" lists the following accounts for the applicant as of November 20, 2006:

General Account	\$63.92
Markers Account	<u>738.38</u>
Total	\$802.30 (App. Ex. #18; Tr. pp. 25-26)

42. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (App. Ex. #7)

43. The applicant does not have any capital, capital stock, or shareholders. (Tr. p. 62)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and 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.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part 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. * * *

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal

Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended. * * *

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. (35 ILCS 200/15-65(a), (c)).

Property may, therefore, be exempt under subsection (a) of this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1st Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, and earns no profits or dividends; (3) whether the organization derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (4) whether the organization dispenses charity to all who need

and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does 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; and (5) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

The applicant contends that it is a charitable organization that uses the property for charitable purposes. It argues that it provides a great benefit to the community by educating the public and reminding them of the historical significance of the Civil War. The applicant states that it is struggling to meet its operating expenses, and removing the property tax burden would benefit both the community and the State because the

applicant will not have to apply for State grants. The applicant will then be able to better meet its operating costs. According to the applicant, the fact that a portion of the building is leased to another non-profit organization does not automatically disqualify the property for the exemption. The applicant asserts that the arrangement between it and Opera Illinois benefits both organizations, and allowing the exemption would serve the purpose of the statute.

The Department argues that the applicant is a civic organization that leases the property for the purpose of producing income. The Department notes that Opera Illinois has exclusive use of the two offices and ticket booth, and it has the use of the auditorium Monday through Friday unless otherwise agreed. Opera Illinois also has use of a large percentage of the basement, although the exact percentage is not clear; it entered into a written "Rental Agreement," paid a security deposit, pays rent, and has use of a vast majority of the building. The Department notes that in the prior administrative hearing decision concerning this applicant, the ALJ stated as follows:

It should also be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income may be used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336 (1988), leave to appeal, denied. In the case of Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1983), the Court held that in determining whether or not a lease is for profit, it makes no difference whether the lessor makes a profit, or sustains a loss. (Docket No. 86-72-118, July 24, 1991, pp. 7-8)

In response, the applicant states that the ALJ's conclusion to deny the exemption in that case relied upon the fact that the property was owned by a veteran's organization. The facts have changed since that decision, and the applicant contends that the property is now owned by a charitable organization.

In order to qualify for an exemption under section 15-65(a), the property may not be “leased or otherwise used with a view to profit.” 35 ILCS 200/15-65. The leasing of the property to another organization does not automatically disqualify the property for an exemption. See Children’s Development Center, Inc. v. Olson, 52 Ill. 2d 332 (1972). To qualify for the exemption under section 15-65(a), however, the property may not be leased with a view to profit. See Village of Oak Park, *supra*.

In the present case, the facts show that the property is leased with a view to profit. The Agreement states that the parties intended the rent to be “sufficient to cover the costs associated with the operation of the Hall other than capital improvements.” By leasing the property, the applicant clearly intended to generate enough income to fund the Hall’s operations. Although the applicant stated that the rent is not sufficient to cover all of its expenses (Tr. p. 62), the applicant is still deriving an economic benefit from leasing the building, and this is the primary reason for the lease. The Agreement states that the applicant considers the rent to be a “donation to [the applicant], rather than rent of an asset,” but this statement belies the actual facts. The payment of rent is not a gratuitous transfer of money because Opera Illinois uses the property in return for the rent. Opera Illinois is not making a contribution to the applicant without expecting something in return.

The applicant has admitted that Opera Illinois uses the building approximately 80% of the time. The rent that Opera Illinois pays is based on a prorated 80% basis for the cost of utilities, property taxes, and insurance, and it is not less than \$650 per month.⁴ The applicant’s representative said that the 80% figure was related to the “time use” of

⁴ Although Opera Illinois has been in arrears with its rent payments, the applicant stated that eventually Opera Illinois catches up. (Tr. pp. 60-61)

the building, not space use. (Tr. pp. 87-88) The application that was filed with the County Board of Review indicates, “The building’s primary use is as the Center for Opera Illinois * * *.” (Dept. Ex. #1) The applicant’s representative stated that this also referred to time use rather than space use. (Tr. pp. 77-78)

The evidence shows that in addition to using the building 80% of the time, Opera Illinois uses the majority of the space in the building as well. It has exclusive use of the two offices on the first floor and the ticket booth, and it uses the auditorium Mondays through Fridays unless otherwise agreed to by the parties. Its costume shop is in the basement, and the only rooms exclusively used by the applicant are the Club Room and the kitchen. Opera Illinois is the primary user of the building, and the applicant leases the building with a view to profit.

Because a lease is involved in this matter, it is noteworthy that the property also would not qualify for an exemption under subsection (c) of section 15-65. First, it does not appear that the applicant is the type of organization to which subsection (c) applies (i.e., old people’s home, facility for the developmentally disabled, or mixed-use facility). In addition, the evidence does not support a finding that Opera Illinois is the type of lessee referred to in the last paragraph of subsection (c)⁵. Although there was a reference to Opera Illinois being exempt from federal income taxes under section 501(c)(3) (Tr. p. 41), this would not automatically entitle Opera Illinois to a charitable property tax exemption if it were the owner of the property. See Hopedale Medical Foundation, 46 Ill. 2d. at 464. The evidence does not include financial records or other documentation to

⁵ As previously quoted, the last paragraph of subsection (c) provides as follows: “If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.”

show that Opera Illinois meets the factors in Methodist Old Peoples Home, *supra*. The evidence, therefore, is not sufficient to show that Opera Illinois is a charitable organization.

Furthermore, the evidence does not support a finding that the applicant is a charitable organization. The year at issue in this case is 2005, but the applicant did not provide all of its financial information for that year. The record includes expenses for the 12 months ending June 28, 2005, but expenses for the remainder of the year were not provided. (App. Ex. #17) The Department provided a copy of the applicant's federal Form 990, Return of Organization Exempt From Income Tax, for the year ending December 31, 2004, but the applicant did not provide its return for 2005. The applicant's exhibit number 18 is an un-audited "balance sheet" that does not balance and is dated November 20, 2006. The applicant indicated that it usually has one ticketed event per year, but no information was given regarding that event in 2005.

As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. City of Chicago, *supra*. The facts presented indicate that the property is leased with a view to profit, which precludes the property from being exempt under section 15-65(a). In addition, the remaining evidence raises doubts as to whether the applicant is a charitable organization or whether the property would qualify for an exemption under subsection (c) of section 15-65. The applicant, therefore, has not met its burden of proving it is entitled to the exemption.

Recommendation:

For the foregoing reasons, it is recommended that the property is not exempt from taxes for the year 2005.

Linda Olivero
Administrative Law Judge

Enter: March 23, 2007