

PT 06-12
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

HISTORIC SAILOR SPRINGS FOUNDATION Applicant	}	A.H. Docket #	05-PT-0004
		P. I. #s	07-24-409-005
			07-24-409-003
			07-24-408-003
v.	}	Docket #s	04-13-15
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS			04-13-16
			04-13-17
		Barbara S. Rowe Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the "Department"), to determine whether Clay County Parcel Index Nos. 07-24-409-005, 07-24-409-003 and 07-24-408-003 qualified for exemption during the 2004 assessment year.

Ms. Joy Woods, current President of Historic Sailor Springs Foundation (hereinafter referred to as the "Applicant"), was present and testified on behalf of Applicant.

The issues in this matter include whether Applicant is a charitable organization and whether Applicant used the parcels for charitable purposes during the 2004 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the

requested exemptions be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Clay County Parcel Index Nos. 07-24-409-005, 07-24-409-003 and 07-24-408-003 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Dept. Ex. Nos. 1-3. (Tr. p. 7)

2. The Department received the request for exemption of the subject parcels from the Clay County Board of Review. The board recommended granting the exemptions. The Department denied the requested exemptions finding that the properties were not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. The Applicant acquired parcel index no. 07-24-409-003 by a warranty deed dated November 25, 1998. The subject property contains a 1662 square foot one-and one-half story house. The house is unfinished and in need of repair. In 2004 Applicant had no activities on the property. (Applicant's Ex. No. 1; Dept. Ex. No. 1; Tr. pp. 13-14)

4. Applicant acquired parcel index number 07-24-409-005 by a warranty deed dated March 5, 1999. The property contains the lots adjacent to parcel index no. 07-24-409-003. Applicant had no activities on this property in 2004. Applicant keeps it mowed. (Applicant's Ex. No. 3; Dept. Ex. No. 1; Tr. p. 14)

5. Applicant acquired parcel index no. 07-24-408-003 by a warranty deed dated September 15, 2000. The property contains a 1065 square foot one-and one-half story residence that is "under restoration." (Dept. Ex. No. 1; Applicant's Ex. No. 2)

6. Applicant hopes to have the houses restored. It plans to have one resemble an old time doctor's office or museum. Applicant has no certain dates when the properties will be renovated and safe to be open to the public. (Tr. pp. 25-26)

7. Sailor Springs is a Victorian era village in southern Illinois that has 150 residents. (Applicant's Ex. No. 4)

8. Applicant was organized in 1998 to promote, preserve and protect the historic resources of the village. An amendment to the Articles of Incorporation was filed with the Illinois Secretary of State on August 5, 2004. The amendment states that the purpose of the organization is:

The corporation is organized for the purpose of promoting civic pride and improving general business conditions in the Village of Sailor Springs, Illinois within the meaning of Section 501(c)(3) of the Internal Revenue Code. More specifically as follows:

A. To assist in projects, undertakings, studies and other activities in cooperation and in coordination with local government and civic bodies;

B. To aid, assist and foster the replanning, development, revitalization, historic preservation and quality of life of the Village of Sailor Spring, Illinois;

C. To combat community deterioration and slim [sic] and bring conditions [sic];

D. To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation;

E. To interpret and educate the public as to the heritage of the Village of Sailor Springs, Illinois and its surroundings;

G. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to, its members, trustees, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and make payments and distributions in furtherance of the purposes set forth herein;

H. Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for payment for all the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively for the purpose of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for the purpose of improving general business conditions in the Village of Sailor Springs, Illinois, within the meaning of Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such asset not so disposed of shall be disposed of by the Court of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes. (Dept. Ex. 2)

9. Applicant has five classes of membership: (1) Individual - annual dues is \$10; (2) Couple – annual dues is \$15; (3) Student – annual dues is \$2; (4) Supporting – annual dues is \$25 and (5) Lifetime – one time payment of \$250. No one has ever asked for a free membership – nor has one been given. (Dept. Ex. No. 2; Tr. p. 24)

10. Applicant holds regular monthly meetings and five per-cent of the membership constitutes a quorum. Applicant has a three-member board of directors. The officers of Applicant are the president, vice-president, general secretary, and treasurer, all of whom serve for two years. (Dept. Ex. No. 2)

11. In 2004, “The Sailor Spring Preservation and Revitalization Plan” was funded with support of The National Trust for Historic Preservation, the Preservation Services Fund, The Donnelly Family Trust, and Applicant. The plan provides an overview for how the properties of the Applicant may be used. (Applicant’s Ex. No. 4)

12. Applicant was told counsel could represent it. Applicant chose to proceed without an attorney. (Tr. p. 9)

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)

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, . . .

The property tax exemption at issue 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 Peoples Home v. Korzen, 39 Ill. 2d 149, 156 (1968). They have also ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893) which states: "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 determining what is charitable use of property, courts consider the following factors:

1. Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare;
3. Whether the property benefits the public in such a way that it reduces the burdens of government;
4. Whether the organization has no capital, capital stock, or shareholders and earns no profits or dividends;
5. Whether the organization's funds are derived mainly from public and private charity;
6. Whether such funds are held in trust for the objects and purposes expressed in the organization's charter;
7. Whether the organization dispenses charity to all that need and apply for it;
8. Whether the organization provides gain or profit in a private sense to any person connected with it;
9. Whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
10. Whether the exclusively (primary) use of its property is for charitable purposes. Methodist Old Peoples Home v. Korzen, *supra*, at 156-57.

These factors are not requirements, but are guidelines that are considered in assessing an organization's charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill. 2d 561)

Applicant was unable to establish that it had a 501(c)(3) designation from the Internal Revenue Service and, in fact, submitted a letter from the Tax Exempt and Government Entities Division of the Department of the Treasury dated June 14, 2005 that stated that a letter was issued on January 5, 2005 to the Applicant requesting additional information. (Dept. Ex. No. 3) The information was not forthcoming and as of the date of the letter, the Internal Revenue Service had closed the case. In addition, no financial information for Applicant for 2004 was submitted.

The testimony was that Applicant's activities on parcel index no. 07-24-408-003 included a new roof, cleaning the interior and a few house tours in 2001 and 2002. During the same time period, interior restoration took place as funds became available. (Dept. Ex. No. 1; Applicant's Ex. No. 2; Tr. pp. 14-15) However, the taxable year at issue is 2004. No evidence or testimony established that anything happened on any of the properties during that assessment year.

The Illinois Appellate Court found that a church owned building, which was not used for any purpose and was boarded up during the taxable years in question, did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983). In addition, the fifth District Appellate Court held that eighteen vacant lots did not qualify for a property tax exemption in Comp. Train. & Devel. v. Co. of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994)

The only thing that Applicant established that happened in 2004 was the preservation and revitalization plan giving Applicant suggestions for the village. The fact that a plan like that was necessary, shows that Applicant had no firm strategy in mind as to how to restore the village to its past splendor. Applicant eventually hopes to turn the houses on two of the properties in question into museums that are open to the public. In the case of People ex rel. Pearsall v. The

Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

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 (1944). 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)

As Applicant has not met its burden of showing that the properties in question were owned by a charitable organization and used for charitable purposes in 2004, it is recommended that Clay County Parcel Index Nos. 07-24-409-005, 07-24-409-003 and 07-24-408-003 remain on the tax rolls for the 2004 assessment year and be assessed to the Applicant, the owner thereof.

Barbara S. Rowe
Administrative Law Judge
March 10, 2006