

PT 96-25
Tax Type: PROPERTY TAX
Issue: Government Ownership/Use

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

EAST VILLAGE ASSOCIATION)		
Applicant)		
)	Docket #	93-16-1264
v.)		
)	Parcel Index	#17-06-403-019
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Daniel J. McNamara appeared on behalf of the East Village Association (hereinafter referred to as the "Applicant")

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 19, 1995, to determine whether or not Cook County Parcel No. 17-06-403-019 qualified for exemption from real estate tax for the 1993 assessment year.

Ms. Marjorie Isaacson, a member of the board of directors of the applicant, was present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant was the owner of this parcel during all or part of the 1993 assessment year. The second issue is whether the applicant is a charitable organization. The last issue is whether this parcel was used by the applicant for primarily charitable purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the period March 11, 1993, through December 31, 1993. It is also determined that the applicant does not qualify as a charitable organization during the 1993 assessment year. Finally, it is determined that the applicant

did use this parcel for primarily charitable purposes during the period March 11, 1993 through December 31, 1993.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On June 3, 1994, the Cook County Board of Appeals transmitted an Application for Property Tax Exemption To Board of Appeals concerning this parcel for the 1993 assessment year, to the Department. (Dept. Ex. No. 1)

3. On May 25, 1995, the Department notified the applicant that it was denying the exemption of this parcel for the 1993 assessment year, on the grounds that this parcel was not in exempt ownership and not in exempt use during the said assessment year. (Dept. Ex. No. 2)

4. By a letter dated June 5, 1995, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on December 19, 1995, was held pursuant to that request.

6. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on November 16, 1984. (Dept. Ex. No. 1F)

7. The purpose clauses of the applicant's Articles of Incorporation, as amended, include the following:

The purpose of the East Village Association shall be educational, social and civic.

It is organized:

1) to provide an opportunity for those who live in, work in, or identify with the social or business interests of the area, to work together for the common good of the East Village community, with a positive community spirit, and to create a sense of identity for the neighborhood;

2) to work for a clean and safe neighborhood;

3) to assemble and disseminate information about neighborhood conditions, ways to eliminate unwholesome and blighting features, quality and availability of public and private community services, the law pertaining to these matters and resources available for

developing plans for conservation, redevelopment, and general improvement of the community;.... (Dept. Ex. No. 1F)

8. Other activities engaged in by the applicant during the year in issue, include graffiti paint-outs, vacant lot clean-ups and working with the community policing program. (Tr. p. 11)

9. The parcel here in issue had previously been a vacant lot which was constantly covered with abandoned vehicles and littered with discarded furniture, which required frequent clean ups, either by the residents of the surrounding area or the city. (Tr. p. 13)

10. The alderman at that time developed the idea of having a community garden on this parcel. He then turned to the applicant to operate that garden. At that time this lot was owned by the City of Chicago which agreed to lease this parcel to the applicant, if it would manage the garden. (Tr. pp. 13 & 14)

11. On March 11, 1993, the City of Chicago conveyed this parcel to the applicant, pursuant to a negotiated sale, for \$100.00. (Tr. p. 15) The quit claim deed contains a condition that the applicant must use this parcel as a community garden. (Dept. Ex. No. 1C)

12. This parcel is a double size city lot which is divided by a central path. In the center of the parcel is a pergola where people can sit and look at the 14 garden plots. The 14 garden plots are assigned to neighborhood residents who use them to raise vegetables. On the perimeter of the garden in the parkways are decorative flower gardens. (Tr. pp. 15 & 16)

13. The persons who are assigned a plot are asked to pay an annual fee of \$15.00. It is the applicant's policy to waive this fee in cases of need. (Tr. p. 17)

14. The persons who are assigned a garden plot are allowed to keep and use whatever they grow. (Tr. p. 16)

15. The neighborhood, for the purpose of assigning garden plots, is defined as Division Street on the north, Chicago Avenue on the south, Damen Avenue on the west and the Kennedy expressway on the east. (Tr. p. 21)

16. The general criteria for being assigned a garden plot is being a person who does not have a backyard, living in the neighborhood, and having a desire to plant a garden. (Tr. p. 22)

17. Persons who had a garden plot the prior year are asked if they want to have a garden again. After that, gardens are assigned on the foregoing criteria on a first-come, first-serve basis. (Tr. pp. 22 & 23)

18. The applicant is exempt from federal income tax pursuant to section 501(c)(4) of the Internal Revenue Code. (Appl. Ex. No. 3)

19. The applicant's sources of funds during 1993 were newsletter advertising, \$2,800.00; membership dues, \$900.00; and a party raffle, \$650.00. (Appl. Ex. 1)

Conclusions of Law:

Article IX, Section 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.

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,...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;....

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 (1944). 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).

It is also well settled in Illinois that the character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also, Rotary International v. Paschen, 14 Ill.2d 480 (1958). Based on the purpose clause of the applicant's Articles of Incorporation, I conclude that the applicant was organized primarily for educational, social and civic purposes and not for primarily charitable purposes. From the applicant's Articles of Incorporation, as well as its other activities, it is clear that the applicant is not a horticultural society.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read 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 objects and purposes expressed in the 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. Clearly, the applicant failed to meet guideline (3) during the 1993 assessment year, since its primary sources of income during that year were newsletter advertising, membership dues and a party raffle and not private and public charity. I therefore conclude that the applicant failed to establish that it was a charitable organization during 1993. Finally, it should be pointed out that the applicant is exempt from federal income tax pursuant to Internal Revenue Code section 501(c)(4) which exempts civic organizations and not charitable organizations. The use of this parcel as a garden is a worthwhile endeavor, and the applicant is to be

commended for its efforts. However, the statute requires that to qualify for exemption, the property must be both owned by a charitable organization and used for charitable purposes. The applicant does not meet both of these requirements.

I therefore conclude that while the applicant owned this parcel during the period March 11, 1993, through December 31, 1993, the applicant is not primarily a charitable organization. I therefore recommend that Cook County Parcel No. 17-06-403-019 be placed back on the tax rolls for the period March 11, 1993 through December 31, 1993.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 19, 1996