

PT 08-13

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**

v.

**POWELL ARCHAEOLOGICAL
RESEARCH CENTER**

Applicant

**Docket # 07-PT-0001
PIN 02-03.0-100-049,
06-16.0-201-004,
06-16.0-201-006
Tax Year 2006**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Arlie E. Traugher of Traugher & Morris, Ltd. for Powell Archaeological Research Center

Synopsis:

This case concerns whether property located in St. Clair County and owned by the Powell Archaeological Research Center (“applicant” or “PARC”) qualifies for a charitable purposes property tax exemption for the year 2006 under section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). There are three parcels of property at issue: one is approximately .44 acres on which there are two buildings, and the other two parcels total approximately 2.08 acres that are used for farming and excavating. After PARC filed the application for the exemption, the Board of Review recommended that

the exemption be granted. The Department of Revenue (“Department”) reviewed the Board’s decision and determined that the exemption should be denied on the basis that the property is neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department’s determination, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved partially in favor of the applicant.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on September 30, 1997; it has no capital, capital stock, or shareholders. (App. Ex. #6)
2. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (App. Ex. #3)
3. The articles of incorporation indicate the purposes are as follows:
 - To promote the conservation and preservation of archaeological sites and associated data in the greater St. Louis Metropolitan area.
 - To promote and encourage archaeological research in the greater St. Louis Metropolitan area by professional and trained avocational archaeologists.
 - To develop among the public an awareness of the unique cultural, historical, and scientific significance of the archaeological resources in the greater St. Louis Metropolitan area.
 - To disseminate to the general public and professional archaeologists information regarding the interpretation of archaeological resources in the greater St. Louis Metropolitan area.
 - To serve as a clearing house for archaeological site information and data pertinent to the archaeology in the greater St. Louis Metropolitan area and immediate vicinity.

- To work with landowners and developers in the preservation of archaeological data through excavation and other means in the greater St. Louis Metropolitan area.
 - To establish a research plan and priorities in conjunction with other archaeologists and persons interested in archaeological research in the greater St. Louis Metropolitan area. (App. Ex. #6)
4. The applicant's bylaws state it is "organized exclusively for educational and scientific purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code." (App. Ex. #6)
 5. The bylaws indicate the objectives shall be the following:
 - To bring together those persons having a common interest in the history and prehistory of the Central Mississippi River Valley.
 - To promote scientific study, investigation, recording, interpretation, and preservation of historic and prehistoric sites and materials.
 - To encourage and stimulate a better understanding and appreciation of the importance of preservation of historic and prehistoric sites and materials.
 - To arrange historic and prehistoric materials into displays, exhibits, presentations, and reports for the purpose of developing a better understanding of the past. (App. Ex. #6)
 6. On November 10, 1997, the applicant purchased approximately .44 acres of property in Fairmont City, Illinois. There are two buildings on this parcel: a small bungalow and a two-story house with a basement. (App. Ex. #8; Tr. pp. 16-18)
 7. This property is located on the western edge of Cahokia Mounds Archaeological Site. It is across from the site of the Powell Mound, which is the third largest

- mound of the Cahokia Site.¹ The property is within the National Historical Landmark Boundaries for Cahokia Mounds and the World Heritage Boundaries for Cahokia Mounds. (App. Ex. #11; Tr. p. 18)
8. The house is used as the headquarters for the organization. The first floor of the house has a library, two offices, and a kitchen. The basement and second floor are used for storage of archaeological collections. They also contain computers and mapping equipment. (App. Ex. #4, 5; Tr. pp. 18-20, 55)
 9. Students and volunteers use the house for research and to wash and inventory materials that are excavated. The washing is often done outside. Soil samples are processed outside. (App. Ex. #11; Tr. pp. 18-19, 40-41)
 10. Anyone may use the library for research or help process the artifacts. Boy Scouts help with the activities to earn their merit badges. (Tr. pp. 18-20, 36)
 11. Because most of the excavating is conducted at Cahokia Mounds, the artifacts found there belong to the State of Illinois and are temporarily housed with the applicant. Once the processing and reports are completed, the artifacts are sent to the Illinois State Museum. (App. Ex. #7; Tr. pp. 20-21)
 12. The bungalow on the property was being rented at the time the applicant purchased it; the applicant allowed the tenant to remain there. The bungalow is 480 square feet, which is approximately 2.5% of the property. The tenant pays \$300 a month as rent; he has a disability, does not have a car, and stays home most of the day. (App. Ex. #4; Tr. pp. 16, 21-22, 39, 64)

¹ The applicant's brochure states that the "site of Cahokia covers about six square miles with nearly 100 mounds located within its boundaries. Approximately half of this area and a majority of the remaining mounds comprise the Cahokia Mounds Historic Site that is owned and maintained by the State of Illinois. However, this leaves much of the site in private ownership and subject to development." (App. Ex. #11)

13. The other property at issue includes two parcels that total approximately 2.08 acres in Dupo, Illinois. The applicant received this property as a donation on December 28, 2005. (App. Ex. #8; Tr. pp. 22-23)
14. A portion of the Dupo property is used for excavation, and the remainder is used for farming. The farmer maintains the property, plants the crop, and mows it. The farmer does not pay rent to the applicant and retains the crop to sell. (App. Ex. #7; Tr. pp. 23-24, 41-43)
15. The excavations on the Dupo property are done during the summer and are confined to a small area. The applicant makes arrangements with the farmer to set aside an area to be excavated where no crops will be planted. (Tr. pp. 23, 41-42)
16. Membership in the applicant is open to any individual or institution interested in the study of archaeology and in the preservation of historic and prehistoric sites and materials. Both members and nonmembers can volunteer at the applicant's research center and participate in the activities. (App. Ex. #6; Tr. pp. 19, 30-32, 35)
17. The annual membership dues are \$10 for adults, \$5 if a member of an affiliated Illinois Association for Advancement of Archaeology or Missouri Archaeological Society, \$5 for students 18 years old and younger, \$15 for Active Families, \$50 for institutional membership, and \$150 for Life Members. (App. Ex. #6, 11; Tr. p. 27)
18. Members receive a 10% discount on archaeological books and any events such as the Trivia Night and the annual walk, which is a tour of the sites in the area.

Members receive mailings concerning PARC's activities. There are no additional benefits for each category. PARC's website is at www.powellarchaeology.org.

(App. Ex. #11; Tr. pp. 13, 28-32)

19. The applicant's un-audited summary report of its income and expenses for the year 2006 shows the following:

Inflows	
Book Income	3,253.31
Donation	582.00
Income	4,052.25
Line of Credit Loan	2,005.00
Reimbursement	154.04
Rent Income	<u>4,200.00</u>
Total Inflows	14,246.60

Outflows	
Bank Charges	357.06
Business	1,232.64
Cash	50.00
House Maintenance	196.00
Insurance	848.00
Interest Paid	825.02
Loan Payment	3,569.25
Mortgage	4,040.76
Taxes	1,344.44
Utilities	<u>2,152.65</u>
Total Outflows	14,615.82

Overall Total (369.22) (App. Ex. #13)

20. The book income is from the sale of archaeological books at conferences and through the website. The other income is from various fundraising activities such as a Trivia Night, garage sales, and the annual walk. (Tr. pp. 13, 29, 48-49, 59-60)

21. The applicant has a line of credit with a bank to draw upon when it needs cash to pay bills. The reimbursement during 2006 was from an insurance policy. The

rent income included additional rent from the bungalow tenant while his brother stayed with him for a period of time. (Tr. pp. 47-48, 60-61)

22. The officers and Board members are not compensated. (App. Ex. #6; Tr. pp. 13, 50)

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. Ill. Const. 1970, art. IX, §6.

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.

(b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

(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.....

(f) Historical societies.... 35 ILCS 200/15-65(a), (b), (c), (f).

Property may therefore be exempt under this section if it is both (1) owned by a charitable entity 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, 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, *supra*, 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, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) 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 (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 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 argues the property qualifies for an exemption under either subsection (a), (b), (c), or (f) of section 15-65. The applicant maintains it meets the guidelines of Methodist Old Peoples Home, *supra*, and that it is a beneficent and charitable organization under subsection (b), and it is an organization providing services or facilities related to the goals of educational, social and physical development under

subsection (c).² Finally, the applicant claims it is a historical society under subsection (f) because it educates the public about the history and prehistory of the area. The Department did not provide arguments in response but contends that the guidelines must be met in order for PARC to receive the exemption.

Illinois case law does not define historical society, but in Vermilion County Museum Society v. Department of Revenue, 273 Ill. App. 3d 675 (4th Dist. 1995), the court granted a charitable purposes exemption for an organization that was considered to be historical.³ The Society's "main purpose [was] to maintain, for public museum purposes, the historic Fithian House and a couple other historically interesting buildings." *Id.* at 678. The court stated that it considered the study of history to be educational, which qualified the purpose of the Society as charitable. *Id.* at 679. The court then addressed the disputed factors in Methodist Old Peoples Home and granted the exemption, noting "the significant function of the Society is to provide a historical museum." *Id.* at 680.

In Vermilion County, the court stated the Society raised money in three basic ways: (1) general contributions, (2) admission fees of \$1 for adults and 50 cents for children, and (3) membership fees of a minimum of \$10. There was no provision for waiver or reduction of the annual membership dues or admission fee. The membership benefits were limited to a quarterly publication and free admittance.

² PARC referred to these subsections for the first time in its Memorandum of Law that was filed on the day of the hearing, and its memorandum does not specifically address its entitlement to the exemption under these subsections. PARC simply refers to them in one sentence near the end of the memorandum. Subsections (b) and (c) clearly do not apply in this case because the evidence does not indicate that PARC distributes, sells, or resells donated goods as required under subsection (b), and its bylaws do not have a fee waiver provision as required under subsection (c).

³ This decision was rendered shortly before subsection (f) was added to section 15-65 through Public Act 89-426.

In addressing the disputed factors, the court found the admission fee to be insignificant. The court also stated that the \$10 membership fee provided limited value to members but substantial value to the Society and the public. Membership provided the Society with a list of major contributors, and the quarterly publication most likely encouraged contributions “well above the nominal \$10 per year charge.” *Id.* at 679. The court added there was no indication the publication made a profit; rather, it encouraged interest in the Society, which resulted in the necessary sizable contributions needed for funding.

In the present case, PARC’s primary purpose is historical and educational, and under Vermilion County and subsection (f) of section 15-65, this purpose is a charitable one. PARC is organized primarily to promote the study and preservation of historic and prehistoric sites and materials. Although PARC has a charitable purpose, it must still meet the guidelines in Methodist Old Peoples Home, *supra*, in order to receive the exemption. See Eden Retirement, at 290; Vermilion County, at 679.

PARC meets the first guideline in Methodist Old Peoples Home because it provides many gifts that benefit the general public. PARC is concerned with protecting archaeological sites from future development, and it complements the work being done at Cahokia Mounds. It excavates, processes, and stores artifacts that eventually end up at the Illinois State Museum. It allows anyone to participate in its activities, including Boy Scouts who want to earn their merit badges. PARC’s research library is available to anyone who would like to use it. PARC preserves materials and sites with archaeological significance and educates the public on their importance. All of these activities significantly benefit an indefinite number of people.

As for the second factor, PARC has no capital, capital stock, or shareholders and earns no profits or dividends. Although most of its income is not from public or private charity, the failure to meet this factor does not necessarily require a conclusion that the organization is not charitable. The court in Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652 (1st Dist. 1992) noted the following:

A careful reading of the cases indicates that while the source of funds is listed as a characteristic of a charitable organization, each concerns itself primarily with discovery of the facts relative to the use to which the funds are put. * * * [A] better view is that where it is established that the funds and property are devoted to public purposes, the source of the funds is not the sole determinant factor. Lutheran General Health Care, 231 Ill. App. 3d at 663-664, quoting American College of Surgeons v. Korzen, 36 Ill. 2d 340 (1967).

The court continued by stating the fact that an organization charges people who are able to pay does not preclude an exemption if no profit is made and the amounts received are applied in furthering the organization's charitable purpose. Lutheran General Health Care, 231 Ill. App. 3d at 664. In the present case, PARC has a line of credit to draw upon when it needs cash to pay its bills because its income is not always sufficient to cover its expenses. All the money it receives is applied towards furthering its charitable mission, and the amount received from dues is not significant.⁴ In addition, although PARC receives income from the sale of archaeological books, this is not the primary activity of the organization. See Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447, 464 (2nd Dist. 1991) (food stand and gift shop were incidental uses of the property).

⁴ The membership dues for the year 2005 totaled \$105, and for the period of January 1 to August 22, 2007 they totaled \$1,415. (Dept. Ex. #1, p. 12; App. Ex. #2) When PARC's treasurer was asked why dues were not shown on the 2006 financial information, she indicated that dues may not have been collected that year. (Tr. p. 63)

The third guideline is met because first, PARC dispenses charity to all who need and apply for it. With the exception of the \$10 membership fee, PARC's benefits are free to the general public, and the few events for which PARC charges, such as the Trivia Night and annual walk, are fundraising events. The \$10 membership fee is not an obstacle in the way of those who need its charitable benefits because, as the court found in Vermilion County, *supra*, the nominal \$10 fee provides limited value to members but substantial value to the organization and the public. In addition, PARC does not provide gain or profit in a private sense to any person connected with it; no one is paid for their services to the organization.

Finally, the primary use of the Fairmont City property, with the exception of the bungalow, is charitable. The Fairmont City property is used primarily as a research center and for PARC's activities, which are charitable. Although PARC contends that the bungalow tenant acts as an on-site guardian for the property because there is no per se security on the property, the evidence does not support this finding. At the time the applicant purchased the property, the bungalow was being rented, and the applicant simply allowed the tenant to remain there. The evidence does not indicate that the tenant had specific duties to maintain the security for the property or that he was compensated in any way, such as reduced rent, for doing so. During the year in question, the tenant paid additional rent while his brother stayed with him. PARC receives a significant amount of rent from the bungalow portion of the property, and it appears as though the bungalow is used with a view to profit rather than for charitable purposes. The bungalow portion of the Fairmont City property should, therefore, not be exempt.

In addition, the primary use of the Dupo property is not charitable. The primary use of the Dupo property is for farming. Although a small portion of the Dupo property was excavated during 2006, PARC did not provide documentation showing what portion was used for that purpose. Therefore, a partial exemption for that portion of the property cannot be granted.

Recommendation:

For the foregoing reasons, it is recommended that with respect to the .44 acre parcel of property in Fairmont City, the 480 square foot bungalow, which is 2.5% of the property, should be taxable, and the remainder of the Fairmont City property should be exempt from taxation. It is also recommended that the 2.08 acres of property in Dupo should be denied the exemption.

Linda Olivero
Administrative Law Judge

Enter: June 16, 2008