

**PT 12-03**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**LIVINGSTON COUNTY HISTORICAL  
SOCIETY**

**Applicant**

**Docket # 11-PT-0012**

**Tax Year 2010**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Thomas Ewing, Attorney at Law, for Livingston County Historical Society

Synopsis:

The Livingston County Historical Society (“applicant”) filed an application for a property tax exemption for the year 2010 for a parcel of property located in Livingston County. The applicant contends the property is used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Livingston County Board of Review recommended that the property receive a full year exemption. The Department of Revenue (“Department”) disagreed with that decision and denied the exemption on the basis that the property was not used for charitable purposes. The applicant timely protested the Department’s decision. The parties waived their right to an evidentiary hearing and stipulated that the uncontested facts are presented in the documents submitted by the parties. The sole issue presented is whether the parcel was adapted and developed for charitable use during 2010

according to the standard set in Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2<sup>nd</sup> Dist. 1987). After reviewing the record, it is recommended that this matter be resolved partially in favor of the applicant.

FINDINGS OF FACT:

1. On November 11, 2009, the applicant acquired a house known as the Strevell/Lincoln House. The house is located at 401 West Livingston Street in Pontiac, Illinois. (Dept. Ex. #1, pp. 6-9)
2. The house is historic and is connected to a visit in 1860 by Abraham Lincoln. It is the only remaining structure in Livingston County visited by Lincoln. The house is also connected to Jason Strevell, who was an attorney, city trustee, and state legislator. (Dept. Ex. #1, pp. 2, 8, 29)
3. To prevent the house from being demolished, it was purchased by a group of local citizens on September 9, 2008. The citizens donated the house to the applicant on November 11, 2009. (Dept. Ex. #1, pp. 6, 11, 68)
4. The applicant is restoring the house, and when it is completed it will be used as a museum and educational site. The restoration is expected to take three to five years. The applicant is a small historical society that did not initially have money to restore the house. It is raising money for the project as the restoration continues. (Dept. Ex. #1, pp. 2, 5, 11)
5. On August 14, 2009, a preliminary report concerning the restoration of the house was completed by Tom Vance, Historic Consultant. (Dept. Ex. #1, pp. 17-22)

6. On August 25, 2009, a committee comprised of community volunteers was established to plan the restoration of the house and raise funds from private contributions to pay the costs associated with the restoration. (Dept. Ex. #1, p. 65)
7. On September 30 and October 1, 2009, the City of Pontiac Street Department demolished and removed the garage and brought in soil. The city graded and seeded the area. (Dept. Ex. #1, p. 23)
8. On January 10, 2010, the applicant sent a newsletter outlining the plans and fund-raising efforts for the project. (Dept. Ex. #1, p. 13)
9. On January 28, 2010, the Strevell/Lincoln House committee approved a proposal for the removal and restoration of the windows in the front of the house. (Dept. Ex. #1, p. 13)
10. On February 2, 2010, the committee had a meeting during which plans were discussed for the outside restoration, a garden, and a dig for the location of the old outhouse. Volunteers were asked to help continue the removal of the modern alterations that were made to the interior of the home when it was converted into apartments. (Dept. Ex. #1, p. 14)
11. On February 6, 2010, the applicant raised \$300 for the project. (Dept. Ex. #1, p. 14)
12. On March 3, 2010, the committee met to review restoration efforts and fund-raising. (Dept. Ex. #1, p. 14)
13. On May 18, 2010, a presentation was made to the Pontiac Women's Club regarding the project. (Dept. Ex. #1, p. 14)
14. On July 12, 2010, the former mayor of Pontiac pledged \$5,000 to the project. (Dept. Ex. #1, p. 14)
15. On July 15, 2010, the applicant received the \$5,000 donation. (Dept. Ex. #1, p. 51)

16. On August 5, 2010, local contractors toured the house to assess its condition. (Dept. Ex. #1, p. 14)
17. On August 11, 2010, the committee met for a planning session. (Dept. Ex. #1, p. 14)
18. On August 25, 2010, the applicant made a presentation at a public meeting to outline the plans for the project and generate community support and involvement. (Dept. Ex. #1, p. 14)
19. On August 30, 2010, the committee adopted engineering plans for a memorial brick sidewalk at the house. The engraved, granite bricks will be placed in the walkway leading up to the front door of the house. Donors will get a brick with either their name, the name of someone they wish to honor, or a message engraved on it. (Dept. Ex. #1, pp. 14, 32, 36, 76)
20. On September 10, 2010, the committee reviewed the criteria of a gothic style house, which is the style of the Strevell/Lincoln House. (Dept. Ex. #1, p. 14)
21. On September 15, 2010, the committee accepted offers of antique furniture to be used in the house. (Dept. Ex. #1, p. 14)
22. On September 20, 2010, the committee obtained bids for the installation of the memorial bricks and landscaping of the yard. (Dept. Ex. #1, p. 14)
23. On September 22, 2010, a member of the planning committee presented ten ideas for fund-raising options. The campaign to sell the memorial bricks was outlined. (Dept. Ex. #1, pp. 14, 65)
24. On September 27, 2010, the fund raising drive was highlighted in an open event held at the house. (Dept. Ex. #1, p. 65)

25. On September 28, 2010, the committee reviewed the report of the Historic Consultant and authorized the payment of his \$125 fee. (Dept. Ex. #1, p. 15)
26. On October 1, 2010, the Pontiac Rotary Club gave the committee a check for \$1,000. (Dept. Ex. #1, p. 15)
27. On October 4, 2010, the committee received a presentation of a site plan for the house. (Dept. Ex. #1, p. 15)
28. On October 11, 2010, a financial report was given to the committee. The restoration report included approval of a contract to restore the lower and upper windows of the house for \$10,770. (Dept. Ex. #1, p. 65)
29. On October 16, 2010, the committee examined a history of the activities going into the restoration of the house. (Dept. Ex. #1, p. 15)
30. On October 27, 2010, the applicant paid \$5,385 as a down payment for the restoration of the windows. (Dept. Ex. #1, p. 58)
31. On November 9, 2010, a financial report was given to the committee. The restoration report noted that the double doors at the main entrance to the house had been removed and were being refinished by a volunteer. (Dept. Ex. #1, p. 66)
32. On December 1, 2010, a financial report was given to the committee. The report on the window restoration indicated that all of the windows had been removed by Restoration Windows, Inc. A report on the exterior paint color was presented. (Dept. Ex. #1, p. 66)
33. On December 10, 2010, the applicant had its annual dinner meeting with a speaker who discussed the project. (Dept. Ex. #1, p. 15)

34. On December 15, 2010, a financial report was given to the committee. An agreement was reviewed and approved for Pontiac Granite Company to purchase, engrave, and install the memorial bricks at an estimated cost of \$10,404. (Dept. Ex. #1, p. 66)
35. On December 20, 2010, the applicant paid \$3,300 as a down payment for the memorial bricks. (Dept. Ex. #1, p. 58)
36. On May 25, 2011, a financial report was given to the committee. The restoration report provided an update on the progress of the window restoration. The contract for repair and tuck-pointing of the house foundation was reviewed and approved for \$2,880. (Dept. Ex. #1, p. 66)
37. On June 1, 2011, the City of Pontiac Street Department removed the front step and stoop. (Dept. Ex. #1, p. 23)
38. On June 14, 2011, a financial report was given to the committee. The restoration report indicated that the foundation repair had been completed. (Dept. Ex. #1, p. 66)
39. On June 30, 2011, workmen from History Construction installed the restored windows and doors. (Dept. Ex. #1, p. 32)
40. On July 12, 2011, a financial report was given to the committee. A new wooden stoop had been installed at a cost of \$970. The repair of the house trim was discussed. Bids for the painting of the exterior of the house were presented. (Dept. Ex. #1, p. 66)
41. On July 14, 2011, the City of Pontiac Street Department installed roofline spires. (Dept. Ex. #1, pp. 23, 29)
42. During June and July 2011, a local contractor repaired and replaced portions of the gingerbread trim. (Dept. Ex. #1, pp. 30, 36)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010). The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. *Id.*; Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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 (35 ILCS 200/1-1 *et seq.*), which allows exemptions for charitable purposes and provides, in relevant 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..... (35 ILCS 200/15-65(a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968). 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 (1<sup>st</sup> Dist. 1982).

In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. “Intention to use is not the equivalent of use.” *Id.* at 252. See Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1<sup>st</sup> Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption). An exception to the actual use requirement exists, however, if the property is in the process of being adapted and developed for an exempt use; if so, then it will be treated as being devoted to that use. Weslin Properties, Inc., at 587. It must be determined whether the applicant’s activities constitute development and adaptation for an exempt use, or whether the applicant merely intends to develop the property for an exempt use. *Id.* at 584. The Department notes that in Lutheran Church of Good Shepherd of Bourbonnais v. Department of Revenue, 316

Ill. App. 3d 828 (3<sup>rd</sup> Dist. 2000), the court held that “development and adaptation of the subject property must be judged in light of the ultimate intended use.” *Id.* at 834.

The Department argues that the property in this case has not been adapted or developed for an exempt use. The Department believes that the applicant has failed to take sufficient steps towards the renovation of the property in order to warrant the exemption for 2010. From the time the property was purchased in September 2008 through the 2010 tax year, the vast majority of the activity dealt with fund raising and planning for the renovation of the property. According to the Department, the amount of actual renovation and improvement to the property was extremely limited during the 2010 tax year. Moreover, the completion of the renovations and the use of the house as a museum are still years away. The Department, therefore, contends that the applicant has failed to sufficiently demonstrate that significant steps were taken towards adaptation of the property during the 2010 tax year.

In Weslin Properties, Inc., *supra*, the court addressed the issue of whether the applicant’s activities on the property in question constituted development and adaptation for charitable use. The applicant purchased the property with the intent to build a medical complex. The court found that as soon as the applicant purchased the property, it began to carry out its intentions to use the property for exempt purposes. The applicant proceeded quickly through the planning and design stages for constructing the complex by approving the development of a master site plan and holding several meetings with the architects to review and refine the plans. The applicant began physical adaptation of the property through landscaping and the construction of berms. It also expended large sums of money in the process. The court concluded that these facts constituted more than the “mere intention to convert the property for an exempt use, and actually constituted development and adaptation for such use.” *Id.* at 586.

In Lutheran Church of Good Shepherd of Bourbonnais, *supra*, the applicant acquired property that was to be used as an extension of the church's existing yard area. The court indicated that the efforts at developing and adapting the property must be judged in light of the ultimate intended use. The court stated that, unlike the Weslin Properties, Inc. case, the ultimate use of the property as a yard did not require extensive planning or construction. The court, therefore, found that the applicant's decision to not plant crops on the land and the applicant's mowing and tilling of the land were enough to find that the property was in the process of being adapted for an exempt use. Lutheran Church of Good Shepherd of Bourbonnais, at 834.

In the present case, the ultimate intended use of the property as a restored museum requires extensive planning and renovation. The applicant's activities towards adaptation, therefore, can be compared to those in Weslin Properties, Inc. In that case, after acquiring the property, the applicant immediately began the planning and the development of a master site plan along with physically adapting the property and spending large sums of money in the process.

In the present case, the applicant did not spend a large amount of money towards the renovation until October 27, 2010 when it paid \$5,385 as a down payment for the restoration of the windows. Prior to that date, the applicant's activities demonstrated a clear intent to renovate the property, but they did not constitute more than the mere intention until the end of October when the applicant clearly and convincingly began to adapt the property for an exempt use. Planning and attempting to raise money are activities that show a clear intent to renovate the property, but those activities, alone, do not rise to the level necessary to show adaptation of property that requires extensive renovation. Considering all of applicant's efforts, the applicant's

activities meet the clear and convincing standard on October 27, 2010, when the actual development and adaptation began.

Recommendation:

For the foregoing reasons, it is recommended that the property be exempt from October 27, 2010 through December 31, 2010.

Enter: May 18, 2012

Linda Olivero  
Administrative Law Judge