

**PT 15-04**  
**Tax Type: Property Tax**  
**Tax Issue: Charitable Ownership/Use**

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

---

**FILLMORE HISTORICAL SOCIETY,  
APPLICANT**

**v.**

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

**No. 13-PT-0001  
Real Estate Tax Exemption  
For 2012 Tax Year  
P.I.N. 18-26-201-005  
Montgomery County Parcel**

**Kelly K. Yi  
Administrative Law Judge**

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Russell Seibert, *pro se*, on behalf of Fillmore Historical Society; Mr. Robin Gill, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether Montgomery County Parcel, identified by property index number 18-26-201-005 (hereinafter the “subject property”), qualifies for exemption from 2012 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit, and subsection (f), “Historical societies.” 35 ILCS 200/15-65(f).

On June 29, 2012, Fillmore Historical Society (hereinafter “Fillmore” or “Applicant”) filed a Property Tax Exemption Complaint with the Montgomery County Board of Review seeking exemption from 2012 real estate taxes for the subject property. The Board reviewed Fillmore’s Complaint and recommended that the exemption be denied. The Department of

Revenue of the State of Illinois (hereinafter the “Department”) affirmed the Board’s recommendation in a determination dated September 20, 2012, finding that the subject property was not in exempt use in 2012. Dept. Ex. 1, p. 2. Applicant filed a timely appeal of the Department’s exemption denial. On September 25, 2013, a formal administrative hearing was held before Administrative Law Judge Linda Olivero<sup>1</sup> with Mr. Russell Siebert, President of Fillmore, Gail Bowman, Treasurer, and Bill Hoyle, Accountant, testifying. The issue of whether Fillmore is a charitable organization is not in dispute. The sole issue is whether Fillmore’s subject property was adapted and used exclusively for charitable purposes in 2012. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed in part and reversed in part.

**FINDINGS OF FACT:**

1. Dept. Ex. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use during 2012. Tr. p. 5; Dept. Ex. 1, p. 2.
2. Applicant acquired a vacant lot at the subject property, located at 112 South Main Street in Fillmore, Illinois, through a donation on August 26, 2010. Tr. p. 26; Dept. Ex. 1, p. 5.
3. Applicant is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Dept. Ex. 1, p. 9.
4. Applicant, incorporated on December 21, 2004, is a historical museum that exhibits a collection of artifacts of the Fillmore area of Hillsboro, Illinois, which was once a thriving community. Tr. p. 10; Dept. Ex. 1, p. 10.

---

<sup>1</sup> ALJ Olivero, currently on leave, was unable to write this Recommendation. The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witnesses is not at issue.

5. The idea to start a museum began in 2000 when two elderly women in their eighties “got the community together and got it started.” It was originally located in a rented building until it outgrew the space; then, it moved to an old school building but had to relocate again due to a leaky roof. Tr. p. 30.
6. The building fund to build a historical museum started in January 2010. Dept. Ex. 2.
7. The building was built incrementally and larger than was originally intended to accommodate the donors’ wishes to add a community portion (“community hall”) in the museum building. “A lot of people donated and said, hey, if we can use it for an area for if we have a big family come in” Tr. pp. 26-27, 31.
8. The discussion with the building contractor began in December 2010; the groundbreaking was in May 2011 with the foundation and floor poured by June 2011; framing and some of the inside walls were completed by September 2011. Dept. Ex. 1, p. 34.
9. Then the construction stalled due to lack of funds until the Applicant was able to raise more funds in the winter of 2011; the construction resumed in April 2012 at which time heating and cooling, and drywall were installed; by end of May 2012, painting and lighting installation were completed; and by June 2012, some of the museum artifacts were installed on the slat boards. Dept. Ex. 1, p. 34.
10. Applicant’s first board meeting was held in the new community hall on June 13, 2012. Dept. Ex. 1, p. 34.
11. In June 2012, donated cabinets were installed, and by November 15, 2012, donated appliances along with counter tops were installed in the community hall. Dept. Ex. 1, p. 34.

12. The subject property consists of a building 36 x 72 in dimension. The back 60% of the building (“museum”) is dedicated to storing and displaying museum artifacts. The front 40% of the building is the community hall, consisting of bathrooms, closets, a kitchen, and a sizeable open space with long tables and chairs, is used for monthly board meetings and fundraisers. Two sections can be partitioned. Tr. pp. 14, 28, 31; Dept. Ex. 1, pp. 3, 36-39.
13. Applicant’s primary exemption purpose, according to its Form 990-EZ, is to collect and preserve a myriad of artifacts and memorabilia pertaining to southeast Montgomery county, most notably the village of Fillmore, Illinois, and surrounding areas. App. Ex. 1.
14. Applicant exhibits historical artifacts such as old photos of the community, newspaper articles, children’s toys, clothes, trophies, team uniforms, and kitchenware. Dept. Ex. 1. pp. 26-33
15. Applicant is open to the public at no cost. The museum is open periodically and is available for tour by appointment by calling the numbers posted at the building. Tr. pp. 23-24.
16. The community hall was used three times in 2012, twice for family reunions for a donation of \$60 and \$65 per 4 hours of use; the alumni class of 1953 was allowed to hold a fundraiser there at no cost in November 2012. Tr. pp. 13-14; Dept. Ex. 1, p. 15.
17. Applicant has a set minimum donation of \$60 for 4 hours of use. Applicant does not have a “fee/rental waiver” policy in effect. If someone wanted to use the space but could not afford it, there is no set policy to either waive the fee or deny use. Tr. pp. 22-24.

18. Applicant's Directors do not receive any compensation. There are no personnel expenses. App. Ex. 1.
19. In 2012, Applicant had \$2,526 in expenditures, including \$442 in fundraising expenses, \$891 in utilities, and \$1,193 in other expenses including insurance and depreciation. App. Ex. 1.
20. Applicant's income and expense statement for a period of January 2010 through October 2012 shows that it collected \$129,428.16 and ended with a negative balance of \$868.71. Dept. Ex. 2.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant partial exemption of the subject property from 2012 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be reversed in part and affirmed in part to grant 60% partial exemption of Montgomery County Parcel, Property Index Number 18-26-201-005 from 2012 property taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of

Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). Applicant has proven, by clear and convincing evidence, that the subject property falls within the statutory requirements for a partial exemption of property for charitable purposes.

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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.

\*\*\*

(f) Historical societies.

35 ILCS 200/15-65.

Property may be exempt under this section if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. Chicago patrolmen’s Association, v. Department of Revenue, 213 Ill.2d 273, 285 (2004). Whether the 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 149, 157 (1968). If the primary use of the property is charitable, then 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). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc., v. Department of Revenue, 158 Ill.App.3d 794, 796 3<sup>rd</sup> Dist. 1987).

The parties agree that Applicant has met the characteristics of a charitable organization and the ownership of the subject property is not at issue. Therefore, solely at issue is whether the subject property was adapted and used exclusively for charitable purposes in 2012. Tr. pp. 6, 41; Dept. Ex. 1, p. 2. Applicant contends that it meets the requirements of exemption because the building houses a historical museum and “even the times where it’s used otherwise, it’s a donation to further the museum,” so, every use is charitable use. Tr. pp. 9, 40.

The Illinois Supreme Court ruled that evidence that land 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 to use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965). However, where property is in the actual process of development and adaptation for exempt use, it will be treated as being devoted to that use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); Weslin Properties, Inc., v. Department of Revenue, 157 Ill.App.3d 580 (2<sup>nd</sup> Dist. 1987). It must be determined whether the applicant’s activities constitute development and adaptation for an

exempt use. Weslin Properties, Inc. at 584. Under the exception to the actual-use requirement for adaptation and development, courts evaluate the taxpayer's activities for reasonable diligence in light of practical considerations. In re Application of County Collector, 48 Ill.App.3d 572, 576 (1977); Weslin Properties, Inc., at 586. A lack of a building fund was a practical consideration that reasonably delayed the development of the building. Grace Community Church Assemblies of God v. Illinois Department of Revenue, 409 Ill.App.3d 480 (4<sup>th</sup> Dist. 2011).

In Weslin Properties, Inc., the court found that as soon as the applicant purchased the property, it proceeded quickly through the planning and design stages for constructing the medical complex and began physical adaptation of the property through landscaping and 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." Weslin Properties, Inc. at 586. In the present case, similar to Weslin Properties, Inc., the evidence establishes that only after a few months from the date the vacant land was gifted by a family in the community, Applicant acted diligently to build a historical museum. Applicant consulted a contractor in December 2010, and actual groundbreaking was in May 2011.<sup>2</sup> Construction continued steadily for the next several months until September 2011 when the building fund ran out. Applicant was able to secure more donations in the winter of 2011, and the construction resumed in April 2012. These facts support a finding that the actual development and adaptation for the building was in May 2011. However, the record is replete with evidence that the building was built larger than was originally planned because the donations were contingent upon adding

---

<sup>2</sup> As the applicant is only seeking exemption for year 2012, the exact date of adaptation in 2011 is immaterial.

in the museum building a community hall to be used as a rental property. Tr. pp. 27, 31. Accordingly, I find that the building at the subject property was not adapted entirely as a historical museum, but, instead, for a dual use as a historical museum and a rental property.

“Where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purposes and subjecting the remainder to taxation.” City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955). “Where a property as a whole, or in unidentifiable portions, is used both for an exemption purpose and a nonexempting purpose, the property will be wholly exempt only if the former use is primary and the latter is merely incidental.” Illinois Institute of Technology at 66. “An identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a nonexemption purpose or not used at all. Thus, there may be separate assessments by separating uses.” *Id.*

In the present case, the uncontradicted testimonies of two witnesses demonstrate that the subject property can be divided into two identifiable sections of use. First, I examine the uses for the museum. Relevant to the determination of how the property is primary used is the percentage of total visitors who use the property for its stated purpose, the percentage of property allocated, and the amount of time that the property is used for the stated charitable purpose. The Arts Club of Chicago v. Department of Revenue, 334 Ill.App.3d 250 (1<sup>st</sup> Dist. 2002) (“The Arts Club”). The Department contends that the three uses in year 2012 for the building are insufficient to constitute a primary charitable use (Tr. p. 41). The evidence, however, demonstrates that while the community hall was used for private functions on those three occasions, the two sections were partitioned during private uses. The testimonies establish that the back 60% of the building is solely dedicated to storing and displaying historical artifacts. Tr.

p. 28. The evidence further reveals that the museum is opened periodically and by appointments. Whether the museum received any visitors in year 2012 is less significant of an inquiry than its availability for tours. Also, as the building was completed in the latter part of 2012, the opportunity for use would have been naturally limited. “Neither the exemption statute nor cases interpreting it have established a minimum required frequency of use.” “Evidence of *some* use of its land” is sufficient to satisfy the actual-use requirement. Grace Community Church Assemblies of God at 491 (emphasis in the original). While no evidence was presented to demonstrate the actual amount of charitable use for the museum, no use other than to store and display historical artifacts was reported. As such, an inference may be drawn that 100% of the total museum visitors used it for charitable use, to view the historical artifacts. This was the case even when the museum was opened, upon request, to the families renting the community hall; they specifically wanted to see the artifacts. I find such uses for the museum fall under exempt use. Moreover, the physical layout of the museum is not conducive for meetings and private events. The exhibits presented of the photos show that the museum is densely occupied with historical artifacts, some hung on the walls, some free-standing, and some encased in display cases; there simply is no room for anything else. Considering all of these factors, I conclude that Applicant has proven, by presentation of clear and convincing evidence through testimony or exhibits, that the museum at the subject property, occupying 60% of the building, should be exempt from 2012 real estate taxes under subsections (a) and (f) of 35 ILCS 200/15-65.

With respect to the front 40% of the building, the evidence, instead, shows that it was neither adapted nor used as a historical museum but as a rental property. The community hall consists of bathrooms, closets, a fully functioning kitchen, and a sizeable open space with long tables and chairs to accommodate different venues. The uncontradicted testimonies demonstrate

that the donations for the building were contingent upon adding the community hall at the subject property. Mr. Seibert testified that “[t]he building is actually bigger than we w[ere] originally planning, because we added this room to it to get more donations. To get it built.” Mr. Hoyle testified that “[a] lot of people donated and said, hey, if we can use it for an area for if we have a big family come in.” Tr. pp. 27, 31. As was intended, it has since been adapted for such use, according to the wishes of the donors whose funds enabled the building to be built. After the building was largely completed, Applicant reported in the exemption application dated June 2012 that it “may rent room for reunions, showers, parties, & misc.” Dept Ex. 1, p. 3. Other than to state that the community hall was used for board meetings and fundraisers,<sup>3</sup> Applicant did not present any evidence to support a claim of an exempt use as a historical museum. In fact, the evidence supports an opposite conclusion that the community hall was adapted and used primarily for nonexempt purposes.

Applying the factors in The Arts Club to determine primary use, the percentage of property dedicated for the charitable purpose in the community hall is insignificant, as there is only scant display of historical artifacts along the edges, certainly not to the level of primary use. *See* Tr. p. 12. This finding is supported by Applicant’s witnesses who testified that only the back 60% of the building is dedicated to museum use. Similarly, the amount of time used for charitable purpose in the community hall is little to none. While the evidence demonstrates that the monthly board meetings are held there, which can be characterized as incidental use to primary use as a historical museum, the evidence establishes that the community hall was used primarily as a rental property. The evidence clearly shows that the community hall was not built as a part of the museum, but was developed and adapted as a venue for meetings and private

---

<sup>3</sup> There is no clear and convincing evidence that a fundraiser was held in 2012 for the benefit of the museum. The alumni fundraiser and the garage sale fundraiser may be one and the same. Tr. p. 14.

events where people host an alumni fundraiser and family/high school reunions. Applicant's contention that "whenever someone uses it, the museum is open" (Tr. P. 41) implausible in the absence of evidence of separate entrances to the front and back of the building, allowing private functions to remain private while keeping the unstaffed museum open to the public. Applicant did not present any documentary evidence, such as terms of use, that the private uses were secondary to the museum being open to the public during rentals. Providing a rental space for private events such as reunions, showers, and parties, as was described in Applicant's exemption application, is not a charitable endeavor nor connected in any way with stated charitable use. Put it differently, the use is not incidental to its primary charitable use as a historical museum. Moreover, such use is not evenly and freely allocated to everyone who asks, as only a select group of people were allowed to use the space at no charge while others were asked to pay and have complied with the recommended minimum donation of \$60 per 4 hours of use. While Applicant has no fee waiver policy, no evidence was presented to explain the discrepancy in the selective requests for the recommended minimum donation for private uses. In the absence of a fee waiver policy, I find that the minimum recommended donation is equivalent to rent. Based on these facts, I conclude that Applicant has failed to prove, by clear and convincing evidence, that the community hall, consisting of 40% of the subject property, was adapted and used for charitable purposes. Rather, the evidence supports a finding that the community hall was intended, adapted, and used as a rental property, thus, not entitled to exemption from 2012 property taxes under subsections (a) and (f) of 35 ILCS 200/15-65.

Applicant contends that even if the building is not used exclusively for charitable purposes, because the "donations" for the rental is used to "further the museum," the use is for charitable purposes. Tr. p. 40. Applicant states that it has had no net revenue from the renting

the community hall and argues that it would have doubled the asking price if it was rented “for a profit deal.” Tr. pp. 32, 42; Dept. Ex. 1, p. 15. However, the concern in 35 ILCS 200/15-65 is whether the property is used with a view to profit, not whether the owner is maximizing profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the court noted that “former decisions of the court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” Applicant rents the community hall for profit. In Turnverein “Lincoln” v. Bd. Of Appeals, 385 Ill. 134, 144 (1934), the court noted, with regard to the argument that income from the rented property was offset by operation expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” The community hall at the subject property is “let for a return,” and accordingly, must be liable for the burden of taxation.

Applicant’s argument that “Just like the legions and the Moose and all those places have the same type[s] of [hall]” finds no legal support. Tr. p. 27. The Illinois Supreme Court has found in two separate cases that property of American Legion Posts was not exempt. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill.2d 286, 291 (1956); North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967). While the Village of Fillmore with a population of 250 has “no place for anybody to meet or anything,” (Tr. pp. 29, 34), and the Applicant provides a space for the community, laudable acts do not necessarily constitute charity, especially given that the community hall was built quid pro quo.

**Recommendation:**

For the foregoing reasons, it is recommended that the Department's determination, which denied exemption from 2012 real estate taxes, should be affirmed in part and reversed in part to grant a 60% exemption of Montgomery County Parcel, Property Index Number 18-26-201-005, from 2012 real estate taxes.

Kelly K. Yi  
Administrative Law Judge

February 6, 2015