

PT 98-91
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

**TURTLE CREEK BREEZEWAY
DEVELOPMENT CORPORATION,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No: 98-PT-0015

**Real Estate Tax Exemption
For 1995 Tax Year**

**P.I.N.S: 006D-153
006D-154**

Winnebago County Parcels

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: At issue is whether Winnebago County Parcel Index Numbers 006D-153 an 006D-154 (hereinafter the “subject property” or “subject parcels”) should be exempt from 1995 real estate taxes under section 15-65 of the Property Tax Code¹ which exempts all property owned by “institutions of public charity” when such property is “actually and exclusively used for charitable or beneficent purposes[.]” 35 ILCS 200/15-65.

This controversy arose as follows:

¹ In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), our supreme court held property tax exemption issues necessarily depend on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those in the Property Tax Code (35 ILCS 200/1 *et seq.*).

The applicant, Turtle Creek Breezeway Development Corporation, filed a Property Tax Exemption Complaint with the Winnebago County Board of Review on November 15, 1995, seeking a property tax exemption for the subject property for the 1995 tax year. On November 16, 1995, the Board recommended that the applicant be granted a partial year exemption from October 24, 1995 through December 31, 1995. On October 10, 1996, the Illinois Department of Revenue (hereinafter the "Department") denied the exemption request concluding that the subject property was not in exempt use. The applicant filed a timely appeal from the Department's denial of exemption. On September 25, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcels be exempted from 19% of 1995 real estate taxes which represents that portion of the year from October 24, 1995 through December 31, 1995 during which the applicant owned the subject property.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt use.
2. The subject property consists of a 15.2 acre island located in the Rock River in South Beloit. Dept. Gr. Ex. No. 1.
3. There are no buildings or other improvements on the subject parcels. Dept. Gr. Ex. No. 1.
4. The subject property was donated to the applicant via a quitclaim deed dated October 24, 1995. App. Ex. No. 4; Tr. pp. 12, 17.

5. The applicant was organized under the General Not for Profit Corporation Act of Illinois for the purpose of preserving the natural environment along Turtle Creek and Rock River. App. Ex. No. 1.
6. The applicant acquires property, makes any necessary repairs, and then opens the property up for use as a public park area. Tr. pp. 7-9, 23
7. The applicant is funded entirely by public and private donations and has no office or salary expenses. Tr. pp. 7, 23.
8. The applicant organization charges no membership fees and is open to anyone. Tr. p. 13.
9. In 1995 the subject property was acquired by the applicant and immediately opened for public use as a park/rest area. Tr. p. 18.
10. The applicant is acquiring land along the Rock River, including the subject parcels which the applicant plans on eventually turning over to the Winnebago County Forest Preserve. Tr. pp. 19-20.
11. None of the property owned by the applicant is used for private purposes. Tr. p. 24.

CONCLUSIONS OF LAW

An examination of the record establishes that the applicant has demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to warrant an exemption from property taxes for the 1995 tax year. Accordingly, under the reasoning given below, the determinations by the Department that the subject property did not qualify for exemption should be reversed. 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 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property of "institutions of public charity" when such property is "actually and exclusively used for charitable or beneficent purposes" (35 ILCS 200/15-65 (1994)). In the case at hand, the applicant contends that the subject property should be exempt for 19% of the 1995 tax year because the applicant: (1) is an institution of public charity; (2) owned the subject property from

October 24, 1995 through December 25, 1995; and (3) actually and exclusively² used the subject property for charitable purposes.

The Department's October 10, 1996 determination denying the instant exemption request was based solely on the Department's conclusion that the subject property was not in exempt use. Because the Department denied the exemption based solely on lack of exempt use, it is implicit that the Department concluded that the applicant qualified as an institution of public charity and did in fact own the subject property from October 24, 1995 through December 25, 1995. Those conclusions were unchallenged at the instant proceeding and nothing in the evidence presented would call those conclusions into question. Accordingly, the only real issue is whether the subject property was actually and exclusively used for charitable purposes.

"The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented." Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156. In Methodist Old Peoples Home, our supreme court noted that charitable use could be evidenced by, *inter alia*: dispensation of charity to all who need and apply for it and a reduction in the burdens of government. *Id.* at 157-159.

Here, the applicant reduced the government's burden by acquiring the subject property and holding it in its natural state until it can be acquired by the Winnebago County Forest Preserve. Moreover, the applicant did not limit usage of the land to any select group but rather held the land open as park area for general public use. Under

² The word "exclusively," when used in tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas

these circumstances, I conclude that the subject property was used primarily for charitable purposes.

Because the applicant is an institution of public charity, owns the subject property, and uses the subject property primarily for charitable purposes, I conclude that the subject property is entitled to exemption.

WHEREFORE, for the reasons set forth above, I recommend that Winnebago County Parcel Index Numbers 006D-153 and 006D-154 be granted an exemption for 19% of the 1995 tax year which represents that portion of the year from October 24, 1995 through December 31, 1995 during which the applicant owned the subject property.

Date _____

Robert C. Rymek
Administrative Law Judge

Research Institute v. Dep't of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep't of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).