

PT 11-22
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

SAFE PASSAGE, INC.	}	Docket No: 10 PT 0067
APPLICANT		Real Estate Tax Exemption
v.		For 2010 Tax Year
THE DEPARTMENT OF REVENUE	}	P.I.N. 08-23-309-013
OF THE STATE OF ILLINOIS		DeKalb County Parcel
		Mimi Brin
		Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Richard D. Larson, Esq., on behalf of Safe Passage Inc.; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether DeKalb County Parcel, identified by property index number 08-23-309-013 (hereinafter the “subject property” or “property”) should be exempt from 2010 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: Safe Passage Inc. (hereinafter “Safe” or “Applicant”) filed an application for Non-homestead Property Tax Exemption with the

DeKalb County Board of Review seeking exemption from 2010 real estate taxes for the subject property. The Board reviewed Safe's Application and recommended that the exemption be denied. The Department of Revenue of the State of Illinois (hereinafter the "Department") also denied the Application on August 12, 2010, finding that the subject property was not in exempt use in 2010. Safe filed a timely appeal of the Department's denial of exemption. A formal administrative hearing was held with the applicant providing oral and documentary evidence on its behalf.¹ Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt use during 2010. Dept. Ex. No. 1 (Denial of Non-homestead Property Tax Exemption)
2. Safe acquired the subject property, located at 421 Prospect Street, DeKalb, Illinois, on July 28, 2005. Applicant Ex. No. 3(a)
3. The property is improved with a single family house. Applicant Ex. No. 4; Department Ex. No. 1
4. Safe's purpose is, *inter alia*, to provide advocacy, supportive services and resources for victims of domestic violence and sexual assault. Applicant Exs. No. 2 (Articles of Incorporation, section 5); 3(b) (By-Laws, Article II)

¹ Administrative Law Judge Ken Galvin heard this matter. Due to his unavailability, Administrative Law Judge Mimi Brin authored this recommendation following a thorough review of the record. There were no issues of credibility to be determined.

5. Safe is a General Not For Profit corporation. Applicant Ex. No. 2 (Articles of Incorporation, State of Illinois)
6. Applicant is exempt from federal income tax pursuant to section 501(c) (3) of the Internal Revenue Code. Applicant Ex. No. 1
7. Safe began leasing the property to an individual and the individual's immediate family beginning October 1, 2008. Department Ex. No. 1 (Illinois Residential Lease Agreement)
8. The lease was for a twelve month period for a set monthly rental of \$800. Id.
9. The lessee continued to reside on the property after the lease term and in 2010. Tr. p. 14 (Ms. Hacker, Applicant's Finance Manager)² (hereinafter "Hacker")
10. In February, 2010, there was an addendum to the lease, with retroactive application to November 1, 2009, which reduced the monthly rental payment to \$600. Department Ex. No. 1 (Illinois Residential Lease Agreement, Lease Addendum)

CONCLUSIONS OF LAW:

An examination of the record establishes that Safe has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2010 real estate 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

² No first name was provided for this witness.

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 which is both owned by “institutions of public charity” and “actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit... . 35 ILCS 200/15-65. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). Both the Department and the Board of Review denied the applicant’s exemption request due to lack of exempt use as the property was leased during the tax year at issue. Department Ex. 1 (Department Denial of Non-homestead Property Tax Exemption; Application for Non-homestead Property Tax Exemption, Part 7)

Safe’s witness testified that this lessee was generally in arrears in rent payments. Tr. pp. 14, 18, 20, 21 (Hacker). Ms. Hacker also testified that the lessee made payments in 2010 that were applied to rent she owed in 2009. Tr. p. 21. There is,

however, no evidence in the record that shows what rent payments were made over the course of lessee's occupancy of the property and how those payments were applied. Tr. p. 18.

Ms. Linda Moser, the applicant's executive director (hereinafter "Moser"), testified that when the addendum to the lease was signed in February, 2010, the lessee was still expected to pay rent for the leased premises, with the rent reduction evidenced in the addendum to be retroactive to November 1, 2009. Tr. pp. 26-28. While the applicant may have classified the subject property as long term transitional housing on its books in January, 2010 (tr. pp. 14-15, 17 (Hacker), 26 (Moser)), which would have allowed the applicant use of the premises for its target population without rent payments due, it did not do so in practice in 2010. Tr. pp. 17 (Hacker), 27-28 (Moser). There is no evidence in the record as to how much of the 2010 tax year this lessee remained in possession of the property.

The concern in the relevant statute is whether the property is used with a view to profit. There are no parameters set forth in the statute concerning whether the property owner is maximizing its profits or even making a profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted 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."

In this matter, Safe leased the property to an individual and expected her to pay rent. It did not cancel the lease when the lessee failed to make timely or full rent payments, as allowed by lease terms (Department Ex. No. 1 (Illinois Residential Lease Agreement ¶ 20)), but, rather, continued the lease, after its original term expired, with an addendum that lowered the monthly rent payments expected to be paid.

Safe argues that, beginning January, 2010, it decided that the lessee would no longer be required to pay rent (tr. pp. 33 (closing argument); 14-15, 21 (Hacker)) and it characterized the property as transitional housing for which no rent would be charged. Tr. pp. 14, 17 (Hacker). The actual evidence on these points provides that on February 17, 2010, the date of the addendum, the lessee was still expected to pay rent. Tr. p. 27 (Moser), and that the decision to not charge the lessee rent was not made until “either April or May... .” Tr. p. 21 (Hacker). Ms. Hacker stated that the lessee made payments in 2010 which were applied to outstanding rent due (tr. p. 21), however, no financial statements were offered into evidence regarding the 2010 payment of and application of rent payments made by the lessee.

Importantly, there is no evidence that the lessee was aware that she was no longer required to pay rent for occupancy after January 1, 2010. The evidence shows that as of February 17, 2010, the lessee was required to make rent payments (tr. p. 27), albeit a reduced amount. The Appellate Court, in Provena Covenant Medical Center v. The Department of Revenue et al, 384 Ill. App. 3d 734 (4th Dist 2008), aff’ m 236 Ill.2d 368 (2010), stated as follows:

As we have explained, charity from one person to another is a gift. Perhaps it is possible to give someone a gift in the form of forgiveness of debt, but to accomplish that gift, one surely would have to do more than write off the debt. Writing off a patient’s bad debt involves only the hospital and its databases. Vis-à-vis the hospital and the patient, the relationship of creditor and debtor remains intact-and, presumably, the patient will conduct his affairs accordingly; he might forego opportunities, and, generally, he will live under a cloud, assuming that everything he owns and acquires could eventually be subject to execution. ...And so nothing really has changed between the patient and the hospital. The hospital merely decided, for its own accounting purposes, that trying to enforce the debt would be futile or economically unrewarding-hardly a decision that exudes the “warmth and spontaneity indicative of [a] charitable impulse [citation omitted].

... Like any other gift, a gift in the form of forgiveness of debt requires some kind of delivery. [citations omitted]. Further, the supreme court has held: “[W]here there is no proof of consideration for the forgiveness of a debt, an attempt to forgive a debt is ineffective either as a gift or as an executor contract.” [citations omitted].

Id. at 384 Ill. App. 3d 762. In this instant case, there is no evidence whatsoever that the lessee ever knew that she was not expected to pay rent in 2010 for as long as she occupied the premises. And, there is no evidence of record as to how long the lessee remained on the premises in 2010 under the obligations of the February, 2010 lease addendum. The applicant may have written off this lease obligation, but there is no evidence that the lessee did not believe that she remained obligated for all the rent that remained unpaid for 2010. Thus, the lease cannot be seen as a means whereby Safe extended charity to the lessee in 2010, and it cannot, therefore, be concluded that the property was not leased with a view to profit.

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Any and all doubts that arise in an exemption proceeding, if attributable to evidentiary deficiencies, must be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

Based on the testimony and evidence admitted at the evidentiary hearing, and considering deficiencies in the evidence, I must conclude that the subject property was leased or otherwise used with a view to profit during 2010.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2010 real estate taxes on the grounds that the subject property was not used for charitable purposes should be affirmed, and

DeKalb County Parcel, Index Number 08-23-309-013, should not be exempt from 2010 real estate taxes.

ENTER:

December 14, 2011

Mimi Brin
Administrative Law Judge