

PT 07-8

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

**HOUSING OPPORTUNITIES AND
MAINTENANCE FOR THE ELDERLY,
Applicant**

v.

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

**No: 06 PT 0052
Real Estate Tax Exemption**

For 2004 Tax Year

P.I.N. 13-33-205-001-0000

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Michael Griffin, on behalf of Housing Opportunities and Maintenance for the Elderly; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether 27% of the building and site located on Cook County Parcel, identified by P.I.N. 13-33-205-001-0000 (hereinafter the “subject property”) should be exempt from 2004 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: On August 12, 2005, Housing Opportunities and Maintenance for the Elderly (hereinafter “HOME”) filed a Property Tax Exemption Complaint with the Cook County Board of Review (County Reference No. 88402)

seeking exemption from 2004 real estate taxes for the subject property, which consists of eight apartments. Dept. Ex. No. 2. The Board reviewed HOME's Complaint and recommended that the exemption be denied. The Department of Revenue of the State of Illinois (hereinafter the "Department") rejected the Board's recommendation in a determination dated April 20, 2006 (IDOR Docket No. 04-16-1889) finding that 73% of the building and site on the subject property (consisting of six apartments) was in exempt use and 27% of the building and site (consisting of two apartments) was not in exempt use in 2004. Dept. Ex. No. 1. HOME filed an appeal of the Department's denial of exemption for the 27% of the building and site. On December 11, 2006, a formal administrative hearing was held with Paul Dean, Executive Director of HOME, testifying. Following a review of the testimony and evidence, it is recommended that the apartment used by the maintenance man, which was included in the nonexempt 27% of the building and site, be exempt for the 2004 assessment year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that 27% of the building and site on the subject property was not in exempt use during 2004. Tr. pp. 7-8; Dept. Ex. No. 1.
2. The subject property contains eight affordable independent apartments for seniors. Six of the apartments constitute the 73% of the subject property found to be exempt by the Department. Tr. pp. 17-18; Dept. Ex. No. 2.
3. The 27% non-exempt portion of the building and site consists of two apartments. One of these apartments is inhabited by the maintenance man. He makes repairs to the apartments, controls the temperature in the building, is available on-site for emergencies, arranges for transportation

to doctors appointments for the seniors, and makes accommodations for wheelchair ramps and storage. When a resident dies, he helps surviving family members enter and clean out the apartments and make donations of the deceased's belongings. He helps with funeral arrangements and assists the other seniors in securing transportation to the wakes and funerals. Tr. pp. 12-13, 14-16.

4.The other apartment included in the 27% non-exempt portion of the subject property is inhabited by Helen Zabielski. She is 86 years old and a retired Chicago Public School teacher. She donated the subject property to HOME. The subject property was in need of repairs and had several housing code violations and unpaid property taxes, which Ms. Zabielski was not able to remedy. Ms. Zabielski moved out of the building for over a year while it was rehabbed. In return for her donation of the building, Ms. Zabielski is allowed to live in one of the apartments for the rest of her life. Tr. pp. 10-14, 19-20.

CONCLUSIONS OF LAW:

An examination of the record establishes that HOME has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant exempting the maintenance man's apartment on the subject property for the 2004 assessment year. 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 that is both: (1) owned by “institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968). Ownership of the subject property is not at issue in this proceeding because the Department found in its April 20, 2006 determination that 73% of the building and site was exempt for the 2004 assessment year, thereby determining that the subject property was, in fact, owned by an institution of public charity. The only issue in this proceeding is whether the 27% of the building and site found not to be exempt was actually and exclusively used for charitable or beneficent purposes in 2004. The nonexempt 27% of the subject property includes the apartment inhabited by the maintenance man and the apartment inhabited by Helen Zabielski.

By comparing the facts of this case to cases where an exemption for residential property was denied, I am able to conclude that the maintenance man’s apartment on the

subject property should be exempt from property taxes for the 2004 assessment year. In Benedictine Sisters v. Dept. of Revenue, 155 Ill. App. 3d 325 (2nd Dist. 1987), the court determined that caretakers' residences located on the grounds of a convent did not qualify for exemption based on religious use because the residences were not primarily used for religious purposes. The caretakers did not perform religious-related activities and no religious activities were conducted in their residences. The court in Benedictine based its ruling on the "standard set out in" MacMurray College v. Wright, 38 Ill. 2d 272 (1967), where the Court held that an exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the objectives, or efficient administration of the particular institution. Benedictine at 329.

In contrast to the caretakers in Benedictine, the maintenance man residing in the apartment on the subject property is necessary for the accomplishment of HOME's objectives and for the efficient administration of the apartment complex. The subject property is one of three housing buildings that HOME operates. HOME provides affordable independent apartments for low-income seniors. Tr. pp. 9-10; Dept. Ex. No. 2. The maintenance man makes repairs to the apartments, controls the temperature in the building, is available on-site for emergencies, arranges for transportation to doctors appointments for the seniors, and makes accommodations for wheelchair ramps and storage. When a resident dies, he helps surviving family members enter and clean out the apartments and make donations of the deceased's belongings. He helps with funeral arrangements and assists the other seniors in securing transportation to the wakes and funerals. Tr. pp. 12-13, 14-16.

The maintenance man's responsibilities on-site further HOME's exempt purpose. It is abundantly clear that the maintenance man's presence on the premises is necessary for the accomplishment of HOME's objective of allowing low-income seniors to live independently. It is also clear that his presence on-site allows for the efficient administration of the apartment complex where the low-income seniors live and that the program could not function without a maintenance man residing on-site.

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). Based on the testimony and evidence admitted at the evidentiary hearing, I conclude that the maintenance man's apartment on the subject property is necessary for the accomplishment, fulfillment and efficient administration of HOME's objectives and that this apartment is used for charitable purposes.

I am unable to reach the same conclusion for the apartment inhabited by Helen Zabielski. Ms. Zabielski is 86 years old and a retired Chicago Public School teacher. She donated the subject property to HOME. The subject property was in need of repairs and had several housing code violations and unpaid property taxes, which Ms. Zabielski was not able to remedy. Ms. Zabielski moved out of the building for over a year while it was rehabbed. In return for her donation of the building, Ms. Zabielski is allowed to live in one of the apartments for the rest of her life. Tr. pp. 10-14, 19-20.

Ms. Zabielski resides on the subject property because she "donated the building to HOME in exchange for an apartment." Dept. Ex. No. 2. There is nothing inheritably "charitable" about this exchange. The documents which memorialize the "exchange" were not admitted into evidence. Mr. Dean testified that Ms. Zabielski would qualify for

low-income housing if she applied for it. Tr. p. 19. I am unsure what the basis for this testimony is. No documentary evidence was admitted to support Mr. Dean's testimony on this point. Without documentary evidence proving either Ms. Zabielski's status as low-income or the charitable nature of the "exchange," I am unable to conclude that the apartment occupied by Ms. Zabielski qualifies for exemption under 35 ILCS 200/15-65.

For the above stated reasons, it is recommended that the Department's determination regarding Cook County P.I.N. 13-33-205-001-0000 dated April 20, 2006 should be partially reversed, and the maintenance man's apartment, which was included in the nonexempt 27% of the building and site, should be exempt from property taxes for the 2004 assessment year.

Kenneth J. Galvin
Administrative Law Judge

February 15, 2007