

PT 07-9

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

COMPREHENSIVE COMMUNITY SOLUTIONS, INC.	Applicant) 04 PT 0046
) (03-101-144)
) PIN 11-27-211-023
	v.) 11-27-211-019
) 11-27-211-020
DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS) Mimi Brin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION FOLLOWING REMAND

Appearances: Richard M. Butera, Butera Law Offices, on behalf of Comprehensive Community Solutions, Inc.; John Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

In April 2004, Comprehensive Community Solutions, Inc. (hereinafter “Comprehensive” or the “Applicant”) filed an Application for Non-homestead Property Tax Exemption with the Illinois Department of Revenue (hereinafter the “Department”) for properties located at 907, 915 and 917 S. Main Street, Rockford, Illinois (hereinafter collectively referred to as the “subject property”) for the tax year 2003 (hereinafter the “tax year”). The exemption request was made pursuant to §15-65 of the Property Tax Code, 35 ILCS 200/1 *et seq.* (hereinafter the “Code”) The Winnebago County Board of Review recommended that an exemption be given except for the 2.73% of PIN 11-27-

211-023 that was leased to a for-profit entity. Subsequent to its review, the Department denied any exemption for the subject property.

Comprehensive protested the Department's denial and the matter came to hearing on March 2, 2005 (hereinafter "3/2/05"). Following that hearing, the Department issued a decision denying the exemption. Applicant filed an action for administrative review of the decision resulting in an order remanding the matter to the Department for further hearing limited to specific documents and related testimony. That hearing was held (hereinafter "4/17/06"), however, at the end of that hearing, the parties agreed that another hearing (hereinafter "6/19/06") should be allowed so that the applicant could fully present pertinent evidence that it had heretofore failed to offer. Following the submission of all evidence and a review of the entire record in this case, it is recommended that this matter be resolved in favor of the applicant.

Findings of Fact:¹

1. On April 29, 2004, the Department denied Comprehensive's Application for a Non-homestead Property Tax Exemption for the tax year 2003 for the properties located at 907, 915 and 917 S. Main Street, Rockford, Illinois, on the basis that the subject property was not in exempt ownership or exempt use during the tax year. 3/2/05 Department Gr. Ex. No. 1, p. 2
2. PIN 11-27-211-023 is the 907 S. Main Street property. Applicant Ex. No. 1 (Affidavit of Building Usage) It is used by the applicant for its Neighborhood Tool Bank and Project Welcome Home programs. Id. Applicant also uses it as a training center in its YouthBuild program, as well as for storage for administrative and program needs. Id. 1825 square

¹ Unless otherwise noted, all Findings of Fact and Conclusions of Law refer to the tax year 2003.

feet of this building is leased by applicant to a for-profit business, and it was found not to be exempt by the Winnebago Board of Review (3/2/05 Applicant Ex. No. 6; 3/2/05 Department Gr. Ex. No. 1, p. 1). Applicant concedes that this area is not exempt from the imposition of real estate tax. 3/2/05 Tr. pp. 21-22

3. PIN 11-27-211-020 is property located at 917 S. Main Street. 3/2/05 Applicant Ex. No. 1 The first floor is used as the main administrative offices for applicant. Id. The second floor is used as a GED program classroom as well as a computer training lab for the YouthBuild program. Id. The lower level of this property is used as a student locker room. Id.; 3/2/05 Tr. p. 46
4. Applicant receives the majority of its funds for its YouthBuild programs and related activities. 6/19/06 Applicant Ex. No. 13 (Profit & Loss statement)
5. PIN 11-27-211-019 is a parking lot adjacent to the 917 S. Main Street building and is used by applicant's employees. 3/2/05 Applicant Ex. No. 1
6. Comprehensive owned the property during the tax year at issue. 3/2/05 Applicant Ex. Nos. 7, 8 (Settlement and Chicago Title and Trust Co. documents showing Comprehensive as buyer and owner)
7. Comprehensive was incorporated in June, 1992 in the State of Illinois, pursuant to the Illinois General Not For Profit Act. 3/2/05 Applicant Ex.

No. 10 (Secretary of State document); 4/17/06 Applicant Ex. No. 6
(Articles of Incorporation)

8. Applicant's charitable purpose is set forth in its Articles of Incorporation and its by-laws. 4/17/06 Applicant Ex. No. 5 (by-laws), 6 (Articles of Incorporation)
9. Comprehensive has been determined to be exempt from Federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code. 3/2/05 Applicant Ex. No. 9 (IRS letter, October 24, 2000)

Conclusions of Law:

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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.

Pursuant to its authority granted under the Constitutional, the General Assembly enacted specific exemptions to the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (hereinafter referred to as the "Code"). Comprehensive claims exemption from property tax pursuant to section 15-65 of the Code. Applicant claims exempt status citing sections 15-65 (a) and (c) that state, in relevant part:

§ 15-65 Charitable purposes. 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.

xxx

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon

making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501 (c) of the Internal Revenue Code or its successor, and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, or an entrance fee, assignment of assets or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If the not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

35 ILCS 200/15-65 (a), (c)

Both of these statutory provisions require ownership by particular entities and that the property is actually and exclusively used for charitable purposes. Id.; Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill.2d 273 (2004); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968); Institute of Gas Technology v. Department of Revenue, 289 Ill. App.3d 779, 783

As to §15-65(a), an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise relieves the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893) It has: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from

public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, *supra* at 156, 157.

These factors are used to determine whether property meets the constitutional standards for a charitable institution exemption. Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 290-91. They are balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-69 (2nd Dist. 1995). The Department's position is that the applicant has failed to show that it is a charitable institution, and, further, that it failed to show that it used the subject property for statutorily mandated purposes during the tax year at issue.

The basis, in part, of the first decision in this cause was that the applicant failed to provide essential evidence concerning its organization structure and function. At the initial hearing in this cause the applicant did not provide any Articles of Incorporation or by-laws. See People ex rel. Mercer v. Wyandot Electric Light Co., 306 Ill. 377, 380 (1922) (the question of what business the entity is actually engaged is determined by its charter); Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 795 (3rd Dist. 1987) (“[t]he first step in determining whether an organization is charitable is to consider the provisions of its charter.”) (citing Rotary International v.

Paschen, 14 Ill. 2d 480 (1958)). More importantly, it did not provide any documentary evidence of the sources of its funding despite the fact that there is a for-profit operation intricately involved with applicant's activities. Rather, applicant relied on the oral testimony of its executive director and founder, Kerry Knodle, as evidence of its funding source and of the manner in which it operates. The original determination was, *inter alia*, that this oral testimony was not sufficient to establish applicant's qualification as a charitable institution using the property for charitable purposes.

During the subsequent hearings held pursuant to court remand, the applicant satisfied statutory requirements qualifying it as a charitable institution that used the subject property for charitable purposes during the tax year at issue. Applicant's Articles of Incorporation specifically provide that it organized exclusively for charitable purposes. 4/17/06 Ex. 6 (Articles of Incorporation) and documentary evidence of record admitted at these subsequent hearings establish that applicant functions in furtherance of its organizational intent.

It is clear from the voluminous documents presented and admitted into evidence, in conjunction with supporting oral testimony, that applicant's primary source of funding was public charity, in the nature of federal government grants, and not government contracts entered into for the procurement of property or services for the direct benefit or use of the federal government. 6/19/06 Applicant Ex. No. 9 *passim* (*inter alia*, the grants to applicant pursuant to 31 U.S.C.A. § 6101 (3) (General Assistance Administration Program Information) (provides that the government acknowledges its interest in specific social benefit, general welfare programs that further recognized public policies and grants funding for qualified not-for-profits under particular circumstances in furtherance

thereof)); see also Rev. Ruling 74-205, 1974-1 CB 20, IRC Sec. 61 (“The Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for promotion of the general welfare are not includible in a recipient’s gross income.”). In addition, it is established from the documents now of record, that the applicant primarily provided well-publicized services to the full extent of its funding without setting up barriers, such as fees or any other type of payments, to those who would benefit from those services. 4/17/06 Applicant Ex. No. 2 (Audited Financial Statements 2002, 2003; 3 (2002 IRS 990); 4 (2003 IRS 990). The applicant has now confirmed, through its financial documents, that during the tax year at issue, it spent its funds primarily in furtherance of its charitable mandate and for purposes that furthered well-defined federal government programs concerning public policy and welfare. *Id.* It has also, through this evidence, answered a concern articulated in the initial recommendation regarding whether any persons were improperly profiting from corporate monies. I can conclude that charitable institution guidelines were not violated in this respect. 4/17/06 Applicant Ex. No. 4 (2003 IRS 990).

It is basic to Illinois law that “property tax exemption statutes, such as 15-65, ‘are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution.’” Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 288; Rotary International v. Paschen, *supra* at 486. It is also well settled in Illinois that “the burden of proving the right to exemption is upon the party seeking it... .” Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 289. In determining whether property is exempt from taxation, “every presumption is against the intention of the State to exempt property” (Rotary International v. Paschen, *supra* at 487),

thus, all facts are to be construed and all debatable questions resolved in favor of taxation. Id. Further, the burden is on the exemption claimant to prove clearly and conclusively its entitlement to the exemption sought (Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434 (1st Dist. 1987)), with the clear and convincing evidentiary standard “defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App. 3d 8, 13 (3rd Dist. 1996). At the end of the hearings in this matter, I can conclude that the applicant met its burden showing by clear and convincing evidence that it is, primarily, an institution of public charity that used those areas of the subject properties at issue primarily for charitable purposes.

Wherefore, for the reasons stated above, it is recommended that Winnebago County, PIN # 11-27-211-023, 11-27-211-019 and 11-27-211-020 be exempt from the imposition of 2003 property taxes except for the 2.73% of the property identified as PIN # 11-27-211-023 that applicant conceded was not in exempt use and therefore, was not at issue in this matter.

2/22/07

Mimi Brin
Administrative Law Judge