

**PT 09-7**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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**IN RE: 2003, 2004, 2005, 2006**  
**Property Tax Exemption Applications of**  
**MERIDIAN VILLAGE ASSOCIATION I,**  
**MERIDIAN VILLAGE ASSOCIATION II**

**Docket # 04-PT-0048**  
**PIN 14-1-15-28-00-000-005.001**  
**PIN 14-1-15-28-00-000-005.002**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Edward T. McCarthy of Edward T. McCarthy & Associates for Meridian Village Association I and Meridian Village Association II; Jack H. Humes, Jr. of Humes Law Office for Edwardsville Community Unit School District No. 7; Terry I. Bruckert of Belsheim & Bruckert for Village of Glen Carbon

Synopsis:

This case concerns whether two parcels of property located in Madison County and owned by Meridian Village Association I (“MVA I” or “applicant” or “Meridian”) and Meridian Village Association II (“MVA II” or “applicant” or “Meridian”) qualify for either a charitable or religious purposes property tax exemption for the years 2003, 2004,

2005, and 2006.<sup>1</sup> The two parcels of property contain a retirement community that includes independent living units, assisted living units, and skilled nursing care units. Although each parcel is owned by a separate applicant, the parcels are adjacent to one another, and the community is operated as one facility. The County Board of Review (“County”) recommended that the exemption applications be denied, and the Department of Revenue (“Department”) agreed with the County’s decision. The applicant timely protested the Department’s determination, and the Edwardsville Community Unit School District No. 7 and the Village of Glen Carbon (“Intervenors”) intervened in these proceedings.<sup>2</sup> Prior to the hearing, all of the cases were consolidated, and one evidentiary hearing was held concerning all of the exemption applications. After reviewing the record, it is recommended that the applicants’ requests for an exemption be denied.

FINDINGS OF FACT:

1. Both applicants are Illinois not-for-profit corporations. MVA I was organized on December 23, 1997. MVA II was organized on January 11, 2002. (App. Ex. #3, p. 102; Ex. #5, p. 110)
2. Lutheran Senior Services (“LSS”) is the sole member of each corporation. (App. Ex. #1, p. 90; #5, p. 105)
3. LSS is a Missouri not-for-profit corporation that currently has 104 Lutheran congregations as its members. (App. Ex. #1, pp. 95, 103-106; Tr. p. 102)

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<sup>1</sup> For the year 2003, an exemption is being sought only for the one parcel owned by MVA I. For the remaining three years, exemptions are being sought for both parcels. (App. Ex. #1-7)

<sup>2</sup> Dean E. Sweet, Assistant State’s Attorney for Madison County, did not appear at the hearing but joined in the brief that was filed by the Intervenors and the Department.

4. In September 1998, MVA I acquired the property with PIN 14-1-15-28-00-000-005.001 from LSS's predecessor, Lutheran Child and Family Services.<sup>3</sup> The property is located in Glen Carbon, Illinois. (App. Ex. #1, pp. 2, 5)
5. The property owned by MVA I contains 11 buildings that have a total of 100 independent living units: 66 apartments and 34 town homes. These units have been in use since 2001. (App. Ex. #2, pp. 13, 52, #8)
6. On May 28, 2003, MVA II acquired the property with PIN 14-1-15-28-00-000-005.002 from LSS. The property is adjacent to the parcel owned by MVA I. (App. Ex. #5, pp. 4-7)
7. Two separate legal entities own each parcel because they were financed with HUD guaranteed mortgages, and HUD required each loan to be made to a separate legal entity. For operating purposes, both are operated as one facility known as Meridian Village. (App. Ex. #2, p. 7; Tr. p. 10)
8. The parcel owned by MVA II includes 33 additional independent living units, 66 assisted living units (72 beds), and 20 skilled nursing units (32 beds). It also includes a Wellness Center/Pool, which has a multi-purpose room, theater, computer room, wellness center, and pool. (App. Ex. #2, p. 125)
9. In July 2004, the 33 additional independent living apartments owned by MVA II were placed in service. (App. Ex. #3, p. 9)
10. In December 2004, the assisted living units were placed in service. (App. Ex. #3, p. 9)

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<sup>3</sup> In 2001, LSS replaced Lutheran Child and Family Services as the sole member of MVA I. (App. Ex. #3, p. 53; Tr. pp. 11, 13)

11. In December 2005, the skilled nursing beds were placed in service. (App. Ex. #3, p. 9)
12. The bylaws of both applicants include the following under Article II, which is titled "Mission Statement":

Section I. Purpose of Organization. The Corporation is a nonprofit organization created to address and meet the specialized needs of aged persons, including, but not limited to, housing, health care, and financial security. The Corporation's residential facilities and programs are specifically designed to meet and maintain its aged residents' physical and emotional well-being, as well as meet their recreational, social, and religious needs. The Corporation is committed to maintaining in residence any persons who become unable to pay their monthly rental charges, as described further in Section 2 of this Article, and operating so as to provide its services at the lowest feasible cost, taking into consideration the payment of indebtedness, and the maintenance of adequate reserves to meet the needs of the community through future physical expansion, the needs of aged residents experiencing financial hardship, as described below, and the existing resources of the organization.

Section 2. Policy on Financial Hardship of Residents. The Board of Directors of the Corporation shall establish and maintain at all times a policy of maintaining in residence, to the extent it is able, any residents who become unable to pay their monthly rental charges. The Board of Directors, or, by delegation, the Officers of the Corporation, shall devise and institute procedures necessary to effectuate such policy including, but not limited to, maintaining such residents from the Corporation's reserves, seeking available support from local, state, and Federal welfare programs, soliciting contributions from the Member, as defined in Article V, Section I, or the general public, or by utilizing some combination thereof.<sup>4</sup> (App. Ex. #1, p. 86; #5, p. 100)

13. The services provided at the facility include 24-hour emergency call system, on-site security, meal and housekeeping services, maintenance and lawn care, and educational, recreational, and spiritual programs. (App. Ex. #9, p. 6)

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<sup>4</sup> Article V, Section I, of both of the bylaws states that LSS shall be the sole member of each corporation. (App. Ex. #1, p. 90; #5, p. 105)

14. Additional services for the assisted living area include the administration of medications, assistance with bathing and dressing, and 24-hour nurse or nurse aid staffing. Residents of the skilled nursing care units receive 24-hour licensed nurse staffing. (App. Ex. #7, p. 15)
15. Both applicants follow the benevolent care policy of LSS. The policy was revised on January 27, 2004 and provides, in part, as follows:

#### POLICY

[LSS] provides benevolent care to older adults in financial need at all LSS facilities and within all LSS community outreach programs. This policy addresses benevolent care eligibility at each level of care and defines how the amount of benevolent care will be calculated and recorded. Although it is the policy of LSS to give as much benevolent care as possible, the total amount of LSS benevolent care given in any one calendar year will be limited to and calculated in accordance with the “Spending Policy for Benevolent Care,” established by the LSS Endowment Fund’s Board of Directors.

#### PURPOSE

To give financial assistance to older adults in need of assistance so that they may receive the necessary level of care furthering Lutheran Senior Services’ Christian mission of “Older Adults Living Life to the Fullest.”

#### PROCEDURES

In order to qualify for benevolent care as subsequently detailed, a) the resident must not transfer or intend to transfer assets to diminish their ability to pay for the care they need and b) the resident must seek all governmental financial assistance available to them. LSS reserves the right to deny benevolent care to any resident which would, in LSS’s opinion, jeopardize its ability to meet its obligations and to continue to operate in a financially stable manner.<sup>5</sup> (App. Ex. #3, p. 112)

16. Residents of all units must complete a form titled “Confidential Information,” which is an application for admission to the facility. The form asks for

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<sup>5</sup> The benevolent care policy that was in effect during 2003 includes these same provisions. (App. Ex. #1, p. 119)

information concerning family history, physician, and health insurance. Information about the potential resident's "church life" (i.e., denomination and congregation) is optional. The form also asks for financial information including the resident's assets, monthly income, and debts. (App. Ex. #1, pp. 36-39; App. Ex. #6, pp. 36-39)

17. Residents of all units must have their physician complete a form titled "Medical Certification" that includes information concerning the resident's current medical status. (App. Ex. #1, pp. 40-41; App. Ex. #6, pp. 40-41)
18. The residents who live in the independent living units must enter into a contract with LSS called an Independent Living Residency Agreement. The agreement requires the resident to furnish a current Medical Certification to certify that the resident is capable of independent living. The certificate must include evidence of a negative tuberculin test. (App. Ex. #1, p. 25)
19. Under this agreement, the residents agree to pay a monthly service fee, which is based on current expenses and is subject to change by LSS. During 2003, the fee ranged, depending on the type of unit, from \$1,315 (apartment with one bedroom and one bath) to \$1,975 (patio home with two bedrooms and two baths). The charge for a second person was \$180 for patio homes and \$305 for apartments. In 2006, the monthly service fee ranged from \$1,572 to \$2,334, and the charge for a second person was \$207 for patio homes and \$342 for apartments. (App. Ex. #1, p. 26; #13)
20. The agreement states that the monthly service fee "shall be paid in advance by the 1<sup>st</sup> day of each calendar month." It also states as follows:

If the monthly service fee or any other charge or amount due from the Resident hereunder is not paid within thirty (30) days of its due date, any such past due amount shall be subject to a finance charge of ten percent (10%) per annum commencing on the date such amount was payable. (App. Ex. #1, p. 27)

21. All utilities are included in the cost of the monthly fee except telephone. Also, beginning in April 2005, residents of the patio homes are responsible for electricity or gas. (App. Ex. #1, pp. 27-28; #7, pp. 27, 32)
22. The April 2005 amendment of the Independent Living Residency Agreement added the following provision:

Resident shall maintain a policy of renter's insurance with respect to the Home, its contents and all other personal property of Resident, which shall provide replacement cost coverage for Resident's personal property and shall also provide liability coverage with limits for personal and bodily injury of at least \$100,000. Such policy shall name LSS as an additional insured. (App. Ex. #7, pp. 27, 32)
23. Prior to the occupancy date, the agreement may be terminated if the resident does not pay the balance of any charges that are to be paid prior to occupancy. (App. Ex. #1, p. 29; App. Ex. #7, p. 28)
24. After the occupancy date, LSS has the right (but not the obligation) to terminate the agreement, *inter alia*, if the monthly service fees or other amounts due are 30 days past due.<sup>6</sup> (App. Ex. #1, pp. 29-30)
25. Subject to the termination provisions, the resident has the right to occupy the unit as long as the resident is capable of independent living or obtains additional personal care and healthcare services, does not pose a danger to others, conforms

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<sup>6</sup> The April 2005 amendment to the agreement included the following under this provision: "and Resident has received a minimum of thirty (30) days written notice of the delinquency and the Resident has had at least fifteen (15) days to cure the delinquency." (App. Ex. #7, pp. 29, 32)

to the rules and regulations of LSS, and lives harmoniously with neighbors and staff. (App. Ex. #1, p. 26)

26. If the resident needs nursing home care or assisted living, LSS will arrange for the admission of the resident into a facility operated by LSS on the campus. If a unit is unavailable, the resident will be given priority status on the waiting list. There is no obligation for Meridian to provide assisted living or nursing care in such a situation if no space is available on the property. The agreement does not require the resident to be admitted to an LSS facility; the resident is free to select any care facility the resident chooses. (App. Ex. #1, pp. 30-31)
27. A security deposit must be paid by residents of the independent and assisted living units. The security deposit is currently \$2,000. (App. Ex. #1, p. 33, #6, p. 43; Tr. p. 141)
28. If the Independent Living Residency Agreement is terminated prior to the occupancy date, \$500 of the security deposit is retained by LSS as a processing fee, and the remainder is refundable to the resident. (App. Ex. #20, p. 6)
29. The security deposit and the late fees have never been waived. (Tr. p. 141)
30. Residents who live in the assisted living units must enter into a contract called an Assisted Living Establishment Contract. The provisions of this contract include ones that are similar to those in the Independent Living Residency Agreement regarding monthly fees, late fees, security deposits, and termination subsequent to the occupancy date.<sup>7</sup> (App. Ex. #6, pp. 42-59)

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<sup>7</sup> The provision in this contract concerning the security deposit states that it will be refunded, less any charges incurred for restoring the unit and without interest, within 30 days of termination of the contract. (App. Ex. #6, p. 43) If the agreement is terminated prior to occupancy, a processing fee is deducted from the security deposit. (App. Ex. #6, pp. 45, 50)

31. In order to reside in an assisted living unit, the resident must not have any of the conditions listed in a schedule that is attached to the contract. These conditions include, *inter alia*, resident requires total assistance with two or more activities of daily living, resident requires the assistance of more than one paid caregiver at any given time with an activity of daily living, and resident requires more than minimal assistance in moving to a safe area in an emergency. (App. Ex. #6, pp. 42, 51)
32. If the resident in an assisted living unit needs nursing home care, LSS will arrange for the admission of the resident into a skilled nursing facility operated by LSS or MVA. If a bed is unavailable, the resident will be given priority status on the waiting list. There is no obligation for Meridian to provide nursing care in such a situation if no space is available on the property. The agreement does not require the resident to be admitted to an LSS facility; the resident is free to select any care facility the resident chooses. (App. Ex. #6, p. 46)
33. During 2006, the monthly fee for the assisted living units, which varied in type from a studio to a two-bedroom unit, ranged from \$2,570 to \$4,425. The charge for a second person was \$825. (App. Ex. #13)
34. The Admission Agreement that must be signed by residents (or responsible parties) of Meridian's Care Center (i.e., skilled nursing center) includes the following:

The Resident shall pay or direct his Responsible Party to pay the per diem rate and other charges by the tenth (10<sup>th</sup>) of each month. Accounts that are not paid by the last day of the month will be subject to an interest fee of 10% per annum. The Care Center is not Medicare or Medicaid certified and therefore all charges are the responsibility of the Resident to pay privately....

During the absence of the Resident for any reason, the regular charge herein shall apply until the room is released and all belongings are removed. The Resident or his Responsible Party shall notify the Director of Nursing about whether the Resident's bed should be held or whether the Resident should be discharged. If a notice is not received, the Resident's bed will automatically be held and charges will continue to accrue.

The Administrator shall have the right to remove any Resident, after appropriate notice, when, in the Administrator's judgment, it is in the best interest of the other residents, for medical reasons as defined by the Resident's or Care Center's physician, or failure to pay for his stay at the Care Center....

Any Resident, after admission to the Care Center, who willfully destroys property, harasses or disturbs other residents to the extent that such conduct constitutes a nuisance, or threatens suicide, shall be considered to have breached the rules and regulations of this Care Center, and may be subject to discharge after appropriate notice.... (App. Ex. #6, p. 60)

35. During 2006, the per diem rate for the skilled nursing care units was \$133 for a semi-private room and \$175 for a private room. (App. Ex. #13)
36. An 18-page brochure concerning Meridian Village contains the following on page 3: "Our Christian Mission is 'Older Adults Living Life to the Fullest'." This mission is repeated again on page 4 and on page 15, where the following is added: "In pursuit of this mission, [LSS] will bring about the following results: The love of Jesus Christ seen and recognized in all that we are and do, flowing out and empowering our staff and those we serve." (App. Ex. #9)
37. On page 16 of the brochure, the following is in small print: "If you feel you need benevolent care, please make an appointment with the Meridian Village administrator."<sup>8</sup> (App. Ex. #9)

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<sup>8</sup> The print is approximately the size of the print in this footnote. (App. Ex. #9)

38. The audited financial statements for MVA I for the year ending December 31, 2003 show total revenue in the amount of \$2,102,414. This amount includes \$2,018,599 from net rental revenue. The net loss for the year was \$292,521. (App. Ex. #2, pp. 48-49)
39. The audited financial statements for MVA I for the year ending December 31, 2003 show benevolent care expense in the amount of \$31,325, which is included in miscellaneous administrative expense. (App. Ex. #2, pp. 48, 61)
40. The audited financial statements for MVA I for the year ending December 31, 2004 show total revenue in the amount of \$2,203,526. This amount includes \$2,102,750 from rental revenue. The net loss for the year was \$249,710. (App. Ex. #3, p. 46)
41. The audited financial statements for MVA I for the year ending December 31, 2004 show benevolent care expense in the amount of \$15,288, which is included in miscellaneous administrative expense. (App. Ex. #3, pp. 46, 57, 61)
42. The unaudited consolidated financial statements for both MVA I and MVA II show a total loss of \$1,680,899 and \$1,907,222 for the years 2005 and 2006 respectively. (App. Ex. #3, p. 83, #7, p. 115)
43. The audited financial statements indicate that LSS loaned funds to Meridian to enable repayment of amounts advanced by the previous owner for operations totaling \$943,750. Also, an amount was paid by LSS to the previous owner in the amount of \$46,803 for the difference between current assets and current liabilities of Meridian. LSS is paying for operating expenses on behalf of Meridian, and any unreimbursed amounts are due to LSS. The balance due to

LSS at December 31, 2004 and 2003 was \$1,402,807 and \$1,367,227 respectively. (App. Ex. #3, p. 53)

44. LSS is the management agent for MVA I, and MVA I pays LSS a management fee based on 4% of gross receipts as approved by HUD. MVA I also pays the salary for the manager of the project, who is employed by LSS. MVA I reimburses LSS for the manager's salary. (App. Ex. #3, pp. 53-54)
45. Each member of Meridian's Board of Directors must be a member of one of the Lutheran congregations that are members of LSS. (App. Ex. #1, p. 21; Tr. p. 109)
46. During the years 2003 through 2006, the facility did not have a full-time ordained minister. Beginning in 2005, the facility had a part-time minister. The residents do not have to be Lutheran or Christian to reside at the facility. (Tr. pp. 58-59)
47. During 2003, the facility had an area that was used as a chapel in addition to other purposes. Beginning in 2005, an expanded chapel was completed that is used once per week for worship services. Funerals and baptisms are also held there. (App. Ex. #9, p. 8; Tr. pp. 59, 105)
48. Both applicants have no capital, capital stock, or shareholders and are exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (App. Ex. #2, pp. 118-123; #5, pp. 109-117; #25; #26)
49. MVA II is exempt from retailers' occupation taxes and use taxes pursuant to a determination made by the Department on March 19, 2004. (App. Ex. #14)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part 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. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part 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

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

Property may be exempt under subsection (a) if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home, at 156-57. If the primary use of the property is charitable, then the 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).

In Methodist Old Peoples Home, *supra*, Supreme Court provided guidelines for determining whether property meets the constitutional standards for a charitable purposes exemption. The guidelines are as follows: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, and earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and 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; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old

Peoples Home, at 156-57. In Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273 (2004), the Supreme Court indicated that these constitutional guidelines must be considered in addition to determining whether the applicant meets the requirements under subsection (c) of section 15-65. *Id.* at 290-291. The guidelines are to be 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, 468-469 (2<sup>nd</sup> Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

Meridian first argues that this case is substantially resolved by the Department's finding that MVA II is exempt from retailers' occupation and use taxes on the basis that it is organized and operated exclusively for charitable purposes. Meridian notes that the factors in Methodist Old Peoples Home, *supra*, for determining charitable exemptions apply equally to property taxes and retailers' occupation and use taxes. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2<sup>nd</sup> Dist. 1995). Meridian states that the Department, therefore, has determined that MVA II meets the factors in Methodist Old Peoples Home, *supra*. Meridian claims that because both

applicants have identical organizational documents and have the same Board of Directors, officers, and employees, the Department's finding should apply to MVA I as well.

Notwithstanding Meridian's averments, having a charitable exemption from income taxes or from retailers' occupation and use taxes is not determinative of whether an applicant is entitled to a charitable exemption from property taxes. See Hopedale Medical Foundation, at 464. The Department may review the tax-exempt status of a corporation at any time. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1<sup>st</sup> Dist. 2000). Because the Department denied the exemption for both parcels for the four years at issue, Meridian bears the burden of showing clearly and convincingly that the property meets the constitutional standards in order for it to be exempt for the years in question. See Eden Retirement Center, *supra*.

Meridian argues that it has met this burden and meets most of the guidelines in Methodist Old Peoples Home, *supra*. It contends that it benefits an indefinite number of people or in some way reduces the burdens of government because it has a policy of keeping residents regardless of their ability to pay. Meridian states that it has provided benevolent care to certain residents and has never turned down a request for benevolent care. It has never evicted a resident because of an inability to pay rent and has never denied an admission based upon the assets disclosed on an application. In addition, in Meridian's view, common sense dictates that it is lessening the burden upon government by caring for the elderly. Meridian believes that reducing the burdens of government includes averting the need for government assistance. See Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272, 287 (2<sup>nd</sup> Dist. 1987). By providing seniors

with housing and living assistance, Meridian contends that it saves the State money in the form of Medicaid payments and other healthcare costs. Meridian asserts that it reduces the burdens of government by allowing residents to stay active and healthy longer than people who do not have similar facilities.<sup>9</sup>

Meridian notes that it does not have capital or capital stock, and it has not earned profits during the years in question. Also, it claims that a significant portion of its operational funds were derived from donations by LSS, and Meridian could not continue to operate without financial assistance from LSS. Meridian contends that its net losses for 2003 through 2006 totaled \$5,036,359 and were “indirect benevolent care.” LSS, through MVA, provides a minimum of \$30,000 of benevolent care from an endowment fund. Meridian believes that it is a charitable institution because it operates at a loss and without regard for profit.

According to Meridian, it dispenses charity to all who need and apply for it, and it does not place obstacles in the way of those who need and would avail themselves of its benefits. Meridian claims that everyone who has requested benevolent care has received it, and no one has been removed for failing to pay rent. Meridian does not verify the financial information provided by the residents, and no one was turned away due to lack of financial ability to pay. Meridian also has a written policy for benevolent care that it markets to the general public. Meridian claims it does not charge entrance fees, and entrance fees are never required.<sup>10</sup> Meridian believes the security deposit of \$2,000 is

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<sup>9</sup> Meridian also contends that it reduces the burdens of government because in 2001, LSS took control of the property after it had substantial operating losses, and therefore HUD did not have to take the property back. (App. brief pp. 5-6) Although this argument is flawed, it is unnecessary to address it because it does not apply to the use of the property during the years at issue.

<sup>10</sup> Meridian contends through oral testimony that in 2006, it offered an option to pay an entrance fee in return for a smaller monthly rental. The testimony, however, indicated that this applied to property owned by MVA III, an entity whose property is not at issue in this matter. (Tr. p. 49)

reasonable in comparison to the monthly rental charges, and the health questionnaire is designed to determine whether the resident can live independently or whether the resident will require special attention. The assisted living contracts do not require residents to be capable of “independent living.” Meridian argues that the purpose of the eviction language in the rental agreement is to protect against a resident who has the ability to pay but refuses to do so.

Finally, Meridian asserts that the property is primarily used for charitable purposes because it guarantees occupancy to its residents and will not evict those who are unable to pay. It may remove difficult tenants or those who refuse to pay despite an ability to do so, but it will not remove tenants solely based on their inability to pay. In addition, Meridian contends that its commitment to care for a resident through independent living, assisted living, and skilled care even though the resident may be unable to pay distinguishes it from other retirement homes that have been denied the exemption. Meridian maintains that it accepts residents who are financially weak, and it expects its benevolent care to grow substantially in the future.

Contrary to Meridian’s assertions, the evidence fails to establish that Meridian meets most of the guidelines in Methodist Old Peoples Home, *supra*. First, the evidence does not indicate that Meridian’s charity benefits an indefinite number of people because limits are placed on the amount of charity that is given. The bylaws state that Meridian has “a policy of maintaining in residence, to the extent it is able, any residents who become unable to pay their monthly rental charges.” The written charitable policy provides that Meridian may deny benevolent care to any resident if it would “jeopardize its ability to meet its obligations and to continue to operate in a financially stable manner.” The written charitable policy also states that “[a]lthough it is the policy of LSS

to give as much benevolent care as possible, the total amount of LSS benevolent care given in any one calendar year will be limited to and calculated in accordance with the ‘Spending Policy for Benevolent Care,’ established by the LSS Endowment Fund’s Board of Directors.” Giving charitable care when Meridian determines it is financially able to provide it renders its policy speculative. In addition, the chief financial officer for LSS confirmed that Meridian provides a level of charitable care only to its residents, but it cannot provide it beyond its residents (tr. p. 81); in other words, it provides it only to those who have paid security deposits and rent for the first month. Providing charitable care only to its residents, placing limits on the amount of charitable care, and giving it only to the extent that Meridian speculates it has the financial ability to provide it warrant a finding that Meridian’s policy does not benefit an indefinite number of people. See Wyndemere Retirement Community, *supra*, (charity provided in relation to financial circumstances is not provided to an indefinite number of people and not dispensed to all who need it).

Additional evidence raises doubt that charity has been given to all who need and apply for it. The charging of fees does not automatically disqualify an organization as charitable as long as it furnishes its facilities or services to those who are unable to pay. Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). Meridian’s charitable policy indicates that it will not evict a resident who is unable to pay, but the evidence is unclear as to whether it waived fees prior to admission. Although it is clear that the security deposit has never been waived, it is not clear whether rent for the first month was ever waived. Further, the chief financial officer for LSS testified that during the years in question, it was “highly unlikely” that a person who had only social security income would have

been admitted as a resident. (Tr. p. 79) Although a footnote on one of Meridian's exhibits indicates that some residents were accepted as benevolent care residents at the time of move-in (App. Ex. #8), it is unclear why a resident who allegedly received benevolent care at the time of moving in would still be required to pay a security deposit of \$2,000.

Despite this footnote and in light of the failure to provide an explanation of the footnote, the amount of charitable care that was provided to those who were unable to pay is far from clear. For the years 2003 and 2004, Meridian indicated that it waived fees for three residents, and the total amount waived was \$31,215 and \$22,766 respectively. (App. Ex. #8) These amounts differ, however, from the amount of the benevolent care expense shown on the audited financial statements, which was \$31,325 and \$15,288 for the years 2003 and 2004 respectively.<sup>11</sup> In addition, the amount of benevolent care expense shown on the 2004 **unaudited** income statement for the independent living units, which would have included units owned by both MVA I and MVA II, was \$29,304. (App. Ex. #5, p. 75) This amount again differs from the amount provided by Meridian on its exhibit concerning charitable care. (App. Ex. #8)

Moreover, the alleged charitable care for the years 2003 through 2006 was only provided to residents who lived in the independent living units. Meridian contends that for the year 2006 it provided \$13,728 in benevolent care for its skilled care units. (App. Ex. #8) Under cross-examination, however, Meridian's witness admitted that this amount is the contribution that it is required to pay for the Medicaid program. (Tr. p. 91)

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<sup>11</sup> Although the audited financial statement for 2004 was only for MVA I, the benevolent care expense was apparently the total amount of benevolent care provided by Meridian during 2004 because the record indicates that the residents who received charitable care during 2004 lived in the units at MVA I. (App. Ex. #8)

Although this testimony indicates that Meridian participates in the Medicaid program, it is noted that the Admission Agreement that must be signed by residents of its skilled nursing facility includes the following provision: “The Care Center is not Medicare or Medicaid certified and therefore all charges are the responsibility of the Resident to pay privately.” (App. Ex. #6, p. 60). This is yet another conflict in the evidence provided by Meridian. Notwithstanding this contradiction, the court in Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 610 (3<sup>rd</sup> Dist. 2003) found that discounted care that is provided through contracts with Medicare, Medicaid, and private insurers is not charity. Meridian, therefore, did not provide charitable care to any residents who lived in the assisted living units or the skilled care units during the years in question.

Although Meridian contends that its net losses for 2003 through 2006 were “indirect benevolent care,” operating at a loss does not render an organization a charitable one.<sup>12</sup> See Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of the State of Illinois v. Department of Revenue, 378 Ill. App. 3d 1069 (4<sup>th</sup> Dist. 2007) (independent living units that did not generate a profit did not receive charitable property exemption). Charity is a gift (Methodist Old Peoples Home, at 156), and expecting to be paid for its services but operating at a loss is not charity. See Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998) (writing off bad debt is not the same as providing charity). The chief financial officer for LSS testified that he believes that being a company that is not profit-motivated is akin to being charitable. (Tr. p. 86) As previously mentioned, being a not-for-profit organization is not determinative of whether an applicant is entitled to an exemption from property taxes. See Hopedale

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<sup>12</sup> Meridian contends that it has never passed its losses on to its residents (Reply brief, p. 8). It is noteworthy that in November 2006, Meridian sent a letter to its residents indicating that beginning in 2007, its residents will be asked to pay higher fees to offset the taxes. (Intervenor’s Ex. #1)

Medical Foundation, *supra*. The guidelines in Methodist Old Peoples Home, *supra*, must be considered to determine whether the property is actually and exclusively used for charitable purposes.

Another guideline that Meridian has failed to meet is that its primary source of income is not from public or private charity but rather from fees paid for services rendered. It should be noted that although the campus is operated as one facility, because there are two separate corporations, at the end of the year “audit reports are prepared for each entity where the appropriate expenses are allocated to the two entities.” (App. Ex. #4, p. 41) The evidence includes audited financial statements for MVA I for the years ending December 31, 2003 and 2004, but it does not include audited financial statements for MVA I for the years 2005 and 2006. The evidence also does not include any audited financial statements for MVA II. Instead, the evidence includes unaudited consolidated financial statements for both MVA I and MVA II for the years 2005 and 2006. (App. Ex. #7, pp. 65-72, 108-115) It also includes an unaudited income statement for the independent living units for 2004, and an unaudited income statement for the assisted living units for 2004. (App. Ex. #5, pp. 75-98)

Notwithstanding the failure to provide audited financial statements for both applicants for all the years in question, the audited statements that were provided show that the majority of the income was from “Rental Income,” and the unaudited statements show that the majority of the income was from “Resident Service Fee.” (App. Ex. #3, p. 46; #7, pp. 65, 108) Meridian, therefore, does not derive its funds mainly from public and private charity. Although in its initial brief Meridian argues that LSS has donated a substantial amount of money to its operations (App. brief, p. 20), the audited financial

statements indicate the money was a loan rather than a donation, and the balance due to LSS at December 31, 2004 and 2003 was \$1,402,807 and \$1,367,227 respectively.<sup>13</sup> (App. Ex. #3, p. 53) In its reply brief, Meridian admits that “[i]t is clear that the funds from [LSS] are loaned to Meridian.” (Reply brief, p. 4)

Meridian contends, however, that during the years at issue its net losses totaled \$5,036,359, and its losses are “charitably borne” by LSS (Reply brief, p. 7) because LSS provides Meridian with a substantial amount of money, and LSS derives its funds from public donations. The Intervenors and the Department argue that Meridian cannot acquire charitable status through acts of a separate entity, and Meridian claims that it has produced evidence showing the organizational structure of the entities is intertwined. Despite the fact that the applicants and LSS are related organizations, each is a separate legal entity, and nothing warrants disregarding the corporate entity. See Superior Coal Company v. Department of Finance, 377 Ill. 282, 289-290 (1941); Lombard Public Facilities Corporation v. Department of Revenue, 378 Ill. App. 3d 921, 933 (2<sup>nd</sup> Dist. 2008). The charitable acts of LSS, therefore, cannot be attributable to Meridian. In addition, it is noteworthy that LSS is the management agent for Meridian, and Meridian pays LSS a management fee based on 4% of gross receipts as approved by HUD. Meridian also reimburses LSS for the salary of the manager of the project. Thus, although LSS has given money to Meridian, LSS is also compensated by Meridian and receives income from Meridian on a regular basis.

Other facts support a finding that Meridian places obstacles in the way of those seeking charity. The rental fees that Meridian charges are substantial, and Meridian did

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<sup>13</sup> Although the audited financial statements indicate the money was a loan, the statements also note that the “balance included in Due to Related Party [account] may not be paid back to LSS unless there is either surplus cash in accordance with HUD requirements or prior HUD approval.” (App. Ex. #3, p. 53)

not provide evidence that its rates are not comparable to the rental properties of for-profit entities operating in the area. Meridian also requires security deposits, and any fees that are not timely paid are subject to a finance charge of 10% per annum. Meridian has never waived this late fee or the security deposit. All of the contracts that must be signed by the residents indicate that the contract may be terminated if the resident fails to pay. Although Meridian claims these provisions are necessary to ensure that those who have the ability to pay actually do pay, at the very least, the provisions may deter potential residents who cannot easily pay the stated fees from applying. The only notice that potential residents have concerning the fee waiver policy is one sentence in small print that refers to the policy on page 16 of an 18-page brochure. (App. Ex. #9) Nothing indicates that the residents are otherwise notified of the policy.

In addition, residents must submit information regarding their current health and financial status. Although Meridian claims that it does not verify the financial information, it relies on it. The fact that Meridian does not charge an entrance fee is not significant. See Small, at 517 (exemption denied despite the fact that an entrance fee was not required). Furthermore, beginning in April 2005, residents are required to maintain renter's insurance with liability coverage limits of at least \$100,000, and LSS must be included as an additional insured. Also beginning in April 2005, residents of the patio homes are responsible for electricity or gas.

Meridian has also failed to establish that the primary use of the property is charitable. The court in Methodist Old Peoples Home, *supra*, found that the following facts did not suggest charitable use of property that contained a retirement home: varying the charge on the basis of the size and desirability of the room; requiring applicants to be

in good mental, emotional, and physical health and free of any communicable disease; failing to admit those who are unable to pay the required fee; having its main source of income from fees rather than donations; and having no legal obligation to keep and maintain anyone who becomes unable to fulfill his or her financial obligation or otherwise becomes sick or unmanageable. Methodist Old Peoples Home, at 158-159. Comparable facts are also found in Most Worshipful Grand Lodge, *supra*.

The present case contains similar facts that are not indicative of charitable use. In order to live in the units, residents must pay substantial monthly fees that vary depending on the size and desirability of the unit. Residents must complete an application that shows they have the physical ability to reside in the units. The security deposit and late fees have never been waived, and none of the residents in the assisted living or skilled care units received charitable assistance. Meridian's primary source of income is from fees rather than donations.

Even though Meridian asserts that it lessens the burdens of government by providing seniors with housing and living assistance, it did not indicate how this benefit differs from that offered by a for-profit retirement facility. It appears that providing a facility where residents may stay active and healthier longer is a benefit that any continuing care retirement community would provide. See Good Samaritan Home of Quincy v. Department of Revenue, 130 Ill. App. 3d 1036 (4<sup>th</sup> Dist. 1985) (the incidental benefit of housing for seniors is no different from that associated with almost any lawful housing endeavor).

As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. See Wyndemere, *supra*. The evidence

presented in this case raises doubt concerning the charitable nature of the organization and the use of the property for charitable purposes. Meridian, therefore, has not met its burden of showing clearly and convincingly that it is entitled to the charitable purposes exemption.

### **Religious Purposes**

Section 15-40 of the Property Tax Code provides in part as follows:

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40.

In order to receive an exemption under this section, the applicant must establish that (1) the property is used exclusively for religious purposes, and (2) the property is not used with a view to profit. See First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1116 (2<sup>nd</sup> Dist. 1999). The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

Meridian argues that the property is primarily used for religious purposes because Meridian carries out the mission of the Lutheran Church, and its activities are religiously motivated and a form of worship. Meridian claims that it is an integral part of the Lutheran Church and would not exist but for the Lutheran Church. Members of the Lutheran Church participate on the Board and are employees or volunteers. Meridian was established to carry out a fundamental purpose of the Lutheran Church, which is to

provide care to the elderly to meet all their needs (physical, emotional, spiritual). Meridian contends that its activities are evangelical, bringing the Gospel to people, strengthening their faith in Christ, and converting people to Christianity. Meridian notes that it is a Recognized Service Organization, and its mission is to create a faith community and provide an avenue for Lutheran's to live their faith.<sup>14</sup> Meridian believes its activities are a form of religious activity and are operated solely for religious purposes; the fact that it provides services for the elderly that a secular facility may also provide does not defeat the religious use of the property or make its operations commercial.

Meridian notes that this tribunal must first defer to Meridian's characterization of the purpose of its activities as religious in accordance with the U.S. and Illinois Constitutions. Meridian believes that the Department's taxation of Meridian could eventually hamper or lead to the silencing of its expression of the Church's tenets in violation of the First Amendment. Meridian contends that the First Amendment is designed to protect religious activities by preventing taxing authorities from arbitrarily denying tax exemptions to a particular religious group.

After deferring to the characterization of the purpose of the activities, it must be determined whether the property is primarily used for religious purposes, and Meridian contends that in applying this test, the Department must look at the intentions and motivations in establishing and maintaining Meridian. Meridian believes that the finding in Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987), that the organization's religious activities and motivation were unnecessary to fulfill its religious purposes because they can be accomplished by other means, is not applicable to

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<sup>14</sup> A Recognized Service Organization is an organization that the Lutheran Church recognizes as an extension of the ministry of the Lutheran Church. (Tr. p. 101)

the facts in this case. According to Meridian, the record in the instant case warrants a finding that the primary purpose is religious; Meridian's religious purpose cannot be defeated because the Lutheran Church has other means to carry out its mission. Meridian argues that Fairview Haven is also distinguishable because Meridian's operations are far from businesslike. In addition, Meridian maintains that other cases that have denied religious property tax exemptions to retirement homes are distinguishable because Meridian's goals and services are faith-focused. See Yakima First Baptist Homes v. Gray, 82 Wash. 2d 295 (1973); Christian Retirement Homes v. Board of Equalization of the County of Lancaster, 186 Neb. 11 (1970). Unlike the facilities in those cases, Meridian claims that the religious use of its property is primary, and Meridian assists its residents in living a life of faith.

As Meridian has indicated, in determining whether property is entitled to an exemption on the basis that it is used for religious purposes, a court must first accept the organization's characterization of the purpose of its activities as religious. Fairview Haven, at 773. Next, it must be determined whether the property is in fact exclusively used for the religious purposes. *Id.* Whether an entity is organized and operated exclusively for religious purposes must be determined from its charter, bylaws, and actual method and facts relating to its operation. *Id.* at 774.

In Fairview Haven, *supra*, four congregations of the Apostolic Christian Church of America organized and supported a not-for-profit corporation that operated a retirement home. The court noted that it was not contested that the operation of the retirement home "provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization." *Id.*

The court stated, however, that the operation of the nursing home was not necessary for these religious purposes because they could also be accomplished through other means. *Id.* The court added that religious organizations encourage the practice of all virtues, including charity and kindness to others, but these are not religious purposes within commonly accepted definitions of the word. *Id.*

Notwithstanding Meridian's averments, the reasoning in Fairview Haven applies to the present case. Meridian operates a retirement community for the purpose of providing care to the elderly. Meridian's retirement community allows members of the Lutheran Church an opportunity to evangelize their religion in the context of caring for seniors. The operation of the facility, however, is not necessary to promote their religion because that can be accomplished through other means.

Meridian's bylaws confirm that its primary purpose is to care for the elderly. Meridian was created to address and meet the specialized needs of aged persons, including, but not limited to, housing, health care, and financial security. It is designed to meet and maintain its residents' physical and emotional well-being, as well as meet their recreational, social, and religious needs. Although meeting the religious needs of its residents is included in its purpose, it is organized primarily to care for the elderly, which is not, *per se*, a religious purpose. *Id.*

The actual facts relating to its method of operation also do not support a finding that the property is primarily used for religious purposes. Other than caring for the elderly in a faith-inspired manner, the record includes limited references to actual religious activity. During the years in question, the facility did not have a full-time minister. Beginning in 2005, the facility had a part-time minister, and the chapel was

dedicated for Sunday worship services; the square footage of the chapel, however, was not provided. (Tr. pp. 113, 129) Without evidence of the exact portion of the property that is clearly used for religious purposes, an exemption for the chapel cannot be allowed. See Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66 (1971) (partial exemption allowed if identifiable portion used for an exempt purpose).

There is no religious requirement to reside in the community, and information concerning a potential resident's "church life" is optional on the application for admission. Even though Meridian's activities may include evangelizing the Lutheran religion in the context of caring for the elderly, nothing indicates that its employees or volunteers proselytize. Although Meridian referred to its chaplain leading Bible studies for its residents (tr. p. 108), it did not show how often this takes place or that it is the primary use of the property. According to the evidence presented, the primary use of the property is to provide housing and care for the elderly, which is not a religious use within the accepted meaning of that term for property tax exemptions purposes. Meridian, therefore, has not established that the primary use of the property is for religious purposes.

Recommendation:

For the foregoing reasons, it is recommended that the exemptions be denied.

Linda Olivero  
Administrative Law Judge

Enter: April 27, 2009