

PT 10-13
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

**SELF SUFFICIENCY DEVELOPMENT
CORPORATION,**
APPLICANT

v.

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

Docket No: 09 PT 0080
Real Estate Tax Exemption

For 2009 Tax Year

P.I.N. 12-05-227-036

Lake County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Carol Johnson, Executive Director, *pro se*, on behalf of Self Sufficiency Development Corporation; 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 Lake County Parcel, identified by property index number 12-05-227-036 (hereinafter the “subject property”) should be exempt from 2009 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 6, 2009, Self Sufficiency Development Corporation (hereinafter “Self” or “Applicant”) filed a Property Tax Exemption Complaint with the Lake County Board of Review seeking exemption from 2009 real estate taxes for the subject property. The Board reviewed the Center’s Complaint and recommended that the exemption be granted. The Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation in a determination dated October 29, 2009, finding that the subject property was not in exempt ownership or exempt use in 2009. Dept. Ex. No. 1. Self filed a timely appeal of the Department’s denial of exemption. On September 22, 2010, a formal administrative hearing was held with Carol Johnson, Executive Director of Self, testifying. 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 ownership or use during 2009. Tr. pp. 7-8; Dept. Ex. No. 1.
2. Self purchased the subject property, located at 1219-1225 North Broadway, North Chicago, Illinois on July 17, 2007. Tr. pp. 18-19; Dept. Ex. No. 5.
3. Self's Articles of Incorporation state under "Purpose" that the Corporation "is organized for charitable and economic purposes" and "will also assist low and moderate income residents in the furtherance of self-sufficiency and economic enhancement activities." Tr. pp. 15-16; Dept. Ex. No. 2.
4. Self's Bylaws state that the purpose of the organization is to collaborate with private entities that include municipal governments, financial institutions, community leaders and community organizations in the United States to enhance community development and affordable housing opportunities for low and moderate income families. The "goals" of the organization are to increase the number of qualified affordable housing units, expansion of income producing jobs, generating business activities, training and technical assistance for wealth accumulation to residents who reside in low and moderate income communities. Tr. pp. 16-17; Dept. Ex. No. 3.
5. Self's Bylaws state that it will purchase vacant distressed property from individuals or from local banks at below market prices. The properties will be transferred free of any financial encumbrance such as unpaid real estate taxes or liens. Each property will be rehabilitated and sold to families with incomes that do not exceed 120% of the HUD approved area median. Each property will be sold to families at below market prices with the appropriate legal restriction that

specifies uninterrupted ownership and residence in the home for at least a five-year period. Dept. Ex. No. 3.

6. Self applied to Lake County for a \$50,000 grant for “Public Infrastructure Improvement Projects.” The deadline for submission of the request was October 16, 2009. The grant requested was for “rehabilitation of units for rental.” Six households were to benefit from the project; all of these were “low and moderate income households.” The grant request shows that Self maintains three properties, including the property at issue in these proceedings. Tr. pp. 12-13; App. Ex. No. 2.
7. The grant application contains an unaudited “Profit & Loss” for “January through June, 2009.” The “Profit & Loss” shows that Self had \$23,394 in Revenue during the period of which \$5,789 was “Closing Cost Refund,” \$4,436 was “Tenant Income,” and \$12,464 was “Voucher Income.” Self had \$36,074 in Expenses during the period, including \$9,309 for “Carpet,” \$8,926 for “Loan,” and \$7,588 for “Property Tax Expense.” Self had a loss of \$12,680 for the period. App. Ex. No. 2.
8. Self’s “Rent Collection Policy” states that any resident who is unable to pay his or her rent, due to an unexpected change in circumstances, may apply for a waiver or reduction of rent. Any request for a waiver or reduction in rent shall be considered on a monthly basis. Under no circumstances shall any resident be evicted for failure to pay his or her rent if the resident has demonstrated in writing that he or she has a current inability to pay the rent stated in the lease. However, a resident’s continued inability to pay the rent stated in his or her

lease may be a basis for Self denying renewal of the lease. Tr. pp. 20-22; Dept. Ex. No. 6.

CONCLUSIONS OF LAW:

An examination of the record establishes that the Self has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2009 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 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.” 35 ILCS 200/15-65. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). The charitable exemption statute requires that property sought to be exempt must be owned by an institution of public charity. 35 ILCS 200/15-65. Self purchased the subject property, located at 1219-1225 North Broadway, North Chicago, Illinois on July 17, 2007. Tr. pp. 18-19; Dept. Ex. No. 5.

The issue to be decided is whether Self qualifies as an “institution of public charity” under the terms of Korzen and whether the subject property was used for charitable purposes in 2009. In Korzen, the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; and (5) the organization 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. Korzen supra at 157. The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). The applicant must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

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 the deficiencies in the evidence, I must conclude that Self is not a charitable organization and that the subject property is not used for charitable purposes. It must be noted, first, that the evidentiary hearing in this case lasted 20 minutes, which is an extremely short time for an applicant to bear the burden of proving entitlement to an exemption for charitable purposes.

The documents admitted into evidence and the testimony are inadequate for me to conclude that Self is a charitable organization. Ms. Johnson testified that Self “is a somewhat component of the North Chicago Housing Authority” and “what we do is house low-income families.” “... [O]nce you become self-sufficient, the properties that you move into, down the road you can possibly own one day.” Tr. pp. 9, 10. She also testified that Self “does not receive any type of funding such as North Chicago Housing Authority from HUD...” Tr. pp. 9-10. Article III of Self’s Bylaws state that the Executive Director of North Chicago Housing Authority shall serve as the Executive Director of Self. Dept. Ex. No. 3. There is no testimony in the record as to the relationship between Self and North Chicago Housing Authority and it is unclear how Self is a “somewhat component” of North Chicago Housing Authority.

Financial statements were admitted into evidence, but only for the first six months of 2009, the year at issue in these proceedings. The financial statements were included in a grant application made by Self to Lake County with a submission deadline of October 16, 2009. App. Ex. No. 2. It is, however, unclear from the record whether Self ever received this grant.

The unaudited "Profit & Loss" for January through June, 2009, shows that Self had \$23,394 in Revenue during the period of which \$5,789 was "Closing Cost Refund," \$4,436 was "Tenant Income," and \$12,464 was "Voucher Income." There is no testimony in the record regarding any of these components of revenue. Self also had \$36,074 in Expenses during the period, including \$9,309 for "Carpet," \$8,926 for "Loan," and \$7,588 for "Property Tax Expense." Self had a loss of \$12,680 for the period. App. Ex. No. 2. There is no testimony in the record regarding any of these components of expenses. An unaudited "Profit and Loss" for "January through December, 2008," shows Self with a "Net Income" of \$55,101. Dept. Ex. No. 4. There is no testimony in the record regarding the financial results for 2008. The lack of testimony on these matters does not allow me to conclude that the majority of Self's funding is derived from public and private charity or that Self does not provide gain or profit in a private sense to any person connected with it.

Self's Articles of Incorporation state under "Purpose" that the Corporation "is organized for charitable and economic purposes" and "will also assist low and moderate income residents in the furtherance of self-sufficiency and economic enhancement activities." Tr. pp. 15-16; Dept. Ex. No. 2. Self's Bylaws state that the purpose of the organization is to collaborate with private entities that include municipal governments, financial institutions, community leaders and community organizations in the United

States to enhance community development and affordable housing opportunities for low and moderate income families. The “goals” of the organization are to increase the number of qualified affordable housing units, expansion of income producing jobs, generating business activities, training and technical assistance for wealth accumulation to residents who reside in low and moderate income communities. Tr. pp. 16-17; Dept. Ex. No. 3.

There is no testimony in the record as to how Self “collaborates” with private entities to achieve its “goals.” I cannot conclude from the documents admitted into evidence that the benefits derived from Self are for an indefinite number of people, that Self’s funds are held in trust for the objects and purposes expressed in the charter or that Self’s charity is dispensed to all who need and apply for it. All of these considerations are “distinctive characteristics” of a charitable organization, according to Korzen. There is no testimony in the record as to what burden of government, if any, is reduced by Self’s operations. There is no testimony in the record as to exactly what the “charity” is that Self is dispensing. There is no testimony as to how many people applied for Self’s “charity” and how many people received it.

Self’s “Rent Collection Policy” states that any resident who is unable to pay his or her rent, due to an unexpected change in circumstances, may apply for a waiver or reduction of rent. Any request for a waiver or reduction in rent shall be considered on a monthly basis. Under no circumstances shall any resident be evicted for failure to pay his or her rent if the resident has demonstrated in writing that he or she has a current inability to pay the rent stated in the lease. However, a resident’s continued inability to pay the rent stated in his or her lease may be a basis for Self denying renewal of the lease. Tr. pp. 20-22; Dept. Ex. No. 6. Ms. Johnson read the policy into the record but there is no

testimony as to how the policy is implemented. The provisions in the policy denying renewal of a lease because of a resident's continued inability to pay do not allow me to conclude that Self does not place obstacles in the way of those who need and would avail themselves of its "charitable" benefits.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not owned by an "institution of public charity" or used for charitable purposes should be affirmed, and Lake County Parcel, Index Number 12-05-227-036, should not be exempt from 2009 real estate taxes.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

Date: October 12, 2010