

PT 11-17

Tax Type: Property Tax
Issue: Educational Ownership/Use
Charitable Ownership/Use

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

CHICAGO CITY JUNIOR
COLLEGE DISTRICT No. 508
APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 10-PT-0013 (08-16-767)

Real Estate Tax Exemption
For 2008 Tax Year

P.I.N. 20-03-100-006-0000 and
20-03-100-007-0000 (part of)

Cook County Parcels

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Ares Dalianis and Mr. Scott Metcalf, Franczek Radelet, P.C., on behalf of Chicago City Junior College District No. 508; 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 a day care center, located on the first floor of the parcels identified by Cook County P.I.N.S 20-03-100-006-0000 and 20-03-100-007-0000 (hereinafter the “subject property”), qualifies for exemption from 2008 real estate taxes under 35 ILCS 200/15-135, which exempts all property of community college districts not leased by those districts or otherwise used with a view to profit.

The controversy arises as follows: On September 3, 2009, Chicago City Junior College District No. 508 (hereinafter “Dawson Tech”) filed a Real Estate Exemption Complaint with the

Board of Review of Cook County. On November 5, 2009, the Department of Revenue of the State of Illinois (the “Department”) granted a property tax exemption for the two P.I.N.S., captioned above, “except for 5,250 sq. ft. used by day care on the first floor which is taxable. (property not in exempt use).” On January 4, 2010, Dawson Tech protested the denial of the exemption for the day care center and requested a hearing in this matter.

On April 8, 2011, Dawson Tech and the Department submitted a “Stipulation of Facts,” (“Stip.”) in lieu of an evidentiary hearing, and requested a briefing schedule. On May 9, 2011, Dawson Tech submitted its “Post Hearing Brief” (“App. Brief”). On June 10, 2011, the Department submitted a “Response Brief” (“Dept. Resp.”) and on June 24, 2011, Dawson Tech submitted a “Reply Brief” (“App. Reply”). Following a careful review of the record, it is recommended that the Department’s denial of the exemption for the day care center (hereinafter “New Horizons”) for the 2008 assessment year be affirmed.

STIPULATION OF FACTS:¹

1. City Colleges of Chicago owns the property commonly known as Dawson Technical Institute, 3901 South State Street, Chicago, Illinois (“Dawson Tech”), and specifically identified by the following Property Index Numbers (PINs):
 - a. 20-03-100-006-0000
 - b. 20-03-100-007-0000.
2. City Colleges of Chicago acquired Dawson Tech from the Public Building Commission of Chicago via Quit Claim Deed of Reconveyance dated October 27, 2008. Stip., Exhibit A.

¹ This Stipulation of Facts is a verbatim recitation of the Stipulation presented by the parties on April 8, 2011.

3. City Colleges of Chicago, is a body politic and corporate established and operated pursuant to the Illinois Public Community Colleges Act with the powers enumerated therein. 110 ILCS 805/1-1 *et seq.*
4. Under the Property Tax Code, “All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.” 35 ILCS 200/15-135.
5. City Colleges filed a 2008 Real Estate Exemption Complaint and supporting documentation with the Cook County Board of Review. Stip., Exhibit B.
6. The Illinois Department of Revenue approved the property tax exemption for Dawson Tech, except for the 5,250 square feet of the subject property leased to Centers for New Horizons, an Illinois not-for-profit corporation, for the purpose of providing day and evening early childhood education and other early childhood services for children up to five years of age of City Colleges of Chicago students, faculty, and staff as well as area residents and workers (the “Day Care Center”). Stip., Exhibit C.
7. The only issue City Colleges of Chicago contests is the denial of the exemption for the space occupied by the Day Care Center.
8. A copy of the Facilities Use Agreement between City Colleges of Chicago and Centers for New Horizons is attached to the Stipulation. Stip., Exhibit D.
9. The affidavit of J. Randall Dempsey, Controller for City Colleges of Chicago, is incorporated by reference into the Stipulation. The parties to this Stipulation agree that if called to testify, Mr. Dempsey would testify in the manner indicated therein. Stip., Exhibit E.

10. The affidavit of Dr. Sokoni Karanja, Founder/President & CEO of Centers for New Horizons, is incorporated by reference into this Stipulation. The parties to this Stipulation agree that if called to testify, Dr. Karanja would testify in the manner indicated therein. Stip., Exhibit F.

CONCLUSIONS OF LAW:

An examination of the record establishes that Dawson Tech has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the day care center from property taxes for the 2008 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 limits 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 on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983). Consequently, there is a presumption that no

exemption is intended. Rotary International v. Paschen, 14 Ill. 2d 480 (1958). Furthermore, the party claiming the exemption has the burden of showing that the property clearly falls within the statutory exemption. People ex rel. Nordlund v. Home for the Aged, 40 Ill. 2d 91 (1968). Additionally, the exemption provisions must be strictly construed against exemption. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In accordance with its constitutional authority, the General Assembly enacted section 15-135 of the Property Tax Code, which exempts “all property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit.” 35 ILCS 200/15-135. The Department’s denial of the exemption for the day care center stated that the property was not in exempt use. Stip., Exhibit C. I conclude from this denial that the Department found the subject property to be owned by Dawson Tech. Accordingly, ownership is not at issue in this proceeding.

Dawson Tech argues that the day care center is exempt from property taxes because during 2008, Dawson Tech’s costs of maintaining the day care center exceeded the rental income received from New Horizons. Additionally, Dawson Tech argues that New Horizons would qualify for a property tax exemption on its own, “as a charitable organization under Illinois law.” App. Brief, p. 1. However, I conclude from the record in this case that Dawson Tech leases the 5,250 square feet to New Horizons with a view to profit, a use proscribed by 35 ILCS 200/15-135. I conclude further that there is insufficient evidence in the record to determine that New Horizons would qualify for a charitable exemption under Illinois law.

The Leased Space Is Used by Dawson Tech With A View Toward Profit: The terms of the “Facilities Use Agreement” governed the rights and responsibilities of Dawson Tech and New Horizons with regard to the day care center in 2008. New Horizons had the right to use the

leased space for the purpose of operating a day care center, but no other uses of the property were allowed. The Agreement between Dawson Tech and New Horizons only requires New Horizons to hold available a minimum of 10 spaces per year for the children of Dawson Tech's students, faculty and staff. Stip., Exhibit. D. There is no information in the record as to how many children of Dawson Tech's students, faculty and staff attend New Horizons. New Horizons' Form 990, "Return of Organization Exempt from Income Tax," for year ending June 30, 2008, states that New Horizons "provides early childhood education for approximately 450 students." Stip., Exhibit F. Dawson Tech does not argue that New Horizons serves any educational purpose and the record does not show that the day care center has any direct or integral relationship to Dawson Tech, other than providing day care for a minimum of 10 children of Dawson Tech's students, faculty and staff.

In Turnverein "Lincoln" v. Bd. Of Appeals, 358 Ill. 135, 143 (1934), the Court noted succinctly that educational institutions are not organized for profit and that the application of revenues derived from property owned by such institutions to school purposes will not exempt the property producing the revenues from taxation unless the particular property itself is devoted exclusively to such purposes. In the instant case, the 5,250 square feet at issue, the property producing the revenues for Dawson Tech, is not devoted to educational purposes.

New Horizons paid Dawson Tech \$19,792.50 in rental payments in accordance with the Facilities Use Agreement. Dawson Tech was responsible for providing building security, snow removal, grounds-keeping and structural repairs to the building for New Horizons. Stip., Exhibit D. In Mr. Dempsey's affidavit, he described the allocation of Dawson Tech's expenses to New Horizons. According to the affidavit, allocating the expenses of Dawson Tech for building

security, snow removal, grounds-keeping and repairs based on square footage, City Colleges spent \$38,002 to maintain and serve the day care center. Stip., Exhibit E. “Thus, City Colleges spent \$18,209.50 [\$19,792.50 less \$38,002] more to maintain and serve [the day care center] during 2008 than it received in rental payments from New Horizons.” App. Brief, p. 2.

The concern in 35 ILCS 200/15-135 is whether the property is leased or used with a view to profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that “former decisions of this court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other forms of consideration, it is used for profit.” I conclude that Dawson Tech is leasing the day care center for rent, namely \$19,792.50 for the year 2008, and according to People v. Withers Home, this is using the 5,250 square feet “for profit,” a use proscribed by 35 ILCS 200/15-135.

In Turnverein, the Court stated, with regard to the argument that income from rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” *Id.* at 144. In Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497, 500 (1st Dist. 1983), where a parking lot was leased by a religious institution to a Village for use as a municipal parking lot, the court noted that where property is leased with a view to profit, it is “immaterial” whether the income derived is used for religious purposes and it is “irrelevant” whether the property actually generates a profit or a loss, or whether the revenues are totally offset by operational or maintenance costs. Dawson Tech is leasing the 5,250 square feet to New Horizons “for a return.” According to the established case law, it is “irrelevant” and “immaterial” that

Dawson Tech's revenues from the rental may be less than expenses allocated to the day care center or that Dawson Tech sustains a loss on the rental.

Moreover, the expenses being allocated by Dawson Tech to New Horizons are in the nature of fixed expenses. Dawson Tech agreed to provide New Horizons with building security, snow removal, grounds keeping and structural repairs. App. Brief, p. 3. These expenses are fixed and would have to be paid by Dawson Tech regardless of whether New Horizons rented space on the campus. There is no evidence in the record showing that the amount of these expenses increased incrementally because of the rental of the day care center to New Horizons. Dawson Tech will have to pay for snow removal and structural repairs whether New Horizons occupies the 5,250 square feet or not. The appropriate and logical way to view Dawson Tech's rental to New Horizons is that Dawson Tech received \$19,792.50 in rental payments from New Horizons and this revenue can then be applied toward its fixed expenses for the year. In looking at the lease from this perspective, it seems reasonable to conclude that Dawson Tech intended to profit from the lease. The funds that Dawson Tech argues that it loses on the rental to New Horizons are illusory.

The statute at issue in this matter precludes exemption if property is being used with a view to profit. In looking at the ordinary meaning of the words "with a view to profit," I conclude that the record in this case establishes that Dawson Tech leased the space to New Horizons for profit, and, accordingly, Dawson Tech must be liable for this space "to the burden of taxation." Dawson Tech has failed to prove that its requested exemption falls within the statutory exemption for community college districts as provided for in 35 ILCS 200/15-135.

There Is Insufficient Evidence In The Record To Determine That New Horizons Would Qualify For A Charitable Exemption Under Illinois Law: Dawson Tech argues on

this point that its lease to a “charitable organization” should not prevent Dawson Tech from obtaining a tax exemption for the space leased to New Horizons under section 15-135 of the Property Tax Code. App. Brief, p. 1. Dawson Tech argues further that “prior decisions by the Department granted exemptions to properties leased by one exempt organization to another.” App. Brief, p. 10.

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (hereinafter 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. Applicants for exemption must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

There is simply not enough evidence in the record for me to determine that New Horizons is a charitable organization under Illinois law. The only information in the record regarding New Horizons is an affidavit of Dr. Sokoni Karanja, “Founder/President & CEO” of New Horizons, and New Horizons’ Form 990, “Return of Organization Exempt from Income Tax,” for June 30, 2008 and June 30, 2009, and “Illinois Charitable Organization Annual Report,” also for June 30, 2008 and June 30, 2009. Stip., Exhibit F. There is no evidence in the record that New Horizons is exempt from sales and use tax in Illinois. The “Facilities Use

Agreement” states that New Horizons has its “principal headquarters” at 4150 South King Drive, whereas Dawson Tech, and the leased property, are located at 3901 South State Street. Stip., Exhibit B. There is no evidence in the record showing that New Horizons is exempt from property taxes at 4150 South King Drive. There is no evidence in the record as to whether 4150 South King Drive is another day care center or New Horizons’ corporate offices.

Although Dr. Karanja’s affidavit only discusses New Horizons’ day care operations, the Forms 990 indicate that New Horizons is also involved with “education [providing] training for approximately 250 clients,” workforce development to enhance education and job skills, and “economic and educational development for youth with parental involvement which includes academic support, life skills training, counseling and various services needed for youths.” There is no information in the record on these other activities and how these activities serve a charitable purpose or constitute charitable use of New Horizons’ property.

New Horizons’ Form 990 for June 30, 2008 and June 30, 2009, shows that Dr. Karanja earned \$182,464 and \$185,972, respectively, plus benefits. There is no evidence in the record as to average salaries in the day care industry for presidents and CEO’s. Without more information, I am unable to conclude that New Horizons does not provide gain or profit in a private sense to persons connected with it, one of the characteristics of a charitable organization.

New Horizons’ “Illinois Charitable Organization Annual Report” for June 30, 2008 and June 30, 2009 shows that it earned, *inter alia*, \$7,947,487 and \$8,788,189 in “Government Grants.” The “Government Grants” represent 80% and 84%, respectively, of New Horizons’ total revenues for June 30, 2008 and June 30, 2009. The contracts or grants that New Horizons has with the government were not admitted into evidence. Because the contracts or grants are not

in evidence, I cannot determine that they “public charity” as Dawson Tech concluded in its Post Hearing Brief. App. Brief, p. 8-9.

Rather, the government contracts and grants may very well be payments by the government for whatever services New Horizons provides. I must assume that the government is paying New Horizons a fee for its services, not unlike other fee for service contracts executed pursuant to arms-length contractual agreements. Moreover, New Horizons is not reducing a burden on government because the government is paying New Horizons for the services it provides. The Annual Reports also show “Other Revenue” of \$205,674 and \$302,589 for June 30, 2008 and June 30, 2009, respectively. There is no information on these amounts in the record. I am unable to conclude that New Horizons receives the majority of its funding from public and private charity or that it lessens a burden on government, both of which are distinctive characteristics of charitable organizations.

According to Dr. Karanja’s Affidavit, those receiving services from New Horizons in 2008 were only required to pay a co-payment as prescribed by “Title 11 Block Grant.” Stip., Exhibit F. The record contains no information on whether New Horizons provides services or continues to provide services to children whose parents cannot afford the co-payments.

Additionally, the record contains no bylaws, policy manuals, parents’ handbooks or tuition and fee schedules for New Horizons. The record contains no evidence as to who actually receives charity from New Horizons or what New Horizons’ charitable expenditures were for 2008. The record contains no evidence on the criteria that New Horizons uses to determine who needs charity. The record contains no evidence on how New Horizons’ charitable and tuition waiver policies are advertised. The record contains no evidence on whether New Horizons charges late fees or penalties or uses collection agencies for unpaid tuition. The record contains

no evidence on whether New Horizons provides day care for children not covered by government grants.

Dawson Tech argues in its Post-Hearing Brief that “the only limitation on the services provided by New Horizons is its physical and financial capacity.” App. Brief, p. 10. There is no evidence in the record as to New Horizons’ “physical and financial capacity.” Without further information on New Horizons’ “capacity,” I am unable to conclude that New Horizons’ charitable benefits are derived for an indefinite number of persons, that charity is dispensed to all who need and apply for it or that New Horizons does not place obstacles in the way of those needing its charitable benefits, all of which are distinctive characteristics of a charitable organization.

Dawson Tech’s Post-Hearing Brief cites Children’s Development Center, Inc., v. Olson, Township Assessor, 52 Ill. 2d 332 (1972), where “the Illinois Supreme Court has ruled in favor of exempting a property from taxation where the property in question was leased from one tax-exempt organization to another tax exempt organization and used for tax-exempt purposes.” App. Brief, p. 4. In Children’s Development, the School Sisters of St. Francis, a religious order, rented a portion of their convent to Children’s Development Center, a not-for-profit corporation providing programs for educationally handicapped children. The Court found that the entire property continued to be exempt after the leasing, in spite of the fact that the convent made a profit from the leasing. The primary use of the leased property, while yielding income, was to serve a tax-exempt purpose, and therefore, the leasing was not done with a view to profit. *Id.* at 336. According to Dawson Tech, “the relationship between the parties in the current case is the same as the relationship between the School Sisters of St. Francis and the Children’s

Development Center.” The requested exemption should therefore be granted because “the use of the property is for tax exempt purposes.” App. Brief, p. 5-6.

There is no evidence in the record that would allow me to conclude that New Horizons serves a tax exempt purpose on the subject property. There is no specific property tax exemption for day care. If Dawson Tech, itself, operated a day care center on the subject property, the day care center would not, *ipso facto*, be exempt. There is insufficient evidence in the record for me to characterize New Horizons as a charitable organization or conclude that the day care center constitutes charitable use of the subject property.

WHEREFORE, for the reasons stated above, I recommend that the Department’s determination of November 5, 2009, which denied an exemption for the 5,250 square feet used as a day care on the first floor, on the Cook County P.I.N.S, captioned above, (Department Docket No. 08-16-767, County Reference No. 93545) should be affirmed and that the day care center should not be exempt from property taxes for the 2008 assessment year.

ENTER:

July 14, 2011

Kenneth J. Galvin
Administrative Law Judge