

PT 11-21
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

**NORTHSIDE SANCTUARY HOUSE INC.,
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,
RESPONDENT**

**No. 09-PT-0089
(08-16-792)
Real Estate Exemption
For 2008 Tax Year
PIN: 14-17-210-011**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Paula Hunter on behalf of the Illinois Department of Revenue; Richard E. Zulkey of Richard E. Zulkey & Associates, Chartered on behalf of Northside Sanctuary House Inc. (“Applicant”).

Synopsis:

The hearing in this matter, before administrative law judge Julie-April Montgomery, was held at the Illinois Department of Revenue (“Department”) in Chicago, Illinois on December 13, 2010 to determine whether or not Cook County Property index number 14-17-210-011 qualifies for exemption during the 2008 assessment year. Linda Marlovitz, manager of the property owned by the Applicant, and Emmett Williams and Ronald Durham, both former residents of the property were present at the hearing and testified on behalf of the Applicant.

The issues in this matter include, first, whether the Applicant was the owner of Cook County Property index number 14-17-210-011 during the 2008 assessment year; secondly,

whether the Applicant is a charitable organization and lastly, whether the Applicant used the property at issue for charitable purposes during the 2008 assessment year.

Following the submission of all evidence and a review of the record, it is determined that the Applicant was a charitable organization, that it owned Property index number 14-17-210-011, and that it used this parcel for charitable purposes during the entire 2008 assessment year. In support of this conclusion, the following findings of fact and conclusions of law are made.

Findings of Fact:

1. The jurisdiction and position of the Department that Cook County Property index number 14-17-210-011 did not qualify for a property tax exemption for the 2008 assessment year was established by the admission into evidence of Department Exhibit (“Ex.”) 1. Transcript (“Tr.”) pp. 9, 10; Department Ex. 1.
2. On September 3, 2009, the Department received a property tax exemption application from the Cook County Board of Review for Property index number 14-17-210-011. *Id.* The Applicant had submitted the request and the Board recommended granting the exemption for the assessment year 2008. *Id.* The Department assigned docket No. 08-16-792 to the application. *Id.*
3. On November 5, 2009, the Department denied the requested exemption application finding that the property was not in exempt use and not in exempt ownership. *Id.*
4. On December 11, 2009, the Applicant timely protested the denial of the exemption and requested a hearing in the matter. *Id.*
5. Pursuant to the taxpayer's hearing request, a hearing, before administrative law judge Julie-April Montgomery, to consider the taxpayer's protest, was held in Chicago Illinois on December 13, 2010. Tr. p. 1.

6. The Applicant was incorporated under the Illinois General Not-for-Profit Corporation Act on October 16, 1975. Applicant's Ex. 1.
7. The Applicant is not exempt from the payment of federal income tax pursuant to section 501 (c) (3) of the Internal Revenue Code, or any other Internal Revenue Code provision. Department Ex. 1.
8. The By-Laws of the Applicant state that the purposes for which the Applicant is organized are as follows:

[T]he purpose of the corporation is:

To promote social welfare through the promotion and assistance of works of charity and mercy to indigent persons seeking to improve their economic and social situations, including the following:

- (a) guidance and counseling on a one-to-one level for persons seeking help in fighting alcoholism;
- (b) referral to alcoholic rehabilitation centers, clinics and programs;
- (c) assistance in seeking employment and living accommodations for persons who are transient or unemployed;
- (d) seeking service organizations which offer services to indigents for rehabilitation;
- (e) investigating existing social situations which cause alcoholism, and which affect persons seeking rehabilitation; and
- (f) ameliorating adverse social situations affecting alcoholic rehabilitation.

9. The By-Laws further state that: "No part of the net earnings of the corporation shall inure to the benefit of any director, trustee, officer of the corporation or any private individual, and no director, trustee, officer of the corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation." Applicant's Ex. 2.
10. The Applicant acquired Cook County Property index number 14-17-210-011 by Warranty Deed dated May 3, 1976. Applicant's Ex. 3. The parcel is commonly known as 4652 North Kenmore, Chicago, Illinois. Applicant's Ex. 3.

11. A two story wood-frame building with an attic and garage sits on Property index number 14-17-210-011. Tr. p. 24; Applicant's Ex. 4. The building on this parcel is known as the Saint Francis Catholic Worker House ("Catholic Worker House"). Department Ex. 1.
12. The purpose of the Catholic Worker House is to provide guidance and support, including temporary shelter and transitional housing, meals and other resources to homeless single adult people. Tr. pp. 29-33.
13. Catholic Worker House is a four bedroom house with additional attic bedrooms having a capacity of up to 20 people. Tr. pp. 24, 60. The arrangements are for a congregate living situation in which residents share bedrooms. Tr. pp. 29-31.
14. In 2008, a year during which the number of transient residents fluctuated, the Applicant had 10 to 20 residents that resided at the Catholic Worker House. Tr. p. 60.
15. For administration and staff support, the Applicant, during 2008, relied upon 3 to 4 live-in volunteer workers. Tr. p. 46. The number of workers fluctuated during that year. *Id.* Their duties included greeting people that stopped by the house, doing all necessary paperwork for the house including paying bills, and they conducted interviews with prospective residents. They also decided which residents made them unsuitable to continue as residents due to violent behavior or drug or alcohol use, mediated conflicts between people in the Catholic Worker House, supervised maintenance, provided food resources for the Catholic Worker House's residents and visitors, and conducted publicity and fundraising activities. Department Ex. 1. Live-in workers resided at the Catholic Worker House without paying any rent. *Id.*
16. Recipients of Applicant's services are homeless, adult men and women. A person must be at least 18 years old and must not currently be using drugs or alcohol. Tr. p. 33. Moreover, to be

a recipient of Applicant's services, a person must not have mental health problems or physical problems requiring special attention. *Id.* However, a history of drug or alcohol use is not a bar to becoming a resident of the Catholic Worker House. *Id.* Members of the Applicant's staff meet with individuals who wish to become residents of the Catholic Worker House to determine whether they fail to meet any of these requirements. *Id.*

17. No drugs or alcohol are allowed on the premises of the Catholic Worker House. *Id.* Moreover neither intoxication nor violent and disruptive behavior is permitted. *Id.*

18. The Applicant generally allows homeless persons to stay at the Catholic Worker House no longer than one year. Department Ex. 1. However, a homeless person's stay may be extended under certain circumstances. *Id.*

19. All persons allowed to reside at the Catholic Worker House are permitted to live there rent-free. Tr. p. 31. There is no charge of any kind for any of the services the Applicant provides to its residents and visitors. *Id.*

Conclusions of Law:

Article 9, section 6 of the Illinois Constitution of 1970, provides in part has 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.

This provision is not self-executing but merely authorizes the general assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992).

It is settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956). Whenever doubt

arises, it is to be resolved against exemption and in favor of taxation. People ex. Rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967).

Pursuant to its Constitutional grant of authority, the Legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 ILCS 200/15-65 which exempts certain property from taxation 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. (b) Beneficent and charitable organizations incorporated in any state of the United States ...[.]

Here, the appropriate exemption applies to "institutions of public charity." The Illinois courts have long refused to apply the exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156 (1968).

They have also ascribed to the following definition of "charity" (originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893)): "... a charity is a gift to be applied consistent with existing laws, for the benefit of an indefinite number persons, persuading them to an educational or religious conviction, for their general welfare, or in some way reducing the burdens of government." Methodist Old Peoples Home, *supra* at 156-57. The Illinois Supreme Court, in Methodist Old Peoples Home has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics. The organization:

1. must benefit an indefinite number persons, persuading them to an educational or religious conviction, for their general welfare, or in some way reduce the burdens of government;
2. must have no capital, capital stock or shareholders and earn no profits or dividends;
3. must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
4. must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and
5. must not place obstacles of any character in the way of those who need and would avail themselves on the charitable benefits dispensed; and
6. The term “exclusively used” means the primary purpose for which property is used and not any secondary or incidental purpose. Methodist Old Peoples Home, *supra* at 157.

Two things are necessary for an exemption of property under the charitable exemption. First, the property must be owned by a charitable organization and secondly, the property must be used for charitable purposes. Rogers Park Post No. 108 American Legion v. Brenza, 8 Ill. 2d 286 (1956). Although the criteria used in Methodist Old Peoples Home are not an exclusive, rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. DuPage County Board of Review v. Joint Commission, 274 Ill. App. 3d 461 (2d Dist. 1995) (leave to appeal denied, 164 Ill. 2d 561).

The record in this case indicates that the Applicant owned the property in the year at issue, having acquired it by warranty deed in 1976. Applicant’s Ex. 3. The record also indicates that the Applicant is organized under the Illinois General Not-for-Profit Corporation Act. Applicant’s Ex. 1. The Applicant’s organization pursuant to this Act is persuasive evidence that the Applicant has no stock or shareholders and does not profit from the venture of providing

shelter and assistance to indigent people. Indeed, the Department concedes that the Applicant meets this Methodist Old Peoples Home characteristic. Tr. p. 61.

The Applicant contends that all of the Applicant's funds come from grants and charitable contributions, and the Department does not contest this claim. *Id.* (“[W]e acknowledge that the applicant ...meets the second characteristic [of Methodist Old Peoples Home] which is that the organization earns no profits or dividends but derives its funds mainly from public and private charities and holds in trust for purposes expressed in its charter.”). Accordingly, I find that the Applicant derives all of its income from public and private charity.

The purposes of the Applicant are expressed in its bylaws as follows:

[T]he purpose of the corporation is:

To promote social welfare through the promotion and assistance of works of charity and mercy to indigent persons seeking to improve their economic and social situations, including the following:

- (a) guidance and counseling on a one-to-one level for persons seeking help in fighting alcoholism;
- (b) referral to alcoholic rehabilitation centers, clinics and programs;
- (c) assistance in seeking employment and living accommodations for persons who are transient or unemployed;
- (d) seeking service organizations which offer services to indigents for rehabilitation;
- (e) investigating existing social situations which cause alcoholism, and which affect persons seeking rehabilitation; and
- (f) ameliorating adverse social situations affecting alcoholic rehabilitation.

These purposes are charitable and beneficent in nature. Crerar, *supra*. For the reasons enumerated below, I find that the Applicant is engaged in the charitable activities enumerated in its bylaws and, therefore, constitutes a charitable organization.

During the hearing, Linda Marlovitz, the Applicant’s manager testified as follows.

Q. Are there any standards for someone entering?

A. There – in the interview, there’s an interview process when somebody expresses that they’re interested in living at the house. If there is space

available, the worker ...community that lives in the house meets to decide if we're in a position to interview someone, and then we'll let the person know and they'll come to... a half hour interview. And some of the questions that we ask people if they have a history of alcohol or drug use, and if they do, that is not – that doesn't exclude them from possibly living at the house. We just want to know their history. And if they're currently using, that would be a reason – we work with people who are in recovery, so if they're currently using, our house is drug and alcohol free. So we – that would be a reason. If they are currently using, our house wouldn't be an appropriate place for them to live.

Tr. pp. 32, 33.

This testimony indicates that, as long as space is available, and a homeless person meets the general criteria for residency, the principal one being that he or she is not currently using drugs or alcohol, the Applicant allows anyone who applies to reside in the Catholic Worker House. See also Department Ex. 1 (attachment labeled "Exhibit A") (indicating that the only persons barred from residency are drug users, alcoholics and persons that engage in violent behavior). Moreover, the Applicant charges no rent of any kind. Tr. p. 31. Given the absence of any financial barriers to prospective residents in need of transient housing, I find that the Applicant, through its provision of temporary residence based primarily upon availability, benefits an indefinite number of persons. The Department contends that, with respect to its transient residence services, the Applicant does not meet all of the characteristics of a charity noted in Methodist Old Peoples Home because it does not dispense charity to all who need and apply for it, and places obstacles in the way of those that need and would avail themselves of this benefit. Tr. pp. 61-63. The Department bases this claim on the fact that members of the Applicant's staff screen persons wishing to reside in the Catholic Worker House and does not accept for residency those it deems unfit to receive this benefit. *Id.*

Testimony given during the hearing indicates that interviews with prospective residents are conducted to determine whether they have needs exceeding the capacities of the Catholic

Worker House or whether they have drug abuse, alcohol abuse or mental problems that make them a safety risk to other Catholic Worker House residents. Tr. pp. 32-34. The Department claims that the Applicant's policy of screening prospective residents and excluding persons who are drug or alcohol users or who may have mental problems or physical problems the Catholic Worker House is not equipped to handle, bars the Applicant from qualifying as a charity. Tr. pp. 61-63. For the following reasons, I find that the Applicant's screening and interviewing process does not bar the Applicant's classification as a charitable endeavor.

By excluding persons with potential behavioral problems or with special mental or physical needs more appropriate to a more specialized type of care facility, the Applicant is avoiding the misuse of the Applicant's resources by such persons. In effect, the Applicant, through its screening process, is excluding persons who indicate incapacity to properly utilize all of the Applicant's resources in a constructive manner. Where a prospective resident's behavior or mental or physical state makes it unlikely that the Applicant's resources will be used constructively, or in a manner intended by the Applicant, it cannot be said that charity to such persons is being denied to persons that "would avail themselves" of the residential benefits the Applicant affords. Declining to offer charitable services to a person that cannot, for whatever reason, avail himself or herself of them does not constitute placing obstacles in the way of those that "need and would avail themselves of the charitable benefits it dispenses". Methodist Old Peoples Home, *supra* at 157. Consequently, the Applicant's specific screening process does not result in it having non-charitable characteristics under the Methodist Old Peoples Home criteria.

Furthermore, a policy of not screening out drug addicts, alcoholics and persons with mental problems when they seek to reside at the Catholic Worker House would raise serious safety concerns. There is no indication in the record that the workers that lived in the Catholic

Worker House during 2008 were qualified or intended to assist people with these types of problems. Maintaining order and safety when confronted with the problems that violent and disruptive behavior substance abuse and mental illness often entail would place impossible demands upon the Catholic Worker House's staff exceeding their qualifications and could result in living conditions at the house that would be detrimental to the health and safety of its residents. The mandates of Methodist Old Peoples Home cannot reasonably be construed to require that an Applicant irresponsibly disregard the safety and well-being of its residents in order to meet them. For this reason, I find that the practice of screening persons desiring to reside in the Catholic Worker House for substance abuse and mental illness does not bar the Applicant from qualifying as a charity.

The Department also argues that a charitable exemption in this case must be denied because, in addition to its function as a sanctuary for the homeless, the Catholic Worker House is used to provide rent-free housing to its unpaid workers. See Tr. p. 63 (citing Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App. 3d 858 (2d Dist. 1989)). The Illinois courts have held that providing free housing to employees of a charity can only be considered to be a charitable function under limited circumstances. Illinois case law has developed a test for the exemption of properties occupied by residential employees of tax exempt organizations. To meet this test, the residential employee must both: (a) perform one or more specifically identifiable exempt functions, such as education or religious duties, in the residence, and; (b) be required by those same exempt duties to live in the residence. McKenzie v. Johnson, 98 Ill. 2d 89 (1983); Benedictine Sisters of Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325 (2d Dist. 1987); Lutheran Child Family Services of Illinois v. Department of Revenue, 160 Ill. App. 3d 420 (2d Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d

1082 (2d Dist. 1988); Girl Scouts of DuPage County Council, *supra*. While the unpaid workers performed exempt duties by virtue of their charity related support functions at Catholic Worker House, there is nothing in the record indicating that they were required, by these duties, to live in this residence.

The Applicant does not deny that it provides free housing to its unpaid workers, and does not aver that all of the conditions that must be met for the provision of rent-free housing to be considered charitable under the above test existed in the instant case. The Applicant, nevertheless, contends that providing free housing in the instant case does not disqualify it from exemption. Tr. p. 67.

As noted above, Methodist Old Peoples Home requires that, in order to qualify for exemption, property must be used exclusively for charitable purposes. However, the Illinois courts have repeatedly stated that the “exclusive use” requirement for tax exemption is satisfied where property is used primarily for an exempt purpose, although the property may be used for a secondary or incidental purpose. Chicago Bar Association v. Department of Revenue, 163 Ill. 2d 290 (1994); McKenzie v. Johnson, 98 Ill. 2d 87 (1983); Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill. 3d 619 (5th Dist. 2008); Methodist Old Peoples Home, *supra*. Consistent with these holdings, Department regulation 86 Ill. Admin. Code, ch. I, section 130.2005, which, applying the Methodist Old Peoples Home criteria, enumerates the Department’s standards that must be met for an organization to qualify as a primarily charitable endeavor, states the following:

(n) Meaning of “Exclusively”

2) ...[I]f a substantial purpose or activity of the [applicant] is not charitable, religious or educational, the Department will not consider the [applicant] to be organized and operated exclusively for charitable, religious or educational purposes within the meaning of the Act.

The record in this case indicates that, during 2008, the Catholic Worker House provided residency to a fluctuating number of residents that ranged between 10 and 20. During this period, it also provided counseling, meals, shelter during the day and other services to persons that did not require its residency services. Tr. pp. 29, 31, 32. The record also indicates that the number of live-in workers and volunteers during 2008 fluctuated between three and four. Tr. p. 46. In light of this evidence, I find the limited use of the property at issue during 2008 to provide residency to the Catholic Worker House's own workers to be an incidental or "non-substantial" function and purpose of the property at issue during this period. For this reason, I conclude that this use of the property did not constitute a use that disqualifies the Applicant from exemption under the "exclusive use" criteria enumerated in Methodist Old Peoples Home as applied pursuant to regulation 130.2005(n).

Recommendation

Based upon my findings and conclusions noted above, I recommend that the Department reverse its decision denying tax exemption to Cook County Property index number 14-17-210-011. I further recommend that Cook County Property index number 14-17-210-011 be exempt from real estate taxation for the entire 2008 assessment year.

Ted Sherrod
Administrative Law Judge

Date: October 25, 2011