

PT 12-08

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

In re)	Docket Nos.	10-PT-0048
2009 Property Tax)		07-16-876
Exemption Application of)	PINs	20-28-314-003, 20-28-314-004,
)		20-28-314-005, 20-28-314-006, 20-28-314-007,
CATHOLIC CHARITIES)		20-28-314-008, 20-28-314-009.
HOUSING DEVELOPMENT)	John E. White,	
CORPORATION)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Edwin Wittenstein, Worsek & Vihon, LLP, appeared for Catholic Charities Housing Development Corporation; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied an application for a non-homestead property tax exemption filed by Catholic Charities Housing Development Corporation (CCH), regarding seven parcels of property that are situated in Cook County, Illinois. The application sought an exemption for the property pursuant to § 15-65 of Illinois' Property Tax Code (PTC), for 2009.

The parties submitted a stipulated record in lieu of hearing. That record consists of a stipulation of facts, and documentary evidence. I have reviewed the evidence submitted, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director deny CCH's exemption application.

Findings of Fact:

Facts Regarding the St. Leo Residence Limited Partnership (SLLP) and its Partners

1. The St. Leo Residence Limited Partnership (SLLP) is the title holder and owner of all of the parcels of property at issue. Stipulation [of Facts] (Stip.) ¶ 6.
2. The two partners of SLLP are the NEF Assignment Corporation (NEF) and the St. Leo Development Association (SLDA). Stip. Ex. 12 (copy of SLLP agreement), p. 12 (§§ 2.7-2.8).
3. NEF holds a 99.99% interest in the SLLP and is its limited partner; SLDA holds a 0.01% interest in SLLP and is its general partner. Stip. Ex. 12, pp. 6-7 (definitions of General Partner and Limited Partner), 12.
4. NEF is the syndicator for the Low Income Housing Tax Credits (Credits) that SLLP used to fund the development of the Campus. Stip. ¶ 10; *see also* Stip. ¶ 7; <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/work.cfm> (web site of the United States Department of Housing and Urban Development, summarizing and describing the role and functions of a syndicator for purposes of Credits) (last accessed February 29, 2012).¹

¹ I understand the term “syndicator,” as used in the parties’ stipulation, to have the same meaning as used by the United State Department of Housing and Urban Development:

Syndication

Developers may claim housing tax credits directly, but most sell the tax credits to raise equity capital for their housing project. The developer can sell the tax credits:

- Directly to an investor; OR
- To a syndicator, who assembles a group of investors and acts as their representative.

Tax credits can be claimed annually over a 10-year period by the property owner. However, the developer needs the money immediately to pay for development costs,

5. The persons who purchased the Credits from NEF, the syndicator, used them to reduce their federal income tax, as per federal statute. *See* Stip. Ex. 33 (copy of Low Income Housing Tax Credit Extended Use Agreement between SLLP and the Illinois Housing Development Authority, dated June 29, 2005); <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/work.cfm> (last accessed February 29, 2012).
6. In its Limited Partnership Agreement, SLLP's purpose is set forth as:

§ 2.2 Character and Purpose of Business. The general character and purpose of the business of the Partnership is: (a) to acquire, construct, own, finance, lease, and operate the Project Property as a qualified low income

not 10 percent annually for 10 years. Accordingly, the developer typically syndicates the credits - i.e., sells the rights to the future credits in exchange for up-front cash.

The credit purchaser must be part of the property ownership entity; usually this is accomplished by creating a limited partnership (in which the credit purchaser is a 99%+ limited partner) or a limited liability company (in which the credit purchaser is a 99%+ non-managing member). The general partner is responsible for managing the project and the partnership, while the limited partners are typically limited to a passive investment role.

Typically, profits and losses and housing tax credits are shared according to the partners' (members') percentage ownership interests. However, each Limited Partnership Agreement (or LLC Operating Agreement) also provides for a carefully-negotiated "waterfall" that describes how any positive cash flow of the property is to be distributed. Typically, the general partner (managing partner) receives a large share of any positive cash flow, often structured in the form of fees for services such as partnership management, incentive management, or investor services.

A Closer Look at Syndication

Syndication is a complex and expensive process. By law, syndicators must offer prospectuses to potential tax credit purchasers, fully disclosing the terms and risks of the investment. Sales of tax credits to multiple investors in the general public are referred to as public placements and have the highest disclosure requirements. Private placements are sales to a few knowledgeable investors. They have lower disclosure requirements and sales costs.

Of course, developers are interested in the highest possible price paid by investors, and the lowest possible syndication costs. Similarly, investors are interested in paying the lowest possible price, at the lowest possible level of risk. Syndicators are interested in earning high fees, and potentially future business with the developer and investors. To-be-developed properties are not easy to evaluate. These factors mean that the market for housing tax credits is as complicated and sophisticated as the market for stocks and bonds. It is also quite competitive.

housing project within the meaning of §42 of the Code; (b) to eventually sell or otherwise dispose of the Project Property in a manner consistent with the provisions of this Partnership Agreement; (c) own, operate and maintain and sell the VA Clinic; and (d) to engage in all other activities incidental or related thereto.

Stip Ex. 12 (copy of Amended and Restated Limited Partnership Agreement of [SLLP], p. 12.

Facts Regarding CCH, the Applicant

7. CCH is the applicant for the property tax exemption sought in this matter. Stip. Ex. 1 (copy of CCH's completed Department form PTAX-300, titled, Application for Non-homestead Property Tax Exemption – County Board of Review Statement of Facts), p. 1 (Part 1, line 6 (Name of organization applying for the exemption)).
8. CCH is an Illinois not-for-profit corporation whose sole voting member is the Catholic Bishop of Chicago. Stip. ¶ 1; Stip. Ex. 4 (copy of CCH's bylaws), p. 1.
9. CCH was created by the Catholic Charities of the Archdiocese of Chicago for the purpose of developing and maintaining housing for low income individuals throughout Chicago. Stip. ¶ 1.
10. The Department has previously determined that CCH is “organized and operated exclusively for charitable purposes.” Stip. ¶ 3; Stip. Ex. 7 (copy of August 25, 2000 letter).
11. CCH created SLLP and the SLDA to develop the St. Leo's Campus for Veterans (Campus) as a joint project undertaken with the United States Department of Veterans Affairs (VA). Stip. ¶ 5. The Campus includes a four-story apartment building providing housing for homeless veterans (Residences) and an outpatient medical clinic (VA Clinic). *Id.*
12. CCH created SLLP to finance and develop housing using Credits. Stip. ¶ 7. SLLP used the Credits to finance the development of the Residences. *Id.*; Stip. Ex. 33.

13. The Department granted the application for a property tax exemption for the property used as the Residences. Stip. Ex. 14. The Department denied the application for a property tax exemption for the property that comprises the VA Clinic. *See* Department's Denial.

Facts Regarding the Property At Issue, and Its Use

14. This dispute involves only those parcels of property that the parties refer to as being subject to a lease to the VA, for use as the VA Clinic. Stip. Ex. 1, p. 1 (Part 1, line 6 (Property Index Numbers (PINs) identified)); Stip. Ex. 31 (a copy of, respectively, a Memorandum of Lease between SLLP and the VA, and a copy of a completed General Services Administration (GSA) Form 3626, U.S. Government Lease for Real Property, Lease number V69DR-88, between the SLLP and the Government of the United States of America).

15. SLLP leases the property to the VA pursuant to a 10 year lease, which term began on May 15, 2007, and which is subject to renewal. Stip. ¶ 17; Stip. Ex. 31, GSA Lease; *see also* Stip. Exs. 23 (copy of the VA's Solicitation for Offers [number] 69D-236-0525 (VA's Solicitation)), 25 (copies of, respectively, completed GSA forms SLLP completed when proposing to lease the property to the VA), 26 (copies of, respectively, email cover letter and other written notifications to SLLP that the VA had accepted SLLP's bid to lease the property to the VA).

16. The VA Clinic is a 14,387 square foot, two story building. Stip. ¶ 15. It is an outpatient medical facility which is part of the Jesse Brown VA Medical Center network. Stip. ¶ 16. Through that network, the VA provides medical services to veterans living on the south side of Chicago. *Id.*

17. SLLP acquired five of the seven parcels of property from the City of Chicago, for a purchase price of \$22,000. Stip. Exs. 27 (copy of Agreement for the Sale and Redevelopment of Land,

between the City of Chicago and SLLP), 29 (copy of Quitclaim Deed). One of the covenants in the deed is that SLLP agreed to “pay, for so long as it is the legal title holder, real estate taxes and assessments on the Property or any part thereof when due.” Stip. Ex. 29.

18. The other two parcels at issue were transferred to SLLP by CCH, via a special warranty deed, in April 2005. Stip. Ex. 30 (copy of deed). The nominal payment identified on the deed is \$10. *Id.*

19. The rental rate expressed within the Lease form was determined following SLLP’s response to the VA’s Solicitation. Stip. Ex. 23. When making its offer to the VA, SLLP was required to identify its operating costs regarding the property. Stip. Ex 25, p. 1 (copy of GSA Form 1217, p. 1 (line 33)). SLLP reported that its annual cost of ownership of the property to be leased, absent capital charges, was \$96,019.00. *Id.*

20. SLLP’s cost of ownership of the property included the following items of expense:

Real Estate Taxes	\$35,000.00	\$35,000.00
Insurance	\$21,019.00	\$21,019.00
Building Maintenance And Reserves For Replacement	\$25,000.00	\$25,000.00
Lease Commission		
Management	\$15,000.00	\$15,000.00
TOTAL	\$96,019.00	\$96,019.00

Stip. Ex. 25.

21. The Lease between the SLLP and the VA contains the following provisions, among others:

A. Agreement regarding Annual Lease Cost, Lease Term, and Annual Expenses:

1. Annual Lease Cost:

The Lessor and the VA agree to a base year rate of \$27.03 per Rentable SQFT based on 14,387 square feet. The Lessor and the VA agree to the application of a 3% Annual adjustment starting the second year of the lease.

14,387 Square Feet	Unit Price Per SQ. FT	Total Annual Rent	[No.] of Months	Monthly Rent
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St. Leo Clinic	Per Year			
Base Year Price	\$ 27.03	\$ 388,880.61	12	\$ 32,406.72
2nd Year Price	\$ 27.84	\$ 400,534.08	12	\$ 33,377.84
3rd Year Price	\$ 28.68	\$ 412,619.16	12	\$ 34,384.93
4th Year Price	\$ 29.54	\$ 424,991.98	12	\$ 35,416.00
5th Year Price	\$ 30.43	\$ 437,796.41	12	\$ 36,483.03
6th Year Price	\$ 31.34	\$ 450,888.58	12	\$ 37,574.05
7th Year Price	\$ 32.28	\$ 464,412.36	12	\$ 38,701.03
8th Year Price	\$ 33.25	\$ 478,367.75	12	\$ 39,863.98
9th Year Price	\$ 34.24	\$ 492,610.88	12	\$ 41,050.91
10th Year Price	\$ 35.27	\$ 507,429.49	12	\$ 42,285.79

2. Lease Term:

The Lease Term will be awarded on a 10 year period. ***

3. Annual Operating Expenses Paid Directly by Lessee:

The Lessor and the VA agree that the VA is responsible for utilities services and janitorial services.

3. Annual Expenses Paid by Lessor:

The Lessor and the VA agree that the Lessor is responsible for maintaining its building and all of its mechanical equipment. Specifically, GSA Form 1217 (See attached) items A-7, Extermination, Snow removal, and all exterior building Maintenance items, B-10, Heating System Maintenance and Repair, C-14, Electrical System Maintenance and Repair, D-17, Plumbing System Maintenance and Repair, E-19, Air Conditioning System Maintenance and Repair, F-21, Elevator System Maintenance and Repair, G-25, Lawn and Landscaping Maintenance.

B. Agreement regarding exceptions taken to VA Solicitation for Offer Requirements:

3.5 TAX ADJUSTMENTS:

The estimated annual cost of Real Estate Taxes is set forth in Form 1217. The actual cost of the annual Real Estate Taxes may be greater or lessor than the estimate set forth in Form 1217. If the actual Real Estate Taxes are greater than the actual Real Estate Taxes than the Form 1217 estimate, then the Lessee shall pay the Lessor the difference between the estimated and actual Real Estate Taxes as additional rent. If the actual Real Estate Taxes are less than the Form 1217 estimate, then the Lessor shall refund to the Lessee the difference between the estimated and actual Real Estate Taxes as a rent overpayment.

In Cook County, Real Estate Taxes are paid in arrears in semi-annual installments on March 1 and typically September 1. For illustration purposes only, the estimated annual real estate tax in form 1217 is \$35,000. Assuming that the term of the Lease commences September 1, 2006, Lessor will receive \$11,666.67 of rent allocable to 2006 property taxes (i.e., 4/12 x \$35,000 =

\$11,666.67). Lessor will receive real estate tax bills on March 1, 2007, for the first installment of 2006 taxes in the hypothetical amount of \$2,000, and on September 1, 2007, for the second installment of 2006 taxes in the hypothetical amount of \$8,000. Based on such hypothetical 2006 final real estate taxes, Lessor will owe Lessee \$1,666.67 as a rent overpayment (i.e., \$11,666.67 – \$10,000 final 2006 taxes = \$1,666.67 rent overpayment). Also, for illustration purposes only, the amount of rent allocable to estimated real estate taxes in 2007 is \$36,050 (i.e., \$35,000 x 1.30 due to 3% annual cost factor increase). Lessor will receive real estate tax bills on March 1, 2008, for the first installment of 2007 taxes in the hypothetical amount of \$18,500.00, and on September 1, 2008, for the second installment of 2007 taxes in the hypothetical amount of \$19,000. Lessee appeals the taxes and secures a reduction of the second installment taxes to the hypothetical amount of \$18,500.00. Based on such hypothetical 2006 final real estate taxes in the total amount of \$37,000.00, Lessee must pay to Lessor as additional rent for 2007 real estate taxes in the amount of \$950.00 (i.e., \$37,000.00 actual 2007 taxes – \$36,050.00 2007 rent allocable to 2007 rent = \$950.00 of additional rent due).

Lessor shall calculate and determine whether additional rent is due or a refund of a rent overpayment is owed [which] shall occur no later than thirty (30) days after the due date of the final tax bill for the tax year in question (i.e., after any and all challenges to the amount of real estate taxes for the tax year in question have been resolved and cannot be further appealed). Within ten (10) business days thereafter, Lessor shall provide Lessee with written notice of its calculation of rent allocated to real estate taxes for the tax year in question and the paid tax receipts for the first and second installment of taxes for that year. Payments of additional rent or rent overpayment refunds shall be made no later than 60 days after the date of the Lessor's written notice. Payment of any rent overpayment refund by Lessee to Lessor, or of any additional rent by Lessor to Lessee will be made in a lump sum amount.

The VA may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice from the VA. The VA shall reimburse the Lessor for all costs and shall execute all documents required for legal proceedings. The Lessor must agree with the accuracy of the documents required before it will have an obligation to initiate and prosecute any contest to a tax assessment requested by the VA.

Lessee and Lessor agree that VA is leasing 100% of the total rentable square feet in the building.

22. The parties stipulate that the VA Clinic was constructed on the Campus using financing obtained through a 4.9 million dollar loan from the Federal Financing Bank, and guaranteed by the VA. Stip. ¶ 14. The parties also stipulate that the Lease payments from the VA to SLLP for the property are structured to pay the federal financing bank loan guaranteed by the VA. Stip. ¶ 18.
23. At the VA Clinic, the VA provides mental health treatment, addiction services, primary care and job training assistance to the residents of the Campus as well as to the approximately 20,000 veterans in and around the Auburn Gresham community. Stip. ¶ 21.

Conclusions of Law:

Issues and Arguments

The parties have stipulated that the Department has recognized SLLP and CCH as entities that are organized and operated exclusively for charitable purposes. Stip. ¶ 3; Stip. Exs. 7, 14. Thus, the only issues involve whether the property that SLLP leases to the VA, for use as the VA Clinic, falls within the exemption authorized by PTC § 15-65.

The Department's sole argument is straightforward. The plain terms of § 15-65 excludes from exemption property that is "leased or otherwise used with a view to profit" Department's Response Brief (Brief), p. 4. By leasing the property to the VA pursuant to the terms set forth in the Lease, the Department reasons, SLLP is leasing the property with a view to profit, and the property, therefore, cannot be exempt. *Id.*; Stip. Ex. 31, GSA Lease.

In its response, SLLP does not directly address the Department's argument that its lease of the property is a lease with a view to profit. Instead, it focuses on another paragraph of § 15-65, and asserts that, "[a]ccording to Section 15-65 ..., property shall not lose its exemption if a charitable organization leases property to an entity that would otherwise be exempt under the code." Appeal of Denial of Exemption (SLLP's Brief), p. 2. SLLP also quotes statements made by an Illinois legislator when considering an amendment to § 15-65, and claims that PTC § 15-65 reflects "the intent ... to ensure that not only not-for-profit organizations, but all entities qualifying for an exemption would not pay taxes if leasing land from a not-for-profit organization." *Id.*, p. 5.

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for charitable purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-65 of the Property Tax Code (PTC), which provides, in relevant part:

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

(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.

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

35 ILCS 200/15-65.

When considering whether a property owner who claims that its property is entitled to an exemption authorized by § 15-65, Illinois courts and the Department follow the guidelines announced by the Illinois Supreme Court in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d

149, 233 N.E.2d 537 (1968). Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 925 N.E.2d 1131 (2010). Those guidelines ask whether:

- (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reduce the burdens on government;
- (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise;
- (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 organization's charter;
- (4) charity is dispensed to all who need and apply for it;
- (5) obstacles are placed in the way of those seeking the benefits; and
- (6) whether the primary purpose for which property is used is charitable, and not merely a secondary or incidental purpose.

Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542.

The first five Methodist Old Peoples Home factors are designed to determine whether the applicant/owner of the property claimed to be exempt is, in fact, an entity that is organized and operated as an exclusively charitable organization. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145 (“Pursuant to section 15-65 of the Property Tax Code ..., eligibility for a charitable exemption requires not only that the property be ‘actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit,’ but also that it be owned by an institution of public charity or certain other entities, including “old people's homes,” qualifying not-for-profit health maintenance organizations, free public libraries and historical societies.”). As previously mentioned, however, in this case, the parties agree that SLLP is organized and operated exclusively for charitable purposes. Stip. ¶ 3; Stip. Exs. 7, 14; Department’s Brief, p. 3. Therefore, the only fact issue involves the sixth Methodist Old Peoples Home factor, whether the primary purpose for which the property is used is charitable, and not merely a secondary or incidental purpose.

Issue 1: Is SLLP’s Lease of the Property “With A View To Profit”

There is no dispute over the evidence that was offered to show how the property is being used. While they do not dispute the evidence, they dispute the conclusions to be drawn from it. The stipulated evidence shows that, during the year at issue, SLLP leased the property to the VA. The first issue is whether SLLP's lease of the property is a "lease[] ... with a view to profit." 35 ILCS 200/15-65.

The whole of the statutory phrase, "when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit ...[,]" has been considered and construed by Illinois courts. For example, in People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 143 N.E.414 (1924), the court noted:

*** The object of the constitutional provision thus authorizing exemptions from taxation and of the legislation pursuant to that authority is to provide that property in actual use by charitable or religious organizations or institutions of learning in carrying out directly their charitable, religious, or school purposes shall not be required to contribute to the support of government, and the authority of the Legislature to exempt from taxation is expressly limited to property exclusively applied to such actual use. The purpose does not, however, extend to the exemption of property of such organizations not in actual use directly for such purpose, but leased to produce an income or otherwise used for profit, though the income or profit from the property be applied to maintaining the charitable or religious organizations or institutions of learning. **Former decisions of this court show that the phrase 'actually and exclusively used' for such charitable and beneficent purposes, as applied to this case, means devoted directly and primarily to the charitable purposes for which the old ladies' home is established, and that the meaning of 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 form of consideration, it is used for profit. While the application of the income to charitable purposes aids the charity, the primary use of this land is for profit. It is used directly for profit, the same as any other farm in the county, and it is only indirectly, from the application of the income, that it aids in the charitable and beneficent purposes of the old ladies' home.**

Jessamine Withers Home, 312 Ill. at 139-40 (emphasis added).

Whether property is used for profit depends on the intent of the owner in using the

property. American National Bank and Trust Co. v. Illinois Department of Revenue, 242 Ill. App. 3d 716, 611 N.E.2d 32 (2d Dist. 1983) (*citing* People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 58 N.E.2d 33 (1944)). Here, SLLP never once argues that its lease of the property was not for profit. *See* SLLP's Brief, *passim*. As the Illinois supreme court recently noted, "[a] basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation [citations omitted], and every presumption is against the intention of the state to exempt property from taxation." Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144. By failing to address the pertinent fact question (*see* SLLP's Brief, *passim*), SLLP has waived it. Salt Creek Rural Park Dist. v. Department of Revenue, 334 Ill. App. 3d 67, 71, 777 N.E.2d 515, 520 (1st Dist. 2002).

But even if I were not to consider the fact question waived, the stipulated documentary evidence is sufficient to show that the property is being leased with a view to profit. First, the lease itself is for valuable consideration. Stip. Ex. 31, GSA Lease, p. 3. Further, the evidence reflects that the process through which the parties bargained for the letting and use of the property was a market-based transaction. Stip. Exs. 23, 25-26, 31. The VA solicited offers to lease property (Stip. Ex. 23), SLLP submitted an offer (Stip. Ex. 25), the VA accepted that offer (Stip. Ex. 26), and the parties entered into the Lease. Stip. Ex. 31, GSA Lease. When making its offer to the VA, SLLP was required to identify its operating costs regarding the property. Stip. Ex 25, p. 1. SLLP reported that its annual cost of ownership of the property to be leased, absent capital charges, was \$96,019.00. *Id.* In comparison, the first year's annual rent under the Lease was \$388,880.61. Stip. Ex. 31, GSA Lease, p. 3. Thereafter, the rent increased each year, until the tenth year's rent was agreed to be \$507,429.49. *Id.* Over the ten year term, the total rent to

be paid to SLLP was over 4.4 million dollars. *Id.*

Regarding SLLP's other costs regarding the property, the record discloses that SLLP acquired five of the seven parcels of property from the City of Chicago, for a purchase price of \$22,000. Stip. Exs. 27, 29. One of the covenants that the City included within its quitclaim deed to SLLP was that the grantee (SLLP) be required to "pay, for so long as it is the legal title holder, real estate taxes and assessments on the Property or any part thereof when due." Stip. Ex. 29. The other two parcels at issue were transferred to SLLP by CCH, via a special warranty deed, in April 2005. Stip. Ex. 30. The nominal payment listed on the deed is \$10. *Id.*

Here, the primary user of the property was a lessee who paid considerable market value to occupy and use the property. Stip. Ex. 31. SLLP, in contrast, did not actually occupy the property, and it used the property primarily as a lessor/landlord for value. *Id.* Whatever use SLLP might have put the funds it derived from the lease (*see* Stip. ¶ 18) would, at best, constitute a mere incident of the property's actual use. Provena, 236 Ill. 2d at 403-04, 925 N.E.2d at 1152 ("The critical issue is the use to which the property itself is devoted, not the use to which income derived from the property is employed."); Jessamine Withers Home, 312 Ill. at 139-40.

Issue 2: Does a 2001 Amendment to PTC § 15-65(c) Apply Here

Notwithstanding the evidence of the property's lease with a view to profit, in its brief, SLLP asserts that PTC § 15-65 reflects "the intent ... to ensure that not only not-for-profit organizations, but all entities qualifying for an exemption would not pay taxes if leasing land from a not-for-profit organization." SLLP's Brief, p. 5. The intent SLLP refers to is to be found within the statements made by a legislator when commenting on a proposed 2001 amendment to § 15-65(c). *Id.*

Contrary to SLLP's suggestion, however, the best evidence of legislative intent is always

to be found within the actual text of the statute. Dusthimer v. Bd. of Trustees of University of Illinois, 368 Ill. App. 3d 159, 165-66, 857 N.E.2d 343, 350 (4th Dist. 2006) (“If the meaning of a statute is evident from its plain language, we will decline any invitation to consider legislative history or other external aids of construction. ... Only ambiguity expands the boundaries of the text.”); Eden Retirement Center, Inc., 213 Ill. 2d at 292, 821 N.E.2d at 251 (“ ‘We repeat that a court should first look to the statutory language as the best indication of legislative intent without resorting to other aids for construction. ... Where the language of a statute is plain and unambiguous, a court need not consider its legislative history.’ ” (quoting Envirite Corp. v. Illinois Environmental Protection Agency, 158 Ill. 2d 210, 216-17, 632 N.E.2d 1035 (1994))).

Here, the text SLLP relies on was added pursuant to a 2001 amendment to subsection (c) of PTC § 15-65. *See* 35 ILCS 200/15-65(c) (Historical and Statutory Notes) (showing text added by P.A. 92-383, § 5, effective August 16, 2001). When passed, and currently, the text of that amendment provides as is quoted *supra*, page 11. For convenience, I repeat the text added by the amendment, in boldface, and in context, here:

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(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.

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity

on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

35 ILCS 200/15-65(c).

I initially note my agreement with the Department's argument that the statutory text SLLP relies on, by its own terms, pertains only to subsection (c), covering "[o]ld 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," 35 ILCS 200/15-65(c); Department's Brief, p. 6. This conclusion is based on the legislature's use of the text "otherwise exempt under this subsection" *Id.* Contrast this with the text the legislature used in the final paragraph of § 15-65, which begins with the clause: "Property otherwise qualifying for an exemption under this Section" 35 ILCS 200/15-65. Section 15-65 is a statutory section, § 15-65(c) is a subsection. The latter paragraph, therefore, applies to the whole of PTC § 15-65, whereas the former, the paragraph SLLP relies on here, applies only to PTC § 15-65(c).

As the Department has argued (Department's Brief, p. 6), SLLP has not established that the property at issue is an old people's home or a facility for persons with a developmental disability, or that SLLP, itself, is a not-for-profit organization providing services or facilities related to the goals of educational, social and physical development. *See* SLLP's Brief, *passim*; Provena 236 Ill. 2d at 390, 925 N.E.2d at 1145 ("Pursuant to section 15-65 ..., eligibility for a charitable exemption requires ... that [the property] be owned by an institution of public charity or certain other entities, including 'old people's homes,' qualifying not-for-profit health maintenance organizations, free public libraries and historical societies."). The parties have stipulated that SLLP's sole member is organized and operated exclusively for charitable

purposes. Stip. ¶ 3; *see also* Stip. Exs. 7, 14. That is, the conclusion to be drawn by the parties' stipulation and stipulated exhibits is that SLLP is an institution of public charity, whose property is governed by PTC § 15-65(a). Stip. ¶ 3; *see also* Stip. Exs. 7, 14. There is no similar stipulation of fact (*see* Stipulation, *passim*), and the Department expressly denies (Department's Brief, p. 6), that the property at issue, or SLLP itself, meets the terms of PTC § 15-65(c). Further, SLLP's purposes are "to acquire, construct, own, finance, lease, and operate the Project Property as a qualified low income housing project within the meaning of §42 of the Code; (b) to eventually sell or otherwise dispose of the Project Property in a manner consistent with the provisions of this Partnership Agreement; (c) own, operate and maintain and sell the VA Clinic; and (d) to engage in all other activities incidental or related thereto." Stip. Ex. 12, p. 12. I do not presume that such purposes establish clear and convincing evidence that the property at issue, or SLLP, is subject to the exemption authorized by PTC § 15-65(c). Provena 236 Ill. 2d at 388, 925 N.E.2d at 1144 ("The party claiming an exemption must prove by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed.").

By suggesting that the 2001 amendment to § 15-65(c) was intended to apply to the whole of § 15-65, SLLP's argument seeks to impermissibly expand the scope of the 2001 statutory amendment. The text that the legislature actually used in the 2001 amendment clearly manifests its intent that the amendment apply only to PTC § 15-65(c). To treat that text as though it applies, instead, to any other subsection, or to all other subsections, within § 15-65, would directly contravene that manifest intent.

In addition, and even if I were to accept that § 15-65(c) applies to this dispute — which I do not — SLLP's argument about the intent behind the 2001 amendment suggests that it is the

lessee's exempt status, alone, that controls whether leased property might be otherwise exempt under PTC 15-65(c). This argument, too, is contrary to the clear text of the 2001 amendment. The text that SLLP relies on expressly refers to a lessee's "... activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property" 35 ILCS 200/15-65(c). The plain meaning of that text reflects that it is the nature of the lessee's *use* of the property, and not just the lessee's status, that would determine whether property was "otherwise exempt" under § 15-65(c). *Id.* Nothing within § 15-65(c), however, reflects that the Illinois General Assembly has made a legislative determination that any lease of property to the federal government, including those for valuable consideration, is deemed to constitute a use that is exclusively for charitable or beneficent purposes. *See Provena* 236 Ill. 2d at 388, 925 N.E.2d at 1144 ("Statutes granting tax exemptions must be strictly construed in favor of taxation ..., and courts have no power to create exemption from taxation by judicial construction."). The absence of any such intent within the text of § 15-65(c), and § 15-65 generally, is perfectly rational. The federal government is not an institution of public charity, and it is not a not-for-profit organization. 35 ILCS 200/15-65(a), (c). The federal government's lease and use of property for considerable value, such as the property at issue here, is simply not the type of use that is embraced within PTC § 15-65(c), or within § 15-65 generally. 35 ILCS 200/15-65; *see also* Department's Brief, p. 6 (distinguishing nature of lessee discussed within statements of Illinois legislator quoted by SLLP with nature of lessee of property at issue here).

Finally, even if the 2001 amendment applies to this dispute, and even if the 2001 amendment were applicable to property leased to and used by the United States, SLLP has offered no authority for its argument that the property at issue would be exempt from Illinois property tax if the federal government owned it. SLLP's Brief, p. 5. Whether property owned by

the federal government is exempt from Illinois property tax depends on two things, an act of the United States government, and PTC § 15-50. 35 ILCS 200/15-50; Ford Motor Co. v. Korzen, 30 Ill. 2d 314, 322-23, 196 N.E.2d 656, 661 (1964) (“there can be no doubt that *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579, still retains sufficient vitality to prevent a State from levying a direct tax upon the property of the United States *without the consent of Congress*.”) (emphasis added).

Section 15-50 provides that “[a]ll property of the United States is exempt, except such property as the United States has permitted or may permit to be taxed.” 35 ILCS 200/15-50; Department’s Brief, p. 6. The phrase “except such property as the United States has permitted or may permit to be taxed” is, like “and not leased or otherwise used with a view to profit ...” (35 ILCS 200/15-65), an exception to an authorized property tax exemption. *Compare* 35 ILCS 200/15-50 *with* 35 ILCS 200/15-65. If the United States, through Congress, has permitted property it owns to be taxed by a state such as Illinois, then the Illinois General Assembly has expressly manifested its intent that such property is not exempt from Illinois property tax. 35 ILCS 200/15-50; Department’s Brief, p. 6.

In this particular case, the text of the GSA Lease form shows that the VA has agreed to pay Illinois real estate taxes due regarding the property it leases from SLLP and uses to operate the VA Clinic. Stip. Ex. 31, pp. 4-5. Since the VA has permitted the payment of Illinois real estate taxes regarding its use of property to operate a VA clinic, that act shows that the United States may permit the payment of taxes for such a use. While it is not possible to foretell what the VA might have actually done had it owned, instead of leased, the property at issue, the stipulated evidence shows that the VA may permit the payment of state property taxes for property it uses to operate a clinic. Stip. Ex. 31; 35 ILCS 200/15-50. Based on the VA’s actual

exercise of discretionary authority to permit the payment of property taxes regarding the activity it conducts on the property at issue, and the plain text of PTC § 15-50, it is not unreasonable to conclude that, even if the United States owned it, the property at issue would be subject to Illinois property tax. Stip. Ex. 31; 35 ILCS 200/15-50.

Of course, in the end, SLLP's argument on this point is mere conjecture, since the United States does not own the property. Stip. Exs. 29-30. Conjecture, moreover, is not clear and convincing evidence showing that the property is exempt.

Conclusion:

After considering the evidence, I conclude that the evidence shows that SLLP is leasing the property with a view to profit, and that the parcels are not being used exclusively for charitable purposes. I recommend, therefore, that the Director finalize the Department's preliminary determination to deny SLLP's application for exemption for the property, and that such parcels remain on the tax rolls.

March 29, 2012

John E. White

Administrative Law Judge