

**PT 12-12**

**Tax Type: Property Tax**

**Tax Issue: Charitable Ownership/Use**

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

---

---

**JOSEPH CORPORATION  
OF ILLINOIS, INC.**

**APPLICANT**

v.

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

**No. 11-PT-0020 (10-45-143)**

**Real Estate Tax Exemption  
For 2010 Tax Year  
P.I.N. 15-22-337-031**

**Kane County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. John P. Duggan, Duggan Law Offices, on behalf of Joseph Corporation of Illinois, Inc.; 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 Kane County parcel, identified by Property Index Number 15-22-337-031 (hereinafter the “subject property”), qualifies for exemption from 2010 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by an institution of public charity and actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit.

The controversy arises as follows: On December 28, 2010, Joseph Corporation of Illinois, Inc. (hereinafter “Joseph”) applied for property tax exemption for the subject property with the Board of Review of Kane County (hereinafter the “Board”). The Board reviewed the

Applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the subject property be granted a full-year exemption for assessment year 2010.

On March 17, 2011, the Department rejected the Board's recommendation finding that the subject property was not in exempt ownership and use in 2010. On May 16, 2011, Joseph protested the Department's decision and requested an evidentiary hearing. This hearing was held on May 8, 2012, with Mr. Dennis Wiggins, Executive Director, testifying. Following a careful review of the testimony and the evidence admitted at the hearing, 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 Kane County PI.N. 15-22-337-031 was not in exempt ownership or use in 2010. Tr. pp. 10-11; Dept. Ex. No. 1.
2. Joseph is a community based non-profit organization established in 1991 to address affordable housing needs in the Aurora area. Its mission is to "assist very low to moderate income persons and families in securing and retaining good quality affordable housing in DuPage, Kane, Kendall and Will Counties in Illinois." Joseph "also performs property management services and provides second mortgages for housing rehabilitation." Tr. pp. 13-21; App. Ex. Nos. 1, 6, 7 and 14.
3. Joseph is seeking exemption of its office space, including the entry hall reception area, counseling offices, board meeting room, multi-purpose room and classrooms. Tr. pp. 56-61; App. Ex. No. 13.

4. Joseph is a HUD certified home-ownership counseling agency and provides families with credit, budget and pre-purchase counseling, education about the homeownership process and home buyer financial assistance programs, mortgage counseling, mortgage delinquency and default resolution counseling, post-purchase and home maintenance counseling and foreclosure prevention. Joseph's counselors have HUD certification. Tr. pp. 31-32; App. Ex. Nos. 1 and 10.
5. A Joseph advertisement states that "our homebuyer education and mentoring program" can help with your credit report's effect on home buying, budgeting for home ownership, working with realtors, using an attorney, different types of mortgages and special financial assistance. Joseph's staff "will help you determine if you qualify for grants or low-interest loans to help you buy your home." Some homebuyer education seminars are sponsored by banks, including Chase. Tr. pp. 50-52; App. Ex. No. 11.
6. Coulter Court Residences, developed by Joseph, provides 38 one-bedroom apartments in Aurora. Coulter is an Illinois limited partnership which received an allocation of low-income housing tax credits from the State of Illinois totaling \$4.9 million. Coulter has been allocated low-income housing tax credits pursuant to IRS Code Section 42, which regulated the use of Coulter as to occupant eligibility and unit gross rents, among other requirements. Coulter must meet the provisions of Section 42 for 15 consecutive years in order to remain qualified to receive the credits. Joseph is the sole shareholder of Coulter Court Renewal, which is the sole general partner of Coulter Court Limited Partnerships with a .009% partnership interest. There is also an investor limited partner with a 99.991% interest and a special limited partner with a .001% interest. Joseph's Coulter investment is not exempt from federal and state taxes. App. Ex. Nos. 1 and 6.

7. Joseph maintains ownership interests in two apartment complexes serving seniors, Rose Terrace in Oswego and The Meadows in Elburn. App. Ex. Nos. 1 and 6.
8. In partnership with the city of Aurora, Joseph administers the “Safety First Program” which addresses home safety issues within Aurora, including improvements or upgrades of mechanical, electrical and plumbing systems and roof and porch repairs and replacements. This Program is designed to help “those Aurora homeowners whose household income falls at or below 80% of the area median income as determined by HUD.” Homes in need of safety issue repairs are eligible for a grant of up to \$4,999. Through these repairs, “the quality and integrity of the home is preserved allowing for more efficient use and in some cases the ability to secure affordable homeowner insurance.” Tr. p. 51; App. Ex. Nos. 1 and 11.
9. Joseph was incorporated under the Illinois Not For Profit Act on August 3, 1990, and is in good standing as of June 28, 2011. Tr. pp. 21-22; App. Ex. No. 2.
10. Joseph is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Joseph does not have shareholders. Tr. pp. 26-27, 65-66; App. Ex. No. 4.
11. Joseph is exempt from Illinois sales and use tax as an entity organized and operated exclusively for charitable purposes. Tr. pp. 27-28; App. Ex. No. 9.
12. On December 31, 2010, Joseph had revenue from “Contributions and Grants” of \$443,547 and [fundraising] “Events” of \$17,927 for a total of \$461,474. Joseph also had revenue from “Interest Income” of \$142,008, “Rental Income” of \$91,743, and “Partnership Income Coulter Court” of \$215,464 for a total of \$449,215. App. Ex. No. 6.

13. In 2010, Joseph received a grant from the State of Illinois Department of Commerce and Economic Opportunity for foreclosure prevention counseling and foreclosure prevention assistance. Tr. pp. 32-33; App. Ex. No. 10.
14. In 2010, Joseph received a grant from the Illinois Housing Development Authority for participation in the Predatory Lending Database Grant Program. Tr. pp. 40-42; App. Ex. No. 10.
15. Emmanuel House is a social service agency in Aurora which houses refugees, collects rent from them and gives the rent back to them after two years as a down-payment on a house. Joseph has a “Memorandum of Understanding” with Emmanuel House to provide pre-purchase counseling to its residents. Tr. pp. 46-48; App. Ex. No. 10.
16. Joseph has a “Memorandum of Understanding” with the Quad County Urban League in which Joseph’s counselors talk to the League’s clients about pre-purchase, post purchase and financial literacy. The League’s youth assist with painting, dry-walling and carpentry work on Joseph’s homes. Tr. pp. 48-49; App. Ex. No. 10.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Joseph has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from real estate taxes for the 2010 tax 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 (1<sup>st</sup> Dist. 1983).

Joseph seeks exemption of the subject properties under 35 ILCS 200/15-65. This section of the Property Tax Code states 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.

Two criteria are necessary in order to qualify for exemption under subsection (a): (1) ownership of the subject property by a charitable organization; and (2) exclusive use of the subject property for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956).

In order to consider the constitutional question of exclusive charitable use of property, courts consider and apply the following criteria and guidelines, as articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968) (hereinafter "Korzen"): (1) the organization's 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; (2) the organization has no capital,

capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the charity is dispensed to all who need and apply for it; (4) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; 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. Under Section 15-65(a), it will not suffice that the subject property is “exclusively used for charitable or beneficent purposes.” The owner of the property must be a charitable organization. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996). In the instant case, there is insufficient evidence in the record for me to determine that Joseph is, in fact, an institution of public charity.

Joseph is a community based non-profit organization established in 1991 to address affordable housing needs in the Aurora area. Its mission is to “assist very low to moderate income persons and families in securing and retaining good quality affordable housing in DuPage, Kane, Kendall and Will Counties in Illinois.” Joseph “also performs property management services and provides second mortgages for housing rehabilitation.” Tr. pp. 13-21; App. Ex. Nos. 1, 6, 7 and 14. Joseph is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Joseph does not have shareholders. Tr. pp. 26-27, 65-66; App. Ex. No. 4. Joseph is exempt from Illinois sales and use taxes as an entity organized and operated exclusively for charitable purposes. Tr. pp. 27-28; App. Ex. No. 9.

Joseph is seeking exemption of its office space located on the subject property, including the entry hall reception area, counseling offices, board meeting room, multi-purpose room and classrooms. Tr. pp. 56-61; App. Ex. No. 13. The subject property also contains the Fifth Third

Bank and Coulter Court Residences, which will be discussed below. Joseph is not seeking exemption for these areas.

In looking at the Korzen factors and whether Joseph is a charitable institution, as required for exemption under 35 ILCS 200/15-65, it is necessary to look at Joseph's affiliated organizations. Note 1 to Joseph's Financial Statements indicates that Joseph has a "subsidiary," the "Coulter Court Limited Partnership." Coulter Court Residences, developed by Joseph, provides 38 one-bedroom apartments in Aurora. Mr. Wiggins testified that "we put the 38 one-bedroom affordable apartments" in the upstairs of the building that Joseph is seeking exemption for. Tr. p. 62. This is the only testimony in the record about Coulter. All other evidence in the record on Coulter is from the Notes to Joseph's Consolidated Financial Statements.

Coulter is an Illinois limited partnership which received an allocation of low-income housing tax credits from the State of Illinois totaling \$4.9 million. Coulter has been allocated low-income housing tax credits pursuant to Internal Revenue Service Code Section 42, which regulated the use of Coulter as to occupant eligibility and unit gross rents, among other requirements. Joseph is the sole shareholder of Coulter Court Renewal, which is the sole general partner of Coulter Court Limited Partnerships with a .009% partnership interest. There is also an investor limited partner with a 99.991% interest and a special limited partner with a .001% interest. App. Ex. No. 6.

The Notes to the Financial Statements do not contain enough information for me to assess either the financial aspects of the tax credit transactions or Joseph's ownership interest in Coulter. The deficiencies in the evidence must be held against Joseph in determining whether they are a "charitable organization," as required for exemption under 35 ILCS 200/15-65. According to Note 2 of the Financial Statements, "the [Coulter] Subsidiary investment is not

exempt from federal and state taxes.” App. Ex. No. 6. I conclude from this statement that the Coulter units are leased for profit. I must also conclude from the Financial Statements that the Coulter residences are intended to benefit the limited partners who are furthering their own financial interests in claiming the federal tax credits. (See Board of Education of Glen Ellyn v. Dept. of Revenue, 356 Ill. App. 3d 165 (2d Dist. 2005)). Accordingly, Joseph, through its subsidiary Coulter, provides gain or profit in a private sense to the limited partners connected with it.

Additionally, in considering this Korzen factor, it is necessary to look at salaries paid to Joseph’s employees. There is no testimony in the record as to these salaries. There is no information in the Financial Statements as to salaries. “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). The problem in the instant case is that the record contains no testimony or documentary evidence to substantiate that salaries paid to Joseph’s employees are reasonable. There is no testimony or documentary evidence in the record as to how Joseph’s salaries compare with those of employees in similar positions at other community based organizations. Because of the deficiencies in the evidence regarding salaries, I am unable to conclude that Joseph is not providing profit and gain in a private sense to its employees.

Mr. Wiggins described the Coulter residences as “affordable.” Tr. p. 62. However, there is no testimony in the record as to what makes the apartments “affordable” or how rental rates are determined. If leasing apartments at “affordable” rates is indicative of a charitable organization, every landlord leasing property at less than what they thought the rent should be would qualify as a charitable organization. Additionally, there is no testimony or evidence in the

record that Joseph provides any social services to the residents. Accordingly, it is unclear from the record of this case exactly what “charity” Joseph is providing when it rents to the Coulter tenants. There is nothing inherently charitable about renting an apartment to someone, and without more evidence in the record on the terms of the rentals at Coulter, I am unable to conclude that Joseph’s ownership interest in this subsidiary is evidence that Joseph, itself, is a charitable institution, as required for exemption under the statute.

There is no evidence in the record that Coulter has a rent waiver policy for tenants who are unable to pay rent. Whereas charging rents may not destroy the charitable nature of an organization, this is only true to the extent that the organization also admits persons who need and seek the benefits offered but who are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). I am unable to conclude from the limited record that Joseph and its partners admit people to Coulter who are unable to pay or accommodate people who find themselves unable to pay after renting. Therefore, I am unable to conclude that Joseph dispenses charity to an indefinite number of persons at Coulter, another characteristic of a charitable organization, according to Korzen.

Additionally, there is no testimony in the record as to the tenants’ qualifications for rental of the Coulter apartments. There is no testimony or evidence that rent at Coulter is based on income level. I am therefore unable to conclude that Joseph does not place obstacles of any character in the way of those who need and would avail themselves of whatever charitable benefits Coulter dispenses or that charity is dispensed to all who need and apply for it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004).

The “Joseph Corporation Fact Sheet” under the section entitled “Real Estate Development” states that Joseph maintains an ownership interest in “The Meadows” in Elburn and “Rose Terrace” in Oswego, with both complexes serving the senior population. App. Ex. No. 1. There is no testimony in the record on these two ownership interests. Similar to my discussion of Coulter, above, I am unable to conclude from the record that Joseph does not profit from these ownership interests. It is unclear from the record what “charity” is dispensed by these interests, whether the “charity” benefits an indefinite number of persons or reduces a burden on government. There is no testimony in the record as to the tenants’ qualifications for rental of these apartments and I am therefore unable to conclude that Joseph does not place obstacles of any character in the way of those who need and would avail themselves of whatever charitable benefits are dispensed on these properties. Because of the evidentiary deficiencies in the record, I am unable to conclude that Joseph’s ownership interests in these two affiliates is evidence that Joseph, itself, is a charitable institution.

In 2010, Joseph had revenue from “Contributions and Grants” of \$443,547 and fundraising “Events” of \$17,927 for a total of \$461,474. Joseph also had revenue from “Interest Income” of \$142,008, “Rental Income” (to Fifth Third Bank) of \$91,743, and “Partnership Income Coulter Court” of \$215,464 for a total of \$449,215. As the revenue figures indicate, almost 50% of Joseph’s revenue, including interest, rental and partnership income, is from sources that I cannot consider “charitable.” Whereas a slight majority of Joseph’s funding may be derived from public and private charity, the substantial amount of revenue that comes from Joseph’s activities that are not clearly charitable, together with the fact that the record is deficient on the operation of Joseph’s affiliated properties, does not allow me to conclude that Joseph is a charitable organization.

The evidence and testimony presented at the hearing indicate that Joseph may perform some charitable acts in its offices on the subject property, including homeownership counseling, and these acts may reduce a burden on government. However, there is no testimony or evidence in the record as to the number of people who sought and received counseling from Joseph in 2010.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). In this case, Joseph had the burden of proving, first, that it was a charitable organization and, second, that it uses the property sought to be exempted for charitable purposes. Based on the very limited amount of testimony and documentary evidence that was provided in this case, it cannot be found that Joseph has met its burden of proof that it is, in fact, a charitable organization.

For these reasons, it is recommended that the Department's determination that denied the exemption on the grounds that the subject property was not in exempt ownership or use should be affirmed, and Kane County Parcel, P.I.N. 15-22-337-031, should not be exempt from 2010 property taxes.

ENTER:

Kenneth J. Galvin  
Administrative Law Judge

September 5, 2012