

**PT 12-14**  
**Tax Type: Property Tax**  
**Tax Issue: Charitable Ownership/Use**

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

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**VIETNAMESE ASSOCIATION OF  
ILLINOIS,**

**APPLICANT**

v.

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

**Docket No: 11 PT 0015 (09-16-798)**  
**Real Estate Tax Exemption**

**For 2009 Tax Year**

**P.I.N. 14-08-305-055-0000**  
**Cook County Parcel**

**Kenneth J. Galvin**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Herbert Kanter, Rieff, Schramm, Kanter & Guttman, on behalf of Vietnamese Association of Illinois, Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether Cook County Parcel, identified by property index number 14-08-305-055-0000 (hereinafter the “subject property”) should be exempt from 2009 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On November 5, 2010, Vietnamese Association of Illinois (hereinafter “VAI”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 2009 real estate taxes for the subject property. The Board reviewed VAI’s Complaint and recommended that a full year exemption be granted. The

Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation in a determination dated March 3, 2011, finding that the subject property was not in exempt ownership or exempt use in 2009. VAI filed a timely appeal of the Department’s denial of exemption. On July 18, 2012, the parties submitted a “Stipulation of Facts” and requested a briefing schedule. Following a careful review of the Stipulation of Facts and VAI’s Brief, the Department’s Response and VAI’s Reply, it is recommended that the Department’s determination be affirmed.

**STIPULATION OF FACTS:**

- (1) VAI is an Illinois not-for-profit corporation organized for charitable, religious, scientific, and educational purposes. Stip. Ex. No. 1.
- (2) VAI is a 501(c)(3) organization and is exempt from Illinois sales tax. Stip. Ex. Nos. 2 and 3.
- (3) VAI seeks exemption for 2009 for the property located at 5110-5112 North Broadway in Chicago, Illinois.
- (4) In 2009, VAI used its property to provide social services to the community. The applicant’s programs included an employment program to train and place refugees and immigrants in jobs; an adult education program to improve English proficiency; a family health program to increase preventative healthcare; an adjustment and citizenship program to assist refugees and immigrants in overcoming cultural and linguistic barriers and obtain permanent resident or citizen status; an after-school program which provided tutoring to underperforming students; a youth program for middle school to high school aged students; and senior services. VAI also maintained a library that was open to the public.
- (5) All of VAI’s services were provided free of charge to the recipients.

(6) VAI had no capital, capital stock, or shareholders, it earned no profits or dividends, and it did not provide gain or profit in a private sense to any person connected with it. Stip. Ex. Nos. 1 and 4.

(7) VAI's services were not restricted to Vietnamese or Asians, but were available to all who were in need of them.

(8) In 2009, VAI was a participant in the Illinois Department on Aging's Community Care Program. The Community Care Program was implemented in furtherance of the Older Adult Services Act (320 ILCS 42/1) and was intended to help senior citizens, who might otherwise need nursing home care, remain in their own homes by providing in-home and community based services. Stip. Ex. No. 5.

(9) Pursuant to the Community Care Program, VAI entered into a "Community Care Program Provider Agreement" with the Department on Aging under which the Department paid VAI in exchange for VAI's provision of in-home services to senior citizens. For the fiscal year ending June 30, 2009, the agreement provided for \$1,112,614.00 in payments to VAI. For the fiscal year ending June 30, 2010, the agreement provided for \$1,462,053.00 in payments. Stip. Ex. Nos. 6 and 7.

(10) Dennis Miner is the Chief Financial Officer of the Department on Aging. If called as a witness, Mr. Miner would testify to the facts stated in the e-mail dated February 12, 2012. Stip. Ex. No. 8.

(11) Joseph Mason is Manager of the Department on Aging's Division of Home and Community Services. If called as a witness, Mr. Mason would testify to the facts stated in the letter dated July 10, 2012. Stip. Ex. No. 9. The Provider Agreement referenced in Mr. Mason's letter was also in effect during 2009. Stip. Ex. No. 10.

## **CONCLUSIONS OF LAW:**

An examination of the record establishes that VAI has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2009 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both owned by "institutions of public charity" and "actually and exclusively used for charitable or beneficent purposes." 35 ILCS 200/15-65. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter

"Korzen"). Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code absent appropriate evidence that the subject property is owned by an entity that qualifies as an "institution of public charity" and that the property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. 35 ILCS 200/15-65.

The issue to be decided in the instant matter is whether VAI qualifies as an "institution of public charity" under the terms of Korzen and whether the subject property was used for charitable purposes in 2009. In Korzen, the Illinois Supreme Court outlined the following "distinctive characteristics" of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. In addition to these factors which are used to assess whether an institution is charitable, an applicant, in this case VAI, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157.

In exemption cases, the applicant bears the burden of proving by "clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Any and all doubts that arise in an exemption proceeding, if attributable to evidentiary deficiencies, must be resolved in favor of taxation. Gas Research

Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). The parties in this case elected to submit a “Stipulation of Facts” and brief the issues involved rather than have an evidentiary hearing. Because of this election, the record in this case is extremely limited.

VAI seeks exemption for 2009 for property located at 5110-5112 North Broadway in Chicago, Illinois. According to VAI’s PTAX-300, VAI purchased the property on August 27, 2004 and began using it in August, 2006. Assuming, *arguendo*, that VAI does own the subject property, I am unable to conclude that VAI is a charitable organization or that it uses the subject property for charitable purposes.

VAI has failed to prove that the majority of its funds were derived from public and private donations and VAI does not possess this characteristic of a charitable institution. It is suggested that the reasoning behind this Korzen guideline is that an exclusively charitable organization meets its needs by soliciting and receiving donations from individuals with charitable impulses. The charitable organization then holds these donations in trust and exercises its expertise and experience to apply the donations to an identifiable charitable need. Funding by charitable donations can help to establish the identity of an institution as charitable. Eden Retirement Center v. Department of Revenue, 213 Ill. 2d 273 (2004).

VAI receives virtually no funds from public and private donations. VAI’s “Statement of Activities” shows that VAI had “Total Public Support and Revenue” of \$1,388,499 and \$1,824,080 as of June 30, 2009 and 2010, respectively. Less that 1% was “Public Support” as of June 30, 2009 and 3.5% was “Public Support” as of June 30, 2010. Stip. Ex. No. 7.

VAI’s Statement of Activities for June 30, 2009 and 2010, shows “Revenue” described as “Program Service Fees” in the amounts of \$17,712 and \$19,146, respectively. Stip. Ex. No. 7. There is no explanation for this account in VAI’s Financial Statements but I must assume that

VAI earns this “revenue” from charging for some program services that it provides. The Stipulation of Facts states that “[A]ll of VAI’s services were provided free of charge to the recipients.” Stip., par. no. 5. The Program Service Fees account casts doubt on this stipulated “fact,” which must be resolved in favor of taxation.

Furthermore, in looking at whether VAI is a charitable institution, as required for exemption under 35 ILCS 200/15-65, it is necessary to look at all of VAI’s revenue-generating activities. As of June 30, 2009 and 2010, VAI received “Revenue” from a “Newsletter” in the amounts of \$31,380 and \$32,727, respectively. No explanation is offered for this in the Financial Statements. In this same time period, VAI also received “Revenue” from a “Parking Lot” in the amounts of \$97,132 and \$94,977, respectively.<sup>1</sup> According to the Notes to VAI’s Financial Statements, the parking lot is used as a “public parking lot.” Stip. Ex. No. 7. My research indicates no Illinois case where earning revenue from the operation of a public parking lot or from the publication of a newsletter distinguished an organization as “charitable.”

Additionally, Note 4 to the Financial Statements states that VAI’s “Inventory” of \$18,650 and \$13,102, respectively, as of June 30, 2009 and 2010, consists of “cemetery internment rights, endowment care included, and grave markers held for re-sale...” Stip. Ex. No. 7. Again, my research indicates no Illinois case where earning revenue from the sales of internment rights and grave markers distinguished an organization as “charitable.”

VAI is a participant in the State of Illinois’ “Community Care Program” sponsored by the Department on Aging (“DOA”). Pursuant to this Program, VAI has entered into contracts with DOA for the provision of in-home services to senior citizens. As of June 30, 2009, VAI was paid \$1,112,614 under its contract with the DOA. VAI also received \$116,995 under contracts with other city and state agencies. The total amount received for this time period was \$1,229,609,

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<sup>1</sup> VAI is not seeking exemption for this parking lot and the lot is not located on the P.I.N. at issue in this proceeding.

representing 88% of VAI's total revenue for the year. As of June 30, 2010, VAI was paid \$1,462,053 from its contract with DOA. VAI also received \$139,252 under contracts with other agencies. The total amount received for this time period was \$1,601,305, again representing 88% of VAI's total revenue for the year. Stip. Ex. No. 7.

VAI is an "independent contractor" under the "Community Care Program Provider Agreement" it has with DOA. Stip. Ex. No. 9. The Community Care Program was implemented in furtherance of the Older Adult Services Act (320 ILCS 42/1) and was intended to help senior citizens, who might otherwise need nursing home care, remain in their own homes by providing in-home and community based services. Stip. Ex. No. 5. VAI's payment is based on the number of units of service provided per Community Care Program participant for a monthly service period using the fixed unit rates set for the service under the Provider Agreement. Stip. Ex. No. 9. Payments by DOA to VAI under the Provider Agreement cannot be characterized as charitable donations. And having an operating income derived almost exclusively from contractual charges goes against a charitable entity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975).

"The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens." School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). According to the Department's "Response," because VAI "performs its services in exchange for payment by the State, the services rendered do not constitute a gift and they do not reduce the burdens on government." Dept. Response, p. 6.

I also conclude that VAI's operations do not reduce the burdens of government. The large majority of VAI's funding in the year at issue came from payments by the State of Illinois

for services that VAI provides. VAI is an independent contractor and the State of Illinois is paying the organization a fee for its services, not unlike other fee for service contracts executed pursuant to arms-length contractual agreements. VAI is not reducing a burden on the State of Illinois because the State is paying VAI for the services it provides. The Illinois Supreme Court has held that services extended for value received do not relieve the State of a burden. Willows v. Munson, 43 Ill. 2d 203, 208 (1969).

VAI argues that the compensation that it receives from DOA does not provide “total cost reimbursement” and “makes the State a beneficiary not only of the service provided but also of the charitable work of [VAI].” VAI’s Brief, p. 3. No data was offered to support this argument and it is not evident in VAI’s Financial Statements. As of June 30, 2010, VAI had “Contract Fees and Awards” of \$1,601,305 and “Expenses: Program Services: Seniors” of \$1,448,728. Stip. Ex. No. 7. It is not abundantly clear to me from the Financial Statements how the State is not providing “total cost reimbursement.” VAI next argues that its services “keep the seniors in their community and out of the much costlier nursing homes.” VAI Brief, p. 3. No data was offered to support this argument which appears to be pure speculation. Furthermore, an insured senior may leave their community and enter a “much costlier nursing home,” but it is unclear from the record how this imposes a burden on State government.

For a gift, and therefore, charity, to occur, something of value must be given for free. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 751 (4<sup>th</sup> Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). VAI is not providing services without being compensated for them. Because the City and State are paying VAI to provide services to seniors, I cannot conclude that VAI is providing a “gift” or charity to seniors. VAI’s funding is not derived from public and private charity and VAI is not relieving a burden on government. The unexplained

“Program Service Fees” in VAI’s Financial Statements do not allow me to conclude that VAI’s services were provided free of charge to all recipients. For these reasons, I am unable to conclude that VAI is a charitable institution or that it is using its property for charitable purposes.

Accordingly, it is recommended that the Department’s determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not owned by an “institution of public charity” or used for charitable purposes should be affirmed, and Cook County Property Index Number 14-08-305-055-0000, should not be exempt from 2009 real estate taxes.

Kenneth J. Galvin  
Administrative Law Judge

December 5, 2012