

PT 15-01

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

SPD, LLC,

APPLICANT

v.

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

No: 11-PT-0016 (09-72-74)

**Real Estate Tax Exemption
For 2009 Tax Year
P.I.N. 18-08-286-001
Peoria County Parcel**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Fulton Bouldin, *pro se*, on behalf of SPD, LLC; Mr. Robin Gill, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether Peoria County Parcel, identified by Property Index Number 18-08-286-001 (hereinafter the “subject property”), qualifies for exemption from 2009 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.¹ The controversy arises as follows: On November 20, 2009, SPD, LLC (hereinafter “SPD”) applied for a property tax exemption with the Board of Review of Peoria County (hereinafter the

¹ SPD did not ask for exemption under 35 ILCS 200/15-95 of the Property Tax Code, entitled “Housing Authorities,” which exempts all property of housing authorities created under the Housing Authorities Act, if the property and improvements are used for low-rent housing and related uses. Section 15-95 clearly mandates that the property must be owned by housing authorities created under the “Housing Authorities Act” [310 ILCS 10/1 *et seq.*]. There is no evidence in the record that SPD was created under the Housing Authorities Act.

“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 2009.

On June 9, 2011, the Department rejected the Board’s recommendation finding that the subject property was not exempt in 2009. On August 8, 2011, SPD protested the Department’s decision and requested an evidentiary hearing. This hearing was held on January 29, 2014 before Administrative Law Judge Linda Olivero² with testimony from Mr. Fulton Bouldin, President of SPD. Following a careful review of the testimony and the evidence admitted at the hearing, it is recommended that the Department’s exemption denial be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter. On June 9, 2011, the Department denied SPD’s 2009 exemption for the subject property because SPD failed to send the Department the following information: 1) SPD’s articles of incorporation showing the purpose of the organization; 2) a copy of the audited financial statements that show income and expenses for 2009; 3) a copy of the statement of admission requirements and charitable policy or bylaws that provide for fees to be waived or adjusted, according to one’s ability to pay; 4) a copy of the 501(c)(2) or 501(c)(3) exemption issued by the Internal Revenue Service and 5) a copy of the Section 202 or 811 contract with HUD. Tr. pp. 6-7; Dept. Ex. No. 1.
2. The record of this case does not contain the following documents requested by the Department in its denial of exemption dated June 9, 2011: 1) SPD’s articles of incorporation showing the purpose of the organization; 2) a copy of the statement of

² ALJ Olivero was unable to write this Recommendation.

admission requirements and charitable policy or bylaws that provide for fees to be waived or adjusted, according to one's ability to pay; 3) a copy of the 501(c)(2) or 501(c)(3) exemption issued by the Internal Revenue Service and 4) a copy of the Section 202 or 811 contract with HUD.

3. SPD's "Financial Statement," for 2009, on the stationary of "Stein Tax Service," which SPD submitted with its PTAX-300, "Application for Exemption" shows "Rent Received" of \$154,080, "Total Expenses" of \$145,388 and "Net Profit" of \$8,692. Dept. Ex. No. 1.
4. SPD's "primary mission," according to a document sent in with its PTAX-300, is to provide affordable housing opportunities to the low income, very low income elderly, and physically disabled population group. Dept. Ex. No. 1.
5. The subject property has 32 housing units with one unit being used for an office. Tr. p. 10.
6. SPD is a limited liability company. SPD's "Operating Agreement," effective April 27, 2007, states that the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to members in proportion to each member's relative capital interest in the Company as set forth in Schedule 2. Schedule 2 shows one member, Fulton Bouldin, with 100% ownership. Fulton Bouldin's signature does not appear in the Operating Agreement or any of the attached schedules. Applicant's Ex. No. 1.
7. Mr. Bouldin testified that SPD's residents are mainly seniors "who are low income, generally less than 30% of the area median income." Some seniors pay "their rent privately, if they can afford it." Some are on subsidized rentals with their rent subsidized from the Peoria Housing Authority (PHA) under Section 8. PHA sets the rent with the tenant paying a portion based on their income and PHA paying the rest. Tr. pp. 10-11.

8. Mr. Bouldin testified that “in order to initially qualify for assistance, potential households must demonstrate that their income does not exceed 80% of the area medium income as shown in the rental application.” Dept. Ex. No. 1.
9. Mr. Bouldin testified that the application process “is governed by PHA.” The final rent is determined by PHA based on how much income, such as social security, that the resident has coming in. After PHA gives the resident a voucher, they are then referred to SPD. PHA gives SPD an analysis of each tenant showing how much PHA is going to pay and how much the resident is paying individually. Tr. pp. 12-13.
10. Mr. Bouldin testified that SPD gives each resident a lease. The lease does not have a non-eviction clause. Tr. pp. 18-19.

CONCLUSIONS OF LAW:

An examination of the record establishes that SPD 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 2009 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 (1st Dist. 1983).

SPD seeks exemption of the subject property 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.

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held (i) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property, (ii) by an entity that is organized as a partnership or limited liability company, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner of the partnership or managing member of the limited liability company, for the purpose of owning and operating a residential rental property that has received an allocation of Low-income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986, as amended, or (iii) ...

SPD, the owner of the subject property, has not established that it is an institution of public charity that would qualify for the exemption under Subsection (a) of Section 15-65. Two criteria are necessary in order to qualify for the exemption under Subsection (a): (1) ownership

by a charitable organization; and (2) exclusive use for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956). The last paragraph of 15-65 indicates that property that “otherwise qualifies for an exemption” under 35 ILCS 200/15-65, will not lose its exemption even if legal title is held by an organization that is organized as a limited liability company. However, I conclude in this Recommendation that SPD, the limited liability company that holds legal title of the subject property, does not “otherwise qualify” for an exemption under 35 ILCS 200/15-65, and is accordingly precluded from qualifying under the last paragraph of the Section.³

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 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on 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 (4th Dist. 1994). SPD has failed to prove, by clear and convincing evidence, that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

It must be noted at the outset that the Department denied this exemption because the applicant failed to provide information that the Department requested. Dept. Ex. No. 1. The transcript of the hearing in this case is 25 pages with only 12 pages of testimony. SPD did not

³ In addition, SPD has not submitted documentation that it qualifies under paragraph 2 of Section 501(c) of the Internal Revenue Code, which would preclude exemption under Section “i” of the last paragraph and has not submitted documentation that it has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code, thereby precluding exemption under Section “ii” of the last paragraph.

offer into evidence its Articles of Incorporation⁴ or its statement of admission requirements and charitable policy or bylaws that provide for fees to be waived or adjusted, according to one's ability to pay or a copy of the Section 202 or 811 contract with HUD, as requested by the Department. There is no evidence in the record showing that SPD has either a Section 501(c)(2) or 501(c)(3) exemption issued by the Internal Revenue Service. The Department offered into evidence SPD's financial statement for 2009 prepared by "Stein Tax Service," apparently submitted with SPD's initial application. Dept. Ex. No. 1.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Court articulated the criteria and guidelines for resolving the constitutional question of whether an organization is actually an institution of public charity. These guidelines are: (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 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; and (5) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government. In addition to these factors which are used to assess whether an institution is charitable, an applicant, in this case SPD, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157.

⁴ SPD submitted Articles of Incorporation for "Senior World Apartments" with its Application for Exemption. These Articles were filed with the Secretary of State on September 20, 2012 but the exemption year at issue in these proceedings is 2009. Dept. Ex. No. 1. There is no testimony in the record as to the relationship between SPD and Senior World Apartments and whether this relationship existed in 2009.

35 ILCS 200/15-65 provides that property that is leased or otherwise used with a view to profit is not exempt. The question of whether the subject property is being used with a view to profit depends on the intent of the owner. Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill. App. 3d 351, 354 (4th Dist. 1996). The only document in the record offered into evidence by the applicant was SPD's "Operating Agreement." The Agreement, effective April 27, 2007, states that SPD is a limited liability company. According to the Agreement, SPD's net profits or net losses shall be determined on an annual basis and shall be allocated to members in proportion to each member's relative capital interest in the Company as set forth in Schedule 2. Schedule 2 shows one member, Fulton Bouldin, with 100% ownership. The Operating Agreement is not signed by Fulton Bouldin. There are three Schedules attached to the Agreement but none of the Schedules, which have room for a signature, is signed by Fulton Bouldin. The Agreement does not state that SPD is organized under the Illinois Not-For-Profit Act. Taxpayer's Ex. No. 1. The Section entitled "Allocation of Profits and Losses" in the Agreement leads me to believe that in 2009, SPD was a "for profit" corporation.

And the record in this case also forces me to conclude that the leasing of the units on the subject properties in 2009 was, in fact, "for profit," a use proscribed by 35 ILCS 200/15-65. Specifically, the leasing of the units on the subject properties was intended to benefit Fulton Bouldin. SPD's "Financial Statement" on the stationary of "Stein Tax Service" for 2009, which SPD submitted with its PTAX-300, "Application for Exemption" shows "Rent Received" of \$154,080, "Total Expenses" of \$145,388 and "Net Profit" of \$8,692. Dept. Ex. No. 1. The Net Profit is 5.6% of the "Rent Received." This property is "leased and otherwise used with a view to profit," a use proscribed by 35 ILCS 200/15-65. The primary use of the subject property is to

serve paying customers, even if these customers have a limited income. Accordingly, I am unable to conclude that the primary use of this property is for charitable purposes, which is essential for exemption under 35 ILCS 200/15-65.

In looking at the Korzen factors, I must also conclude that the leasing of the units provides gain and profit, in a private sense, to Mr. Bouldin, with him realizing a profit of 5.6% of the rents received. The record is devoid of any testimony or documentary evidence as to how Mr. Bouldin is relieving a burden on government while earning a 5.6% profit from the government's partial subsidy of the rent.

In looking further at the Korzen factors, the financial information in the record indicates that the majority of SPD's funding is not derived from public and private charity. All of SPD's revenue is from rental income. Additionally, I am unable to conclude that SPD is holding its funds for charitable objects and purposes, expressed in its charter. No charter or articles of incorporation were offered into evidence, and as discussed above, the subject property is let for a return rather than for charitable purposes. It is similarly impossible to conclude that SPD is holding its funds for charitable objects and purposes when no balance sheet was admitted into evidence and when the record only contains an income statement for a one-year period. Multi-year financial statements and balance sheets are necessary for determining how excess funds are utilized over the years of SPD's operations.

Mr. Bouldin testified that the subject property is in a low-income area of the City of Peoria. "We haven't had any rich people to apply." Tr. p. 14. Mr. Bouldin testified that SPD was getting less [rent] than it was entitled to if it rented on the open market. Tr. p. 19. But I must conclude from the record that SPD is getting fair market rent for the area that the subject property is located in, although this rent is paid by the tenant and PHA. It is unclear from the

testimony at the evidentiary hearing exactly what the charity is that SPD is providing to the tenants on the subject property. 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 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010). SPD is not providing services without being compensated for them. If leasing apartments at less than you are “entitled to” constituted charitable use of property, every landlord who at some point leased property at a discount would be entitled to a property tax exemption. Charity is an act of kindness or benevolence. “There is nothing particularly kind or benevolent about selling somebody something.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), affirmed, 236 Ill. 2d 368 (2010). I suggest that there is nothing kind or benevolent about renting to seniors at less than you are “entitled to,” while earning a profit. Because I cannot conclude that SPD’s renting of the 31 units at a profit constitutes charity, I am unable to determine that SPD dispenses charity to all who need and apply for it or that charity is provided to an indefinite number of persons.

SPD does not have a formal charitable policy. Mr. Bouldin referred to it as “informal.” “It’s not formal , so to speak, where it’s on paper.” “When [residents] do run into financial trouble, we direct them to charitable organizations in the city or they find out themselves.” “They go there for help.” Tr. p. 15. My research indicates no case where referring people to charitable organizations was sufficient to find that the referring agency itself was a charitable organization. Mr. Bouldin testified that the rent at the subject property is based on the individual’s income level but he has not shown that the rent is entirely waived for residents who are unable to pay. He testified that he remembers evicting a resident who was unable to pay after 3 months. Tr. p. 18. He testified that he does not charge late fees for the first 15 days that rent is

late, but then he charges “something minimal,” “maybe \$20.” Tr. p. 18. Mr. Bouldin testified that residents are given a lease but there is no non-eviction clause in the lease. “We don’t advertise that you can’t be, you know, evicted.” Tr. p. 19. Without some type of formal written policy, showing fee waivers for those unable to pay any rent, it cannot be found that SPD dispenses charity to all who need it. Without advertising both fee waivers for those unable to pay and a non-eviction provision in the lease, SPD has placed obstacles in the way of those who need and would avail themselves of any charity that SPD could provide.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, SPD has failed to prove that the subject property, which is leased and otherwise used with a view to profit, falls within the limited class of properties meant to be exempt for charitable purposes.

For these reasons, it is recommended that the Department’s determination that denied the exemption should be affirmed, and Peoria County Parcel, Index Number 18-08-286-001 should not be exempt from assessment year 2009 property taxes.

December 30, 2014

**Kenneth J. Galvin
Administrative Law Judge**