

**PT 16-02**

**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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**HABITAT FOR HUMANITY OF  
DEKALB COUNTY,  
APPLICANT**

v.

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

**No. 14-PT-053  
Real Estate Tax Exemption  
For 2014 Tax Year  
P.I.N. 08-22-433-003  
06-33-304-004  
02-22-354-010**

**DeKalb County Parcels**

**Kelly K. Yi  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Jeffrey A. Meyer of Klein, Stoddard, Buck & Lewis, appeared for Habitat for Humanity of DeKalb County; Ms. Paula Hunter, Special Assistant Attorney General, appeared for The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether DeKalb County Parcels, identified by property index number 08-22-433-003, 06-33-304-004 and 02-22-354-010 (“subject properties”) qualify for exemption from 2014 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and which is actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65(a) and (b).

On August 7, 2014, Habitat for Humanity of DeKalb County (“Habitat”) filed three Property Tax Exemption applications with the DeKalb County Board of Review seeking exemption from 2014 real estate taxes for the subject properties. The Board reviewed the applications and on August 27, 2014 recommended a partial-year exemption for property index

number 06-33-304-004 and a full-year exemption for property index number 08-22-433-003. The Board's recommendation for the property index number 06-33-304-004 was not made part of the record, but a denial by the Department of Revenue of the State of Illinois ("Department") is evident. In a determination dated October 17, 2014, the Department reversed the Board's recommendations, finding that all of the subject properties were not in exempt use. Dept. Group Ex. 1. Applicant filed a timely appeal of the Department's exemption denials. On October 21, 2015, a formal administrative hearing was held with Mr. Anthony Cvek ("Cvek"), President of Habitat testifying. The issues of whether Habitat is a charitable organization under 35 ILCS 200/15-65(a) and whether the subject properties are used with a view for profit are not in dispute. Solely at issue is whether the subject properties were in actual and exclusive charitable use in the tax year 2014. Following a careful review of the testimony and evidence, it is recommended that the Department's determinations be affirmed.

**FINDINGS OF FACT:**

1. Dept. Group Ex. 1 establishes the Department's jurisdiction over this matter and its determination that the subject properties were not in exempt use in 2014. Dept. Group Ex. 1.
2. Habitat is an affiliate of Habitat for Humanity International ("HFHI"). HFHI's mission is to eliminate poverty housing and homelessness from the world and to make decent shelter a matter of conscience and action. It has built more than 300,000 houses around the world, providing more than 1 million people in more than 3,000 communities with safe, decent affordable shelter. App's Group Ex. 1.

3. Habitat is an Illinois not-for-profit organization with a charitable purpose to provide safe, decent, affordable housing to low and moderate income residents of the county of DeKalb who help build the properties themselves. Tr. 14, 26
4. Habitat acquired the subject properties in 2006, 2008 and 2013. Tr. 16; Dept. Group Ex. 1; Applicant's Ex. 1.
5. The subject properties are undeveloped due to lack of qualified applicants despite Habitat's diligent efforts to find them through community outreach groups and faith-based organizations. Tr. 16.
6. All applications Habitat receives go through a formal screening process similar to a mortgage loan review. In 2014, Habitat board determined that none of the applicants qualified for the program due to insufficient income. Habitat normally arranges a drive-around the property when a qualified applicant family is found. Tr. 19, 26; Applicant's Ex. 2.
7. Other than a garden-style shed on one of the subject properties, where the maintenance tools are stored, the subject properties are vacant, undeveloped lots. Tr. 20.
8. Habitat performed some grading and seeding work to one of the subject properties to prevent erosion, described by Cevk as "basic upkeep and maintenance." Tr. 29.
9. Cevk testified that the availability of vacant properties is intrinsic to Habitat's ability to fulfill its charitable mission because without first acquiring the properties, it cannot market or solicit applications to find qualified applicant families for whom and with to develop the properties. Tr. 21.

10. Habitat is unable to time its property purchases to coincide with development because the mission's success depends on acquiring affordable vacant property whenever they become available. Tr. 21.
11. In 2014, Habitat contacted about hundred organizations to locate qualified applicant families for whom and with to build housing. Tr. 21.
12. In 2014, Habitat did various fundraising activities to raise funds to eventually develop the subject properties. Tr. 23.
13. Habitat used the photos of the subject properties in fundraising and grant writing to showcase its charitable work to raise monetary and non-monetary donations such as building material and construction services. Tr. 24.
14. In 2014, Habitat did not develop any vacant properties due to lack of qualified applicant families. Tr. 27-28.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Applicant has not demonstrated, by presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption for the subject properties from 2014 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject properties do not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. 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).

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 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 (4<sup>th</sup> Dist. 1994). Applicant has not proven, by clear and convincing evidence, that the subject properties fall within the statutory requirements for exemption of properties for charitable purposes.

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision 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.

- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

35 ILCS 200/15-65.

Property may be exempt under this section if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. Chicago patrolmen's Association, v. Department of Revenue, 213 Ill.2d 273, 285 (2004). Whether the property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968). If the primary use of the property is charitable, then property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1<sup>st</sup> Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc., v. Department of Revenue, 158 Ill.App.3d 794, 796 3<sup>rd</sup> Dist. 1987).

The Illinois Supreme Court decided that evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Intention to use is not the equivalent of use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965). However, where property is in the actual process of development and adaptation for exempt use will be treated as being devoted to that use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); Weslin Properties, Inc., v. Department of Revenue, 157 Ill.App.3d 580 (2<sup>nd</sup> Dist. 1987). It must be determined whether the applicant's activities constitute development and adaptation for an exempt use. Weslin Properties, Inc. at 584. Development and adaptation of the subject property

must be judged in light of the ultimate intended use. Lutheran Church of Good Shepherd Bourbonnais v. Department of Revenue, 316 Ill.App.3d 828 (3<sup>rd</sup> Dist. 2000).

Solely at issue is the actual and exclusive exempt use of the subject properties. The Department concedes that Habitat is an institution of public charity and uses the subject properties without a view to profit. It, however, asserts that Habitat has failed to meet by clear and convincing evidence the second criteria for exemption that the properties were in actual and exclusive use for charitable purposes in 2014. While Habitat acknowledges there was no physical adaptation and development of the subject properties, it argues that the properties were used for exempt purposes in the tax year at issue.

Habitat argues that “use” must be defined based on the core mission of a charitable organization. It argues that unlike other charitable organizations, where property purchase is ancillary to their core mission, readily available vacant properties are intrinsic to Habitat’s charitable mission. The rationale is that without first acquiring the properties, it cannot market or solicit applications to find qualified applicant families for whom and with to develop the properties. While Habitat acknowledges that there has been no physical adaptation and development to any of the subject properties, it argues that given its primary charitable purpose to acquire and develop vacant lands, the activities of finding qualified applicant families and fundraising for the eventual development constitute use under the language “related activities” in 35 ILCS 200/15-65(b). Tr. 31.

In support of the argument, Habitat cites Comprehensive Training Development v. County of Jackson, 261 Ill.App.3d 37 (5<sup>th</sup> Dist. 1994) in which the court noted in dictum that the result may have been different if some steps had been taken over the years in furtherance of the claimed charitable purpose. Habitat stresses that unlike the applicant in Comprehensive, it is an

active organization and has engaged in activities to further its charitable purpose in the diligent search of qualified applicant families and fundraising. Habitat's argument is unpersuasive because dictum has no binding authority, and the Fifth District expressly rejected the claim that property held solely for future development constitutes tax exempt use. See Comprehensive at 40. Instead, the Comprehensive court noted that the correct rule was set forth in Skil Corporation, in which the Illinois Supreme Court ruled that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose." *Id.*

Habitat's activities of fundraising and applicant screening demonstrated the intent to develop the subject properties as single family housing, but they did not constitute more than the mere intention. Subsection (b) of 35 ILCS 200/15-65 applies only after the threshold of actual and exclusive use is established. The evidence shows there was no actual use nor were the subject properties in the process of being adapted and developed for the ultimate intended use. It is unfortunate that Habitat has not been able to find qualified applicant families to begin construction but there is no legal support that a charitable organization with an intrinsic need for vacant land is entitled to exemption even before any development takes place. Irrespective of the nature of primary charitable purpose, intention is not equivalent of use. Notwithstanding Habitat's outstanding charity work, the evidence of record simply does not support a finding that the subject properties were in actual and exclusive charitable use in 2014.

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 in order to insure that “sound principles” are preserved, unwarranted exemptions from taxation are avoided and 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. Taxpayer 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 (2<sup>nd</sup> Dist. 1991). Habitat has failed to prove by clear and convincing evidence the second criteria for exemption that it actually and exclusively used the property for charitable purposes in 2014, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for charitable purposes.

**Recommendation:**

For the foregoing reasons, it is recommended that the Department’s denials of property tax exemption for the tax year 2014 be affirmed of DeKalb County parcels, identified by property index numbers 08-22-433-003, 06-33-304-004 and 02-22-354-010.

January 22, 2016

Kelly K. Yi  
Administrative Law Judge