

PT 02-49

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

**FAMILY ALLIANCE, INC.
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0081
(00-56-0037)
P.I.N: 08-32-251-015-0050**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. James G. Militello of Militello, Zank & Coen on behalf of the Family Alliance, Inc. (hereinafter the “applicant”).

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by McHenry County Parcel Index Number 08-32-251-015-0050 (the “subject property”) was “actually and exclusively used for charitable or beneficent purposes,” as required by Section 15-65 of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*) during the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the McHenry County Board of Review (the “Board”) on June 19, 2000. The Board reviewed this Application recommended to the Illinois Department of Revenue (the “Department”) that the subject property be exempt as of January 25, 2000. On October 19, 2000, the Department issued its determination in this matter, finding that the subject property is not in exempt use.

Applicant filed a timely appeal to this denial and then filed a motion for summary judgment, in which it expressly reserved a right to hearing as to any and all issues decided against its interest. On January 9, 2002, I issued an order denying applicant's motion for summary judgment on grounds that there existed a material question of fact as to whether the subject property was "actually and exclusively used for charitable or beneficent purposes," as required by Section 15-65(a) of the Code during the tax year in question.

Pursuant to the reservation contained in its motion for summary judgment, applicant appeared and presented evidence at a formal evidentiary hearing in this matter. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over these matters and its positions herein are established by Dept. Group Ex. No. 1, Documents A, B.
2. The Department's position herein is that the subject property is not in exempt use. Dept. Group Ex. No. 1, Doc A.
3. Applicant, an Illinois not-for-profit corporation organized for purposes of providing services to senior citizens, obtained ownership of the subject property on January 25, 2000. Dept. Group Ex. No. 1, Doc. B; Applicant Ex. No. 5.
4. Applicant purchased the subject property with the intention of constructing an improvement that would allow it to expand the services offered at its existing main facility, which is located immediately adjacent to the subject property. Applicant Ex. No. 5; Tr. pp. 7, 10.

5. The Department exempted applicant's main facility from real estate taxation pursuant to the determination in Docket No. 96-56-46. Dept. Group Ex. No. 1, Doc. B; Administrative Notice; Tr. pp. 10-11.
6. The subject property was vacant and unimproved as of the purchase date. Dept. Group Ex. No. 1, Doc. B; Tr. p. 7.
7. On January 25, 2000, applicant entered into an agreement with FLAL Partnership ("FLAL") that provided, *inter alia*, that applicant was to quit claim the subject property to FLAL in the event that applicant did not obtain a special use permit for an adult day care facility from the City of Woodstock by March 31, 2001. Applicant Ex. No. 8.¹
8. Applicant submitted a grant proposal to the Illinois Department of Commerce and Community Affairs ("DECCA") which sought funding for its proposed expansion project on October 20, 2000. DECCA did not, however, provide the funds that applicant requested. Applicant Ex. Nos. 5, 6, 7; Tr. p. 10.
9. Applicant did nevertheless use the subject property for periodic outdoor activities, such as group therapy sessions for those receiving services at its main facility, at unspecified points during the period in question. Tr. pp. 12-13.

1. Applicant submitted no evidence indicating whether it had in fact obtained the requisite permit by March 30, 2001.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

200/15-65. Charitable Purposes

§ 15-65. 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.

35 **ILCS** 200/15-65(a).

The word “exclusively” when used in Section 15-65(a) and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). “Charitable” uses are those that, by definition, benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also uses undertaken by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes

expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with them; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits they dispense. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

There is presently no dispute as to whether the applicant-owner qualifies as an “institution of public charity,” as required by Section 15-65(a), because the instant denial was based solely on lack of exempt use. Dept. Group Ex. No. 1, Doc. A. Therefore, the sole source of controversy herein is whether the subject property was “actually and exclusively used for charitable or beneficent purposes” between the date applicant obtained ownership of said property, January 25, 2000, and the last day of the 2000 assessment year, December 31, 2000.² For the following reasons, I conclude that the subject property was not in exempt use throughout that period.

Applicant clearly intended to use the subject property for the future expansion of its tax exempt main facility. Nonetheless, applicant’s actual, rather than intended use, is determinative on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). This is especially true where, as here, applicant was required to demonstrate conformity with an applicable legal restriction in order to bring its expansion plan into fruition.

This restriction consisted of procuring a special use permit for an adult day care facility from the Village of Woodstock. Applicant presented no evidence as to whether it

². Section 1-155 of the Property Tax Code defines the term “year,” for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

in fact obtained this permit at any time during the year at issue. Absent this evidence, applicant, which bears the burden of proving all elements of its exemption claim by clear and convincing evidence (Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)), has failed to prove that it complied with this requirement. Consequently, it remained legally impossible for applicant to actively adapt and develop the subject property for expansion purposes throughout the period in question.

Furthermore, applicant did not procure whatever financing was necessary to ensure that its expansion project remained economically viable throughout the relevant period. Business realities inherent in modern construction practice dictate that applicant could not have proceeded beyond even the most preliminary stages of its expansion project unless it first received the funding it requested from DECCA. Because applicant did not receive this funding, its prospects for engaging in an appropriate level of adaptation and development remained speculative throughout the relevant period.

All doubts associated with this speculation must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Consequently, the economic viability of applicant's expansion project remained uncertain at best throughout the period under review. For this reason, the present case is distinguishable from Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987), wherein the court held in favor of exempting part of a medical facility that was under active construction during the tax year in question. Based upon this significant factual distinction, Weslin is not applicable to this matter.

Notwithstanding the above, applicant did present evidence that it engaged architects and civil engineers in tax years subsequent to the one currently in dispute, which is 2000. (Applicant Ex. Nos. 10, 11). However, each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). Therefore, the fact that applicant took some steps regarding its expansion project in tax years occurring subsequent to 2000 does not alter the outcome of this proceeding.

Applicant nevertheless used the subject property for some outdoor activities connected to its main facility during the tax year in question. That use was, per the testimony of applicant's executive director, Carol Louise, periodic at best. (Tr. p. 12). Because the word "exclusively," when used in Section 15-40 means "the primary purpose for which property is used and not any secondary or incidental purpose," (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)), such periodic use is legally insufficient to satisfy the statutory exclusive use requirement. *See*, 35 ILCS 200/15-65(a). Furthermore, all doubts as to whether the subject property was "exclusively" used for charitable purposes must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, the Department's initial determination in this matter, finding that all of the subject property is not in exempt use, should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by McHenry County Parcel Index Number 08-32-251-015-0050 not be exempt from 2000 real estate taxes under Section 15-65(a) of the Property Tax Code.

June 21, 2002
Date

Alan I. Marcus
Administrative Law Judge