

PT 06-13
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 04-PT-0042
v.)	PIN 14-22-411-009
)	Tax Year 2003
BUILDING RESOURCES PROJECT, INC.)	
)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; J. Patrick Joyce, Jr. of Brown, Hay & Stephens, LLP for Building Resources Project, Inc.

Synopsis:

Building Resources Project, Inc. (“applicant”) applied for a tax exemption for the year 2003 for property located in Sangamon County. The Department of Revenue (“Department”) denied the exemption, and the applicant timely protested the denial. The applicant is an organization that receives donated housing materials from various individuals or entities. Its goal is to provide the materials to low and moderate income families. The applicant also recycles paint. The applicant owns property that includes three warehouses and a garage, and it contends that the property is exempt pursuant to

section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois non-profit corporation that was organized in December 2000. (Dept. Ex. #1, p. 22)

2. The applicant was organized for the following purposes: “To provide resources to citizens of Central Illinois to encourage renewal and revitalization of our communities; to provide access to affordable building materials to low to moderate income residents; to reduce the flow of materials going into landfills.” (Dept. Ex. #1, p. 23)

3. The applicant’s by-laws provide that it “is an innovative public-private partnership which actively encourages low-to-moderate income families to repair and maintain property.” (Dept. Ex. #1, p. 17)

4. On February 8, 2002, the applicant acquired the property located at 1545 N. 11th Street in Springfield. (Dept. Ex. #1, p. 8)

5. The property includes the Main Warehouse Building, which is approximately 12,038 square feet, the South Warehouse Building, which is approximately 10,556 square feet, the Quonset Hut, which is a metal building with no heat and is approximately 10,691 square feet, a garage, which is approximately 1,768 square feet, and space for parking. (Dept. Ex. #2)

6. The applicant paid \$140,000 for the property. The loan used to pay for the property was co-signed by the Dominican Sisters. (Dept. Ex. #1; Tr. pp. 17-18)

7. On July 1, 2002, the applicant entered into a lease with the Board of Trustees of Southern Illinois University (“SIU”) for the use of the buildings by the SIU School of Medicine. The lease expired on June 30, 2003. At the time of the purchase, the SIU School of Medicine was leasing the buildings from the previous owner. (Dept. Ex. #2; Tr. pp. 18-19)

8. Under the terms of the lease, SIU agreed to pay rent at the rate of \$1.59 per gross square foot per annum for the total of 32,573 gross square feet. The total amount of the rent was \$51,791.08. (Dept. Ex. #2)

9. In the fall of 2002, the applicant began to use the south half of the Quonset Hut. This was approximately 5,346 square feet of space. The applicant continued to use this space until the lease expired. Then SIU evacuated the main building, and the applicant started using it. SIU continued to occupy the other buildings for approximately two months. (Tr. pp. 20-21)

10. Once SIU completely moved out, the applicant used all of the buildings for its operations. (Tr. p. 21)

11. The applicant’s goal is to provide housing materials to low to moderate income families, but anyone may purchase the items by paying the fee that the applicant sets for each item. (Tr. pp. 26, 56-57)

12. The applicant is open Monday through Saturday from 9:00 a.m. to noon. The applicant has one part-time employee (a warehouse manager) who works during those hours. (Dept. Ex. #1, p. 14; Tr. p. 47)

13. The applicant has kitchen cabinets, bathroom vanities, flooring underlayment, paints, towel bars, wastebaskets, soap dishes, cabinet doors, shingles, lumber, hardware, doors, and a lot of other little odds and ends. (Tr. p. 50)

14. The applicant receives donated building materials from individuals, corporations and contractors. The applicant has received donated materials from Menard's and is attempting to establish a similar relationship with other hardware stores. It solicits materials from contractors and stores. The applicant also receives donations, such as mistinted paint, from Porter Paint. (Tr. pp. 23-24, 53)

15. The applicant's members visited a similar entity in Indianapolis known as Rehab Resources, which donated \$18,000 worth of materials to the applicant. This allowed the applicant to begin its operations, which then resulted in donations from local people, contractors, and manufacturers. Approximately 95 to 99% of the applicant's material is donated. (Tr. pp. 23-24, 52)

16. The applicant does not provide any warrantee or guarantee any materials, and it does not accept returns, exchanges, or grant refunds for materials.¹ (App. Ex. #1)

17. The warehouse manager works with the clients, makes arrangements to have the items dropped off, takes inventory and determines the fee for the items. (Tr. p. 46)

18. To determine the fee that it charges for each item, the warehouse manager looks for the price of the item in the advertisements for Lowe's or Menard's and reduces that amount by approximately 50 to 70 percent. If the item is new, the fee generally will be one-half of the cost based on the ads from Lowe's and Menard's. The used items are valued lower. (Tr. pp. 27-28, 46-47)

¹ The record does not indicate whether the applicant collects use tax on the sale of the items.

19. The applicant serves mostly individuals and gets an average of 5 to 7 customers a day. (Tr. p. 51)

20. The applicant has all customers complete and sign a “Client Referral” form, which states, “Materials obtained from [the applicant] will be used solely for the improvement of my personal residence.” (App. Ex. #1)

21. The Client Referral form includes the client’s name, address, and address where the materials will be used. The form also asks for the number of people in the household and the range of household yearly income, chosen from the following:

- \$0 -- \$17,000
- \$17,100 -- \$27,350
- \$27,351 -- \$31,250
- \$31, 251 -- \$39,050
- \$39,051 -- \$42,150
- \$42,151 -- \$45,300
- \$45,301 -- \$48,400
- \$48,401 -- \$51,550
- Over \$51,550 (App. Ex. #1)

22. The applicant does not attempt to verify the income level. (Tr. p. 42)

23. The bottom of the Client Referral form includes an “Agency Certification,” which states as follows: “I verify that all materials obtained from the [applicant’s] warehouse will be used by this agency or the above client exclusively. This agency accepts the responsibility of screening clients and ensuring the use of all materials obtained through [the applicant].” (App. Ex. #1)

24. The applicant’s “Access to Materials” policy that was adopted November 27, 2001 states as follows:

“In providing access to materials commonly known as ‘stock’, the following procedures will apply:

1. No Client will be refused access simply because of lack of ability to pay the normal handling fee.

2. Each case will be determined on its own merit.
3. Final decision to allow or deny access shall be at the discretion of the Warehouse Manager.
4. When a client declares a desire for materials and a lack of ability to pay the normal handling fee, either of the following may apply:
 - a. The fee may be reduced to a level available to the client.
 - b. The fee may be waived in its entirety.
 - c. The fee may be met by timed payments or through 'work in trade'.
5. When a client declares a desire for materials and a lack of ability to pay the normal handling fee, he will be required to sign a statement declaring such. The statement will read:

'I, _____, declare that my circumstances do not allow me to pay the normal handling fee for materials acquired through Building Resources, Inc. I will not expect a reduction or waiver of fees every time I use the services of Building Resources, Inc. I will not give, transfer, or sell the materials acquired through Building Resources, Inc. to any individual, group or organization, whomsoever. I understand that the normal fee for the materials I will receive today would be \$ _____.'
6. All declaration statements signed by clients for whom the normal handling fee is reduced or waived shall be kept on permanent file and kept in the strictest of confidences as private information. Such statements will be available for inspection by the Internal Revenue Service." (Dept. Ex. #2, p. 19; Tr. pp. 26-28)

25. When a person cannot pay the price that the applicant charges for the items, the warehouse manager determines whether to reduce the fee or give the item free of charge. (Tr. pp. 27-28, 47-48)

26. In the beginning of 2003, the applicant began a relationship with the Illinois EPA concerning the recycling of paint. The EPA previously had a paint-recycling program once a year at the state fairgrounds. The applicant agreed to accept paint year-round for recycling, and the EPA no longer conducts a program at the fairgrounds. (Tr. p. 29)

27. The applicant has a "special crusher" that crushes the cans so that once the paint is squeezed out of the can it is recyclable. The EPA has provided the applicant with barrels to recycle the material that cannot be used, and the EPA removes this material.

The applicant cannot use oil paints or lacquers. As part of the agreement, the EPA does not charge the applicant for the disposal of the unusable material. (Tr. pp. 30, 32)

28. The applicant separates the material in the paint. The applicant re-blends the latex, repackages it, and sells it for a fee. (Tr. p. 30)

29. The applicant sorts the paint by major colors, such as reds, blues, and greens. The applicant mixes it and blends it in a “paddle machine,” and then puts it into 5-gallon buckets. The applicant purchased the paddle machine. (Tr. pp. 30-31)

30. The clients who purchase the 5-gallon buckets of paint must accept whatever color results from the blending. (Tr. p. 31)

31. The applicant charges a \$1 fee per gallon can that is brought in to be recycled. The applicant charges \$5 for a 5-gallon can and \$.25 for a quart can. (Tr. pp. 29-30)

32. The applicant’s fee for a gallon of paint is \$5, but this will be reduced or waived if the customer is unable to pay it. The same policy that applies to the purchase of the warehouse materials applies to the purchase of the paint. (Tr. pp. 28, 31-32)

33. The applicant averages one or two customers a day who want to bring paint in to be recycled. Some customers purchase the reblended paint, and some buy the paint that was donated. (Tr. pp. 49-50)

34. The applicant has outlined a program known as CRAFT (Construction Readiness and Field Training). This program takes “at-risk” youths between the ages of 16 and 21 and teaches them basic construction skills so that they may apply for an apprenticeship in a union when they finish. (Tr. pp. 32-35)

35. At the time of the hearing, the applicant had 8 or 9 youths who were ready to begin the program, and the applicant was looking for instructors to teach it. The applicant intended to put a woodworking workshop in the South Warehouse to be used by the youths. (Dept. Ex. #2, p. 20; Tr. p. 35)

36. For the year ending December 31, 2003, the applicant's un-audited profit and loss statement shows that the applicant received fees from clients in the amount of \$4,189.92, rent from the lease of \$31,183.98, fees from paint recycling day of \$1,517.53, and reimbursed expenses of \$24.38 for a total revenue amount of \$36,915.81. In addition to this, the applicant received grant income of \$1,000. (Dept. Ex. #2; Tr. pp. 35-38)

37. The donation of materials was not included in the profit and loss statement. (Tr. p. 36)

38. The profit and loss statement shows the following expenses:

Amortization expense	6,044.98
Bank Service Charges	83.57
Contract Labor	205.00
Contributions	100.00
Equipment—Forklift (repairs and fuel)	248.74
Equipment—Other	3,500.00
Equipment Purchase	6,318.02
Federal Taxes	
Estimated	1,500.00
Form 941	1,239.43
Form 990-T	3,266.00
Filing fee	20.00
Insurance	
Workers Comp	(3,517.00)
Insurance—Other	5,161.00
Licenses and Permits	75.00
Maintenance Expenses	995.00
Office Supplies	73.97
Payroll Expenses	7,871.17
Property taxes	4,020.04
State taxes – estimated	750.00
State taxes – IL941	58.60

State taxes – IL990-T	1,500.00
Telephone	960.08
Training – workshop	289.00
Warehouse Expenses	
Marketing	1,198.16
Repairs	705.82
Security	3,956.77
Trash Service	405.00
Truck Expenses	933.04
Utilities	4,644.87
Other warehouse expenses	380.67
 Total Expenses	 52,986.93 (Dept. Ex. #2, pp.

17-18)

39. The profit and loss statement also shows “other expense” of \$17.72. The applicant’s total revenue of \$37,915.81 minus its total expenses of \$53,004.65 resulted in a net income (loss) for the year of (\$15,088.84). (Dept. Ex. #2, pp. 17-18)

40. The applicant’s “Amortization” expense was for its mortgage payment. The expense of \$3,500 for “Equipment—Other” was for the purchase of a forklift. The equipment purchase of \$6,318.02 was for a used U-haul truck. (Tr. pp. 43-44)

41. When materials are donated, the applicant sends the donor a list of the items received, and the donor determines the value of the items for their tax deduction. (Tr. pp. 36-37)

42. The fees that the applicant receives are used to cover costs. In the event that there will be excess fees, the applicant intends to provide other programs to help people in the community. (Tr. pp. 28-29)

43. The applicant advertises mostly through word-of-mouth. A few times the local television station has done free promotional stories about the applicant’s operations, and an article was in the local newspaper. (Tr. pp. 41, 42, 51)

44. The applicant is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) pursuant to a determination issued by the Internal Revenue Service in August 2001. (App. Ex. #1)

45. The applicant is exempt from sales and use taxes pursuant to a determination made by the Department on March 14, 2003. (App. Ex. #1)

CONCLUSIONS OF LAW:

Section 15-65 of the Property Tax Code allows exemptions for charitable purposes and provides in part 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(a), (b)).

Property may be exempt under section 15-65 if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes.

Id.; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable

purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and 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 (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden

Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004).

They are not requirements and are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

The applicant contends that it meets the guidelines enumerated in Methodist Old Peoples Home. The applicant states that it accepts donated materials that it provides to low to moderate income citizens for a nominal fee, and it uses its property to store and distribute the materials. The applicant argues that its materials are available to the general public, and its goal is to reach low to moderate income families who could not otherwise afford the materials. Even though fees are set for the materials, the applicant asserts that its policy is to reduce or waive those fees for those who cannot afford to pay, and all income generated from the fees is used for operating expenses.

In addition, the applicant states that it has partnered with the Illinois EPA to recycle paint, and it charges a nominal fee to collect the paint. The applicant argues that it recycles the paint and provides it to low to moderate income families at a nominal charge. The EPA collects and discards the unusable parts of the recycled paint. The applicant maintains that this program helps to remove hazardous material from the community and keeps it from ending up in local landfills. It also eases the burden on the State to collect and dispose of this material. The applicant notes that because of this program, the EPA no longer needs to hold an annual paint recycling project at the state

fairgrounds. In addition, the applicant states that it intends to use the fees that it receives to fund other programs, such as the CRAFT program.

The applicant argues that it benefits an indefinite number of people because its resources are made available to everyone, and no one is denied the resources based on income or for any other reason. The applicant contends that it also waives or reduces the fee for those who cannot pay it. The applicant states that it has no capital stock or shareholders, and earns no profits or dividends. The buildings are subject to a mortgage, and the applicant has very little equity in them. The applicant claims that it derives its funds primarily through private and public donation because the majority of the materials are donated, and material that is not donated is “purchased” for a very small amount. The applicant asserts that no benefits inure to any private individual.

The applicant states that it dispenses its benefits to all people who need and apply for them, and it does not place obstacles in the way of those seeking its benefits. It notes that no one is required to provide proof of income or otherwise demonstrate the lack of ability to pay. It claims that it primarily uses the property for charitable purposes because the buildings are used to store the property, which is later distributed to the clients. In addition, the paint recycling program is operated on the property. The applicant argues that allowing individuals to obtain these materials improves their lives and community, and it lessens the burden on the State to support these areas. The applicant also notes that courts have held that charging a fee does not destroy an organization’s entitlement to the exemption, and the fee waiver policy does not have to be advertised. See Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill. App. 3d 884 (2nd Dist. 2001); Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060 (1st Dist. 2000).

Furthermore, the applicant contends that it operates at a loss, is not making a profit from the fees, and the majority of its “funding” is from the donated materials.

The Department contends that in the event that the applicant is found to be a charitable organization, the portion of the property that was leased to SIU should not be exempt. The Department argues that according to the case of Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), when an entity that receives an exemption based on ownership and use leases property to an entity that receives an exemption based only on ownership, the property is not exempt. The Department has not responded to the applicant’s remaining arguments.

In Village of Oak Park, the property was leased from a religious organization to a municipality, and the court determined that the property did not qualify for the exemption. The court found, *inter alia*, that the case was distinguishable from Childrens Development Center, Inc. v. Olson, 52 Ill. 2d 332 (1972) (property leased from a religious organization to a charitable organization was exempt) on the basis that the lessee was a municipality, which receives an exemption based on ownership only, not use. In addition, the court found that the property was leased to the Village of Oak Park with a view to profit. Village of Oak Park at 500.

In the present case, it appears as though the property leased to SIU was leased with a view to profit. The applicant received a substantial amount of income from the lease during 2003, and the premises were used for SIU’s medical school. Nothing in the record indicates that the applicant did not lease the premises for the production of income.

With respect to the remaining property that was used by the applicant, it is not clear from the record that the primary use of that property was not for the production of income. Under the expense section of the profit and loss statement, the applicant had expenses under federal taxes of \$1,500 for estimated taxes and \$3,266 for Form 990-T. It also had state tax expenses of \$750 for estimated taxes and \$1,500 for Form IL-990-T. The federal and state forms 990-T are filed by organizations that are exempt under section 501(a) but have gross income from an unrelated trade or business of \$1,000 or more.

Because the applicant filed these forms, it appears as though the applicant received or earned income from an unrelated business. The estimated tax payments suggest that it will continue to do so. The applicant did not explain why these forms were filed and did not offer the forms into evidence. It is not clear from the record what type of business income the applicant received that resulted in the filing of these forms and whether this business was conducted on the property in question.

In addition, although the applicant states that it waives fees for those who cannot pay, it is not clear from the record that the fees for the materials are actually waived for those who do not have the ability to pay or that the customers are aware that the fees may be waived. When the warehouse manager was asked whether providing material to people who do not have the ability to pay happens on a regular basis, he answered, "Not really too much. I mean, usually, you know, when they come in shopping, they expect they're going to pay something for it I guess. But I've had a lot of people that, you know, that want to dicker with the price and come down and say, I usually work with them. I've

donated some paint to the people that, you know, really act like they needed it and really didn't have the ability to pay it.” (Tr. pp. 47-48)

From the manager's testimony, it appears as though the customers expect to pay something for the material, and they view the applicant's operations as being similar to a discount retail outlet rather than a charity. Other than providing free paint, nothing indicates that the applicant has provided other material without charge. Providing the material at a reduced price or discount is not the same as providing the material free of charge to those who cannot afford to pay for it. During the year in question, the applicant did minimal advertising, and it appears as though no one was aware that the fee for the materials may be waived. The testimony suggests that the customers believe that they may receive a discount on the items, but giving a discount is different than giving charity.

The manager stated that he donated paint to people who acted like they needed it, but he did not explain how he reached that conclusion. The applicant has its customers complete a client referral form that shows the range of yearly household income, but the applicant did not indicate that it uses this form as a basis for determining which customers should receive free materials or that clients with incomes below a certain level will receive free materials. The applicant did not provide copies of the client statements to show what percentage of its customers are from the lower income ranges. The “Access to Materials” policy also indicates that the “fee may be met by timed payments or through ‘work in trade.’” The applicant did not explain under what circumstances this option is used.

The applicant is certainly providing services that are beneficial to the community, especially the paint recycling program. Nevertheless, the applicant has the burden of

proving clearly and conclusively that it is entitled to the exemption. See Hopedale Medical Foundation, 46 Ill. 2d at 462; Evangelical Hospitals Corporation, 223 Ill. App. 3d at 231. All debatable questions must be resolved in favor of the Department. *Id.* The evidence suggests that the applicant earns business income that may be conducted on the property in question. This unrelated business income raises doubts as to whether the property is used with a view to profit. Also, the applicant has not clearly established that it waives its fees for those who are unable to pay them, or that the sale of the donated material is not done with a view to profit. For these reasons, it cannot be found that the property is entitled to the exemption.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2003.

Linda Olivero
Administrative Law Judge

Enter: February 27, 2006