

PT 98-60
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

BREACH MENDERS, INC.)		
Applicant)		
	)	Docket #s	94-81-92
	)		94-81-93
	)		94-81-97
	)		94-81-114
v.)		
	)	Parcel Index #	09-302
	)		09-202
	)		09-1801-1
	)		09-394
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Roy H. Glockhoff and Mr. Gary L. Haytcher appeared on behalf of Breach Menders, Inc.

Synopsis:

The hearing in these matters was held on February 26, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not Rock Island County Parcel Index Nos. 09-302, 09-202, 09-1801-1, and 09-394 qualified for exemption from real estate taxation for all or part of the 1994 assessment year.

Mr. Chris Ericksen, director of Breach Menders, Inc., (hereinafter referred to as the "Applicant"), and Ms. Cathryn Lass, administrative aid of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned the four parcels here in issue during all or part of the 1994 assessment year; and finally, whether the applicant was either in the process of adapting these four parcels for charitable use or actually used said parcels for charitable purposes during all or part of the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned these parcels during various portions of the 1994 assessment year. Finally, it is determined that the applicant was in the process of adapting these parcels for charitable use during various portions of the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels did not qualify for exemption for any portion of the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On July 22, 1994, concerning Rock Island County Parcel Index Nos. 09-302, 09-202, and 09-1801-1, the Rock Island County Board of Review transmitted to the Department Applications For Property Tax Exemption To Board of Review concerning the aforesaid three parcels, for the 1994 assessment year. On November 4, 1994, the Rock Island County Board of Review transmitted to the Department an Application For Property Tax Exemption To Board of Review concerning Rock Island County Parcel Index No. 09-394 for the 1994 assessment year. (Dept. Ex. Nos. 1, 1H, 1P, & 1X)

3. On November 3, 1995, the Department advised the applicant that it was denying the exemption of the four parcels here in issue for the 1994 assessment year for the reason that said parcels were not in exempt use. (Dept. Ex. Nos. 2, 2A, 2B, & 2C)

4. By a letter dated November 22, 1995, the administrative aid for the applicant requested a formal hearing concerning these matters. (Dept. Ex. No. 3)

5. The hearing in these matters conducted on February 26, 1997, was held pursuant to that request.

6. The applicant acquired Rock Island County Parcel Index Nos. 09-302 and 09-202 by warranty deeds from the City of Rock Island dated May 17, 1994. (Dept. Ex. Nos. 1 & 1I)

7. The applicant obtained Rock Island County Parcel Index No. 09-1801-1 from Gary and Cynthia Schnittgrund by a warranty deed dated December 7, 1993. (Dept. Ex. No. 1Q)

8. The applicant procured Rock Island County Parcel Index No. 09-394 from the Rock Island County Trustee by a quit claim deed dated October 17, 1994. (Dept. Ex. No. 1Y)

9. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act “ of Illinois, on May 4, 1981, for the following purposes:

. . . civic purposes in order to provide decent housing for lower-income prospective homeowners who would not otherwise be able to own their own homes, and to provide decent, affordable housing for lower-income renters. (Dept. Ex. No. 1AE)

10. On August 18, 1982, the purpose clause of the Articles of Incorporation of the Applicant were amended to read as follows:

Charitable and Educational within the meaning of Section 501(c)(3) of the Code. (Dept. Ex. No. 1AF)

11. Pursuant to a letter from the Internal Revenue Service dated June 19, 1984, the Applicant is exempt from federal income tax pursuant to Section 501 (c)(3) of the Internal Revenue Code. (Dept. Ex. No. 1AH)

12. The applicant procures vacant houses within a specific area of generally low income housing within the City of Rock Island. This area is described as “running from 1st Avenue on the South to 18th Avenue on the North and from 1st Street on the East to 30th Street on the West.” This area includes approximately 540 square blocks. (Tr. pp. 21 & 45)

13. The applicant acquires vacant houses by receiving them as a donation, by buying them at a tax sale, or by obtaining them from the City of Rock Island for the amount of the unpaid taxes on the property. (Tr. p. 15)

14. After the applicant acquires a parcel with a vacant house, it obtains liability insurance on the house and the parcel. The applicant's workers then stabilize the vacant house by patching the roof or putting on a new roof, if necessary. The applicant then proceeds to secure the house by glazing the windows, securing the doors, and cleaning out the house to remove infestations. The applicant may also remove a porch or demolish any outbuildings that could be a danger to neighborhood children. The applicant then proceeds to prepare a detailed list of the work necessary to rehab the house. A sign is then placed on the property stating that the applicant owns it and that it is available for sale and rehabilitation. (Tr. pp. 16 & 17)

15. At this point, the applicant considers the vacant house to be stabilized and available for sale. The house remains in this condition until a qualified low-income buyer who wishes to purchase the home is found and is approved by a bank for a mortgage loan. During this period of time, employees of the applicant check on the vacant house on a biweekly basis to make sure that the house remains secure and stabilized. (Tr. pp. 44 & 45)

16. All of the applicant's houses that are stabilized and secured are for sale. (Tr. p. 61)

17. At any one time, the applicant will have one house which is in the process of being rehabilitated and six to eight houses which are stabilized and available for sale. On the date of the hearing, the applicant had seven stabilized vacant houses. During 1994, there were eight stabilized vacant houses. (Tr. pp. 18, 49, & 53)

18. To be in a position to purchase one of the applicant's rehabilitated houses a potential buyer's income must be 80% or less of the median income of the area in which the applicant operates. The applicant then checks the prospective purchaser's credit and employment record. (Tr. p. 23)

19. Once the purchaser is approved by a lender to purchase a vacant house, they are included in the rehabilitation process and help in the selection of colors for the rehabilitation of

the house. The purchaser is required to put in at least 80 hours of work on the rehabilitation of the house. If the purchaser is painting, for example, the applicant's employees will instruct them on the best way to paint and how to use the various painting tools. (Tr. pp. 23, 32, & 40)

20. After the house is finished and the purchaser moves in, the applicant counsels them concerning budgeting for household expenses. The applicant then teaches them how to do routine household maintenance, including how to change the furnace filters. The applicant also teaches them how to clean the gutters, keep the windowsills caulked, and how to inspect and do other maintenance chores. (Tr. p. 40)

21. The applicant's employees include the director, the administrative aid, and several carpenters. The applicant provides the training for the Rock Island High School Housing Rehabilitation Program. The applicant also provides training to court restitution workers who also assist in the applicant's rehabilitation work. In addition, the applicant trains workers for the local Housing Authority. Finally, the applicant uses volunteers from churches and the local colleges in its rehabilitation work. (Tr. p. 23)

22. The applicant finances the rehabilitation of a vacant stabilized house by having a prospective buyer make an application for a loan secured by a mortgage. The applicant assists that prospective buyer to obtain conventional financing for approximately one half of the purchase price. The applicant then provides the remaining one half of the purchaser's cost for the parcel and the house through federal and state grants and low interest rehabilitation programs. (Tr. pp. 18 & 19)

23. The sale price, which the applicant charges to the prospective buyer, would include the applicant's acquisition costs and the costs of rehabilitation. The acquisition costs would include any back taxes the applicant would have to pay, liability insurance on the property, and the cost to stabilize and secure the property. The costs of the rehabilitation work would include the wages paid to the applicant's permanent employees, the costs paid to the plumbing contractor and the electrician required by the city code, and the costs of the materials. There is no profit included in the sale price. (Tr. pp. 35 & 36)

24. Applicant's primary source of funds are City of Rock Island block grants, and federal and state rehabilitation grants. (Tr. pp. 18 & 19, 21 & 22)

25. The first parcel here in issue is Rock Island County Parcel Index No. 09-302. The applicant acquired this parcel on May 17, 1994. During June of 1994, the windows and doors were secured. During July 1994, the site was cleaned up by a volunteer group from a church. During November 1994, floor plans were drafted so that a work write up could be prepared. In April of 1995, the house was cleaned up. On the date of the hearing, this parcel was occupied by Ms. Nellie Hare and her two sons. Ms. Hare owns this parcel. The sale price to Ms. Hare was approximately \$45,000.00. The City provided a \$5,000.00 no interest rehabilitation loan, repayment due when Nellie Hare sells the property. The State of Illinois also provided a \$20,000.00 no interest rehabilitation loan, with repayment due when Ms. Hare sells the property. Ms. Hare obtained a \$20,000.00 conventional loan from First Midwest Bank, which was secured by a mortgage. (Tr. pp. 27-32)

26. The next parcel is Rock Island County Parcel Index No. 09-202. The applicant acquired this parcel on May 17, 1994. During June 1994, the windows and exterior doors were secured and there was a yard clean up. In July of 1994, there was a site clean up. In 1995, there was a site clean up in May. An exterior door was secured in July, after the house was broken into. The day before the hearing in this matter, the applicant was advised that the loan application filed by Brinita Walker had been approved. The applicant anticipates closing on this parcel within a few weeks. (Tr. pp. 37-42)

27. The next parcel is Rock Island County Parcel Index No. 09-1801-1. This parcel was acquired on December 7, 1993. During June 1994, the windows and exterior doors of the house on this parcel were secured and there was a yard clean up. In July 1994, there was a site clean up. In November, floor plans were drafted. During May through September 1995, the applicant mowed the grass and kept the yard cleaned up. This parcel and the house thereon were still owned by the applicant on the date of the hearing. The applicant received a grant from the

Federal Home Loan Bank, which at the time of the hearing it was using to improve the windows and sashes in this house. (Tr. pp. 42-45)

28. The last parcel here in issue is Rock Island County Parcel Index No. 09-394. The applicant acquired this parcel on October 17, 1994. The applicant purchased this parcel at the county tax auction. During June 1994, the windows and exterior doors were secured, the yard was cleaned up and construction wiring was installed. During November 1994, floor plans were developed. During 1995, the site was cleaned up and the garage was cleaned out. The applicant put a temporary fence around this parcel. Although this parcel has been shown to several prospective buyers, it has not been sold. (Tr. pp. 45-47)

29. I take Administrative Notice of the Department's decision in Docket No. 89-81-22 in which it was determined that the applicant is a charitable organization.

Conclusions of Law:

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

35 ILCS 200/15-65 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....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt

arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits.

Based on the foregoing findings of fact, I conclude that the benefits derived are for an indefinite number of persons, namely employed low-income persons. I conclude that since the applicant is an Illinois not-for-profit corporation, it has no capital, capital stock, or shareholders, and does not profit from the enterprise. The applicant, I conclude, derives its funds primarily from private contributions, city and state government grants, which are held in trust for the objects and purposes expressed in its charter. Applicant dispenses charity to employed low-income persons who need and apply for it and no obstacles are placed in the way of those seeking the benefits.

In addition to assisting qualified low-income buyers to obtain housing, the applicant trains them to budget and to maintain their housing. The applicant also provides rehabilitation training for high school students, persons in the court system required to make restitution, and persons employed by the local housing authority. In addition, I conclude that the Department has previously determined that the applicant is a charitable organization in Department Docket

No. 89-81-22.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (1987). As soon as the applicant acquired each of the parcels here in issue, it insured the property. Applicant then stabilized and secured the vacant houses located on these parcels and placed these parcels in its inventory of property available for sale. While these parcels were in this inventory of property available for sale, the employees of the applicant maintained each parcel and made sure that the houses remained stabilized and secure until a prospective buyer who qualified for financing was found.

By the date of the hearing, Rock Island County Parcel Index No.09-302 had been sold, and was occupied by a low-income working person and her two children. On the hearing date, a prospective buyer had been found for Rock Island County Parcel Index No. 09-202 and that buyer's financing had been approved.

On the hearing date, Rock Island County Parcel Index Nos. 09-1801-1 and 09-394 remained in the applicant's inventory of property which had been stabilized, secured, and was available for sale.

In the case of Norwegian American Hospital v. Department of Revenue, 210 Ill. App. 3d 318 (1st Dist. 1991), the Court determined that properties where the buildings had been razed and the sites leveled and landscaped as a part of a general plan of site improvement around the hospital were reasonably necessary to the survival and efficient administration of the hospital, and were therefore used for charitable purposes. I conclude that the four Rock Island County Parcel Index Nos. which had been stabilized, secured, and were being held by the applicant for sale to a qualified low-income buyer pursuant to its long range plan, were reasonably necessary to the efficient administration of the applicant's charitable activities.

I therefore conclude that Rock Island County Parcel Index No. 09-302 was either in the process of adaptation for exempt use or used for exempt purposes during the period May 17, 1994 through December 31, 1994.

I further conclude that Rock Island County Parcel Index No. 09-202 was either in the process of adaptation for exempt use or used for exempt purposes during the period May 17, 1994 through December 31, 1994.

I also conclude that Rock Island County Parcel Index No. 09-1801-1 qualified for exemption during the period June 1994 through December 31, 1994, after the applicant began to adapt the house on that parcel for exempt use.

Finally, I conclude that Rock Island County Parcel Index No. 09-394 qualified for exemption during the period October 17, 1994 through December 31, 1994, when the house on said parcel was either in the process of adaptation for exempt use or used for exempt purposes and the applicant owned it.

I therefore recommend that Rock Island County Parcel Index Nos. 09-302 and 09-202 be exempt from real estate taxation for 63% of the 1994 assessment year. I further recommend that Rock Island County Parcel Index No. 09-1801-1 be exempt from real estate taxation for 59% of the 1994 assessment year. Finally I recommend that Rock Island County Parcel Index No. 09-394 be exempt from real estate taxation for 21% of the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 11, 1998