PT 99-2
Tax: **PROPERTY TAX**
Issue: **Charitable Ownership/Use**

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

ASSYRIAN SOCIAL CLUB, INC, APPLICANT	**No. 95-16-0897**
	Real Estate Tax Exemption for 1995 Assessment Year
v.	**P.I.N.S: 13-02-100-021, 13-02-100-022, 13-02-100-023, 13-02-100-024, 13-02-100-025**
	Cook County Parcels
ILLINOIS DEPARTMENT OF REVENUE	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Robert W. Dekelaita of Dekelaita & Gruzmark, Ltd. on behalf of the Assyrian Social Club, Inc.

SYNOPSIS: This proceeding raises the following issues: (1) whether the Assyrian Social Club, Inc. (hereinafter the "applicant") qualifies as an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code, 35 **ILCS** 200\1-1 *et seq*; and (2) whether real estate identified by Cook County Parcel Index Numbers 13-02-100-021, 13-02-100-022, 13-02-100-023, 13-02-100-024 and 13-02-100-025 (hereinafter collectively referred to as the

"subject property") was "actually and exclusively used for charitable or beneficent purposes" during the 1995 assessment year, as required by Section 15-65.

The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on May 8, 1996. Dept. Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept. Group Ex. No. 1, Doc. C.

The Department accepted this recommendation via a determination dated June 12, 1997. Said determination found that the subject property was neither in exempt ownership nor in exempt use. Dept. Ex. No. 2. Applicant thereafter filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property was not in exempt ownership and not in exempt use. *Id*.
3. The subject property is located at 6313 N. Pulaski, Chicago, IL and improved with a one story building that occupies 11,700 square feet. Dept. Group Ex. No. 1, Doc. C.
4. The Application for Property Tax Exemption filed with the Department on June 18, 1996 states that applicant used "3/5" of the building as a "cultural center."

This document also indicates that applicant gave music lessons, taught languages, and provided social services to new immigrants on a weekly basis at the cultural center. Dept. Group Ex. No. 1, Doc. C.

5. The Application does not indicate how applicant used the remaining 2/5 of the subject property. *Id.*

B. Applicant's Organizational Structure

6. Applicant was incorporated under the General Not for Profit Corporation Act of Illinois on May 14, 1993. Its basic organizational purposes are to encourage education and social welfare in the Assyrian community and promote the cultural heritage thereof. Applicant Ex. Nos. 6, 7.

7. Applicant's constitution and by-laws provide, *inter alia*, that: (1) any person wishing to become a member of the Assyrian Social Club must: (a) fill out a membership application; (b) be presented to applicant's executive committee by a member in good standing; (c) be approved by the membership committee, the executive committee and a 2/3 vote of the general membership; (d) take a membership oath upon being approved; and (e) pay an initiation fee of $25.00 and dues of $10.00 per month. Applicant Ex. No. 7.

8. Applicant's constitution and by-laws further state, *inter alia*, that: (1) membership will be effective upon payment of initiation fees and dues, after which a membership card will be issued to the new member; (2) any member whose dues are in arrears for 3 months, or any member who fails to prepay dues "for six months in advance" shall be provided with written notice of delinquency and then automatically suspended from membership unless the arrearage is paid in full within one month; and, (3) any member so suspended may be reinstated by following the new membership procedure. *Id.*

9. Applicant's constitution and by-laws do not contain any provision authorizing applicant to waive or reduce initiation fees or membership dues in cases of financial need. *Id*.

10. Applicant did not submit any tax returns, audited financial statements or other information establishing its exact sources of income and the expenditures associated therewith for the tax year in question.

C. Ownership and Use Issues

11. Applicant obtained ownership of the subject property via a warranty deed dated May 20, 1993. Applicant Ex. No. 8; Tr. p. 18.

12. Applicant used "3/5" of the building located on the subject property as a "cultural center" throughout 1995.[1] It used this "cultural center" to provide free instruction in the Assyrian language on Tuesday evenings, offer free piano lessons on Wednesday evenings and sponsor approximately 25-30 free lectures about Assyrian history on Thursday evenings. Dept. Group Ex. No. 1, Doc. C; Applicant Ex. Nos 2, 3, 4; Tr. pp. 12-14, 25.

13. All of these activities were open to the public although exact public attendance was unspecified. *Id*.

14. Applicant also provided free immigration support services at the cultural center. It extended these services, which included help filling out necessary paperwork and translation, to those applying for American citizenship or seeking political asylum in the United States. Tr. pp. 28-31.

15. Applicant helped approximately 5 families obtain political asylum during 1995. It assisted another 25 persons with citizenship papers throughout that time. *Id*.

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1. All uses described in this and the ensuing Findings of Fact shall be uses that occurred during the 1995 assessment year.

16. Applicant allowed an Assyrian religious group, the St. Mar Zaya, to hold festival celebrations at the cultural center. It did not charge St. Mar Zaya for using the cultural center on these occasions. Tr. pp. 23-24.

17. St. Mar Zaya held between 20 and 25 festival celebrations at the cultural center during 1995. Attendance at each of these celebrations was unspecified. *Id*.

18. Applicant further permitted unspecified persons to use the cultural center for post-funeral mourning sessions at no charge. Tr. pp. 24-25.

19. The record fails to disclose what, if any uses applicant made of the remaining 2/5 of the building.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does 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 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.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a

self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, 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 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 **ILCS** 200/1-3 *et seq*.). The provisions of the Code that govern disposition of the instant proceeding are found in Section 15-65. In relevant part, that 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.

35 **ILCS** 200/15-65.

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. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); 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).

Here, the relevant statutory exemption pertains to "institutions of public charity". Our courts have long refused to grant relief under Section 15-65 absent appropriate evidence that the property in question is: (1) owned by an entity that qualifies as an "institution of public charity"; and, (2) "exclusively used" for purposes that qualify as "charitable" within the meaning of

Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

In Korzen, the court defined "charity" as follows:

> … charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

It then supplemented this definition by noting that "institutions of public charity":

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 it; 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 it dispenses.

Korzen, *supra*, at 157.

1. Lack of Exempt Ownership

The first step in determining whether an organization is charitable is to consider the provisions of its charter. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Applicant's constitution and by-laws (Applicant Ex. No. 7) provide, *inter alia*, that prospective members must survive a selection process, pay an initiation fee, and pay membership dues in a timely manner.

The selection process is inherently exclusionary toward those whom applicant does not approve. As such, it is distinctly non-charitable. Furthermore, the initiation fee and dues

requirements raise the inference that applicant violates Korzen by placing financial "obstacles" in the way of those who can not afford to make necessary payments.

This inference is strengthened by the fact that applicant's constitution and by-laws are completely devoid of any provision that accommodates such persons or provides for others in financial need. *Accord*, Small v. Pangle, 60 Ill.2d 510, 518 (1975). Instead, these documents impose a sanction of automatic suspension on those who fail to pay membership dues within a prescribed time limit. This provision is, in effect, a penalty for non-payment which "lacks the warmth and spontaneity indicative of charitable impulse." Korzen, *supra* at 158.

Based on the above considerations, I conclude that applicant's membership is, in reality, limited to that class of persons whom: (1) applicant approves via its selection process, and, (2) can afford to make whatever payments applicant prescribes. Because applicant's membership is so limited, I further conclude that its organizational structure is akin to that of a fraternal and/or social organization.

These organizations generally do not qualify for exempt status because they operate primarily for the benefit of the limited class of persons who receive and maintain membership therein. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association, *supra*; Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). Consequently, any "charity" such organizations dispense in the course of their endeavors is but an incidental by-product of operations that do not benefit an "indefinite number of persons". *Accord*, Rogers Park Post No. 108, *supra.*

Applicant's failure to satisfy this definitional requirement strongly suggests that it does not qualify for exempt status. However, this is not applicant's sole barrier to qualifying as an "institution of public charity" because the record does not contain any tax returns, audited financial statements or other evidence that establishes applicant's financial structure. Without this evidence, I am unable to determine whether applicant satisfies the financial requirements contained in part two of the test articulated in Korzen. For this and all the above-stated reasons,

that portion of the Department's determination which denied the subject property exemption from 1995 real estate taxes due to lack of exempt ownership should be affirmed.

2. Lack of Exempt Use

Analysis of the use issue begins with recognition of the fundamental principle that the word "exclusively" when used in Section 15-65 and other exemption statutes means the primary use to which real estate is put. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). Therefore, incidental or secondary uses are not determinative of a property's exempt status. *Id.*

The Application for Property Tax Exemption (Dept. Group Ex. No. 1, Doc. C) indicates that applicant used "3/5" of the subject property as a cultural center during 1995. However, neither this document nor any other evidence of record make any statement about how applicant used the remaining 2/5. Absent this information, applicant has failed to prove that this 2/5 of the subject property was in exempt use.

Applicant has nevertheless proven, via the aforementioned Application, that the subject property was primarily used as a "cultural center" throughout the tax year in question. Such a use might qualify as "charitable" within the meaning of Section 15-65 if not for the fact that social and/or fraternal organizations, such as applicant, operate primarily for the benefit of their own members. Rogers Park Post No. 108, *supra.* For this reason, the broader public is generally considered to be but an incidental beneficiary of any uses associated with such operations. *Id*.

The record does not support a departure from that generalization because it fails to disclose critical attendance information. For instance, the record does not reveal how many people regularly attended the piano lessons, lectures and other activities that applicant held at the cultural center. Nor does it disclose whether any of the attendees were non-members.

The absence of this evidence raises doubts as to whether anyone except applicant's own members actually benefited from the cultural center activities. Such doubts must be resolved in favor of taxation.[2] Therefore, applicant has failed to clearly and convincingly prove that the piano lessons and other cultural center uses qualify as "charitable" within the meaning of Section 15-65.

The fliers submitted as Applicant Ex. Nos. 2, 3 and 4 do not mitigate this failure of proof. These documents may support the inference that applicant intended to make the piano lessons, language instruction, lectures and other cultural center activities available to the public without charge. However, this inference is of no avail to the applicant because it is the actual, rather than intended, use of real estate that determines exempt status. 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).

Due to the aforementioned evidentiary deficiencies, I am unable to discern whether the cultural center was actually used for the primary benefit of applicant's members or the general public. Nevertheless, this record contains ample evidence to support the conclusion that the subject property is owned and used by an organization which operates primarily for the benefit of its own members. Therefore, it seems logically inconsistent for that same organization to "actually and exclusively" use the identical property for "the benefit of an indefinite number of persons", as required by Korzen. *Accord*, Rogers Park Post No. 108, *supra*.

Based on the above considerations, I conclude that the subject property was not primarily used for exempt purposes during 1995. Specifically, I conclude that the record lacks enough

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2. *See, supra*, at p. 6

evidence to support the conclusion that the piano lessons, lectures and other "cultural center" uses qualified as being "charitable" within the meaning of Illinois law. I further conclude that the record is unclear as to whether the uses associated with immigration assistance, mourning sessions and religious festivals were included in the overall "cultural center" use.

If they were so included, then the above reasoning would dictate that they fail to qualify as exempt uses. If, however, they were not so included, then each of the three activities would become a separate but non-exempt incidental use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). Because either interpretation supports taxation, resolving this ambiguity will not alter the ultimate conclusion of non-exempt use. For this and all the aforementioned reasons, that portion of the Department's determination which denied the subject property exemption from 1995 real estate taxes due to lack of exempt use should be affirmed.

2. Final Considerations

Applicant's final argument that its exemption from federal income tax alters the above conclusions. However, the Internal Revenue Service did not issue this exemption until June 23, 1998, a date which occurred after the 1995 assessment year ended on December 31, 1995. Thus, applicant's exemption from federal income tax is technically irrelevant to this case. Even if it were not, the exemption from federal income tax does not establish that the subject property was actually used for exempt purposes during the year in question. In re Application of Clark v. Marion Park, Inc, 80 Ill. App. 3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

Moreover, while the exemption from federal income tax establishes that applicant is an exempt organization for purposes of the relevant sections of the Internal Revenue Code, these

sections do not preempt the exemption requirements contained in section 15-65 of the Property Tax Code. Therefore, applicant's exemption from federal income tax can not provide a legally sufficient basis for exempting the subject property from 1995 real estate taxes under the relevant statute. Based on this consideration, as well as the analysis establishing that the subject property was neither in exempt ownership nor in exempt use, the Department's determination denying said property exemption from 1995 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 13-02-100-021, 13-02-100-022, 13-02-100-023, 13-02-100-024 and 13-02-100-025 not be exempt from 1995 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge