

PT 99-5

Tax: PROPERTY TAX

Issue: Charitable Ownership/Use

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

BLOOMINGTON DAY CARE, INC.)	Docket #	96-57-21
Applicant)		
)	Parcel Index #(41) 14-31-400-021	
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. E. William Rolley, Attorney at Law, for Bloomington Day Care, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Springfield, Illinois on June 11, 1998, to determine whether or not McLean County Parcel Index No. (41) 14-31-400-021 qualified for a property tax exemption during the 1996 assessment year.

June Davis, Executive Director of Bloomington Day Care Center, Inc., (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1996 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for charitable purposes during the 1996 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel from January 12, 1996, through December 31,

1996, or for 97% of the 1996 assessment year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the parcel for charitable purposes during 97% of the 1996-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that McLean County Parcel Index No. (41) 14-31-400-021 did not qualify for a property tax exemption for the 1996 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 10)

2. On April 17, 1997, the Department received a property tax exemption application from the McLean County Board of Review for Permanent Parcel Index No. (41) 14-31-400-021. The applicant had submitted the request, and the board recommended granting a partial year exemption from January 12, 1996, through December 31, 1996. The Department assigned Docket No. 96-57-21 to the application. (Dept. Grp. Ex. No. 2)

3. On September 18, 1997, the Department denied the requested exemption application, finding that the property was not in exempt ownership and use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on June 11, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a warranty deed dated January 12, 1996. The parcel contains 60,205 square feet. Located on the parcel are two one-story buildings. One of the buildings is 7,360 square feet and contains classrooms and a kitchen. The second building is a 128 square foot play yard toy shed. (Dept. Grp. Ex. No. 2 pp. 1, 3)

7. The subject parcel is commonly known as 1009 Maple Hill Road, Bloomington, Illinois. It is the site of "Kids Club West." There the applicant operates a day care center for children aged 6 weeks to 12 years. (Dept. Grp. Ex. No. 2 pp. 1, 6-7, 9)

8. The applicant was incorporated under the general not-for-profit corporation act on April 14, 1972, for the purpose stated in its by-laws. Articles of amendment to the articles of incorporation were filed with the Secretary of State on July 3, 1994, and added 501(c)(3) language of the Internal Revenue Code to the purpose clause. The by-laws of the applicant state that the purpose of the applicant is “to provide quality day care primarily for six weeks to six year olds through a stimulating environment and the concerned direction of a trained and dedicated staff and parents of the children served.” (Dept. Grp. Ex. No. 2 pp. 13, 19-24)

9. The applicant operates not-for-profit day care centers for under-privileged children of low-income families. Prior to opening Kid’s Club West, the applicant had over 200 families on their waiting list at another facility. (Dept. Grp. Ex. No. 2 pp. 1, 5, 9, 20; Tr. p. 23)

10. At Kid’s Club West, full time child-care services are given to children ranging in age from 6 weeks to the age of 12. The building is divided into classrooms that separate the different aged children. The building also contains an office and a kitchen. The outside area is divided into two playgrounds, one for the younger children and one for the older. The facility provides services primarily to low income families that meet the requirements from the Department of Human Services for child care assistance. Ninety-six of the 105 children enrolled at Kid’s Club West are from families that receive a subsidy for the child care payments. (Applicant’s Ex. No. 4A; Tr. pp. 17-18)

11. The applicant has no registration fee. If someone is unable to pay the fees that the applicant is mandated by the Department of Human Services to charge, the applicant will work with the family to see what can be done. No child has ever been asked to leave applicant’s facilities because of an inability to pay the fees. (Tr. p. 28)

12. The applicant’s income for the fiscal year ending June 30, 1997, as shown in its financial statement, was for Kid’s Club West: from DCFS Title XX Program-\$18,241.00; Other DCFS/DPA Programs-\$209,889.00; Bloomington Township-\$12,689.00; Catholic Social Services-\$415.00; Federal Ford Program-\$33,933.00; DCFS/DPA Parent Fees-\$4285.00; Full Fee Parents-\$143,286.00, for total receipts for child care on the parcel in question of

\$422,738.00. DCFS stands for Department of Children and Family Services. DPA is the Department of Public Aid. (Applicant's Ex. No. 2)

13. I take administrative notice of the fact that the applicant has been granted an exemption pursuant to Docket No. 8057-23 for another day care facility that it operates in McLean County at 309 East Wood Street, Bloomington, Illinois. (Applicant's Ex. Nos. 1, 10)

14. The applicant operates Kid's Club West in the same manner as the operation of the property at 309 East Wood Street. (Dept. Ex. No. 4; Tr. p. 14-15)

Conclusions of Law:

Article IX, §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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the 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) 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 (1941). Further, 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)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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, . . .

HERE, THE APPROPRIATE EXEMPTION APPLIES TO "INSTITUTIONS OF PUBLIC CHARITY." OUR COURTS HAVE LONG REFUSED TO APPLY THIS EXEMPTION ABSENT SUITABLE EVIDENCE THAT THE PROPERTY IN QUESTION IS OWNED BY AN "INSTITUTION OF PUBLIC CHARITY" AND "EXCLUSIVELY USED" FOR PURPOSES WHICH QUALIFY AS "CHARITABLE" WITHIN THE MEANING OF ILLINOIS LAW. METHODIST OLD PEOPLE'S HOME V. KORZEN, 39 ILL.2D 149, 156 (1968) (HEREINAFTER "KORZEN"). THEY HAVE ALSO ASCRIBED TO THE FOLLOWING DEFINITION OF "CHARITY[,]" ORIGINALLY ARTICULATED IN CRERAR V. WILLIAMS, 145 ILL. 625 (1893):

... A 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. ID. AT 643

THE ILLINOIS SUPREME COURT HAS EFFECTUATED THIS DEFINITION BY OBSERVING THAT ALL "INSTITUTIONS OF PUBLIC CHARITY" SHARE THE FOLLOWING "DISTINCTIVE CHARACTERISTICS[:]"

- 1) THEY HAVE NO CAPITAL STOCK OR SHAREHOLDERS;
- 2) THEY 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) THEY DISPENSE CHARITY TO ALL WHO NEED AND APPLY FOR IT;
- 4) THEY DO NOT PROVIDE GAIN OR PROFIT IN A PRIVATE SENSE TO ANY PERSON CONNECTED WITH IT; AND,
- 5) THEY 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 AT 157.

THE APPLICANT WAS DETERMINED BY THE DEPARTMENT TO BE A CHARITABLE ORGANIZATION IN GRANTING THE EXEMPTION IN DOCKET NO. 8057-23. THE APPLICANT OPERATES THE CHILD CARE FACILITY ON THE PARCEL IN QUESTION IN THE SAME MANNER AS IT OPERATES THE CHILD CARE FACILITY THAT WAS GRANTED THE EXEMPTION IN DOCKET NO. 8057-23. THE APPLICANT HAS NO CAPITAL STOCK OR SHAREHOLDERS; IT EARNS NO PROFIT OR DIVIDENDS AND DERIVES ITS FUNDS MAINLY FROM PUBLIC AND PRIVATE CHARITIES AND HOLDS THOSE FUNDS IN TRUST FOR THE OBJECTS EXPRESSED IN ITS BY-LAWS; THEY DISPENSE CHARITY TO ALL WHO NEED AND APPLY FOR IT; THEY DO NOT PROVIDE GAIN OR PROFIT TO ANY PERSON CONNECTED WITH KID S CLUB WEST; AND THEY DO NOT APPEAR TO PLACE ANY OBSTACLES IN THE WAY OF THOSE WHO NEED AND WOULD AVAIL THEMSELVES OF THEIR SERVICES.

IT IS THEREFORE RECOMMENDED THAT MCLEAN COUNTY PARCEL INDEX NO. (41) 14-31-400-021 BE EXEMPTED FROM PROPERTY TAX FOR 97% OF THE 1996-ASSESSMENT YEAR.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 27, 1999