

PT 99-7

Tax: PROPERTY TAX
Issue: Charitable Ownership/Use

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

GARWIN FAMILY FOUNDATION)	A.H. Docket #	98-PT-0015
Applicant)		
)	Docket #	97-39-13
v.)		
)	Parcel Index #	15-20-481-032-0040
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Edward Renshaw appeared on behalf of the Garwin Family Foundation.

Synopsis:

The hearing in this matter was held on June 2, 1998, at 2309 West Main Street, Marion, Illinois, to determine whether or not Jackson County Parcel Index No. 15-20-481-032-0040 qualified for exemption from real estate taxation for the 1997 assessment year.

Dr. Leo Garwin, president of the Garwin Family Foundation (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 this parcel during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the applicant used this parcel for charitable purposes or leased or otherwise used all or a portion of the parcel for profit during the 1997 assessment year. Following the

submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the 1997 assessment year. It is also determined that the applicant is a charitable organization. It is further determined that the applicant used 14% of this residence and parcel for charitable purposes during the entire 1997 assessment year. In addition, it is determined that the applicant used 86% of this residence and parcel for charitable purposes during the period January 1, 1997, through August 14, 1997. Finally, it is determined that 86% of this residence and parcel were leased or otherwise used for profit and consequently did not qualify for exemption for the period August 15, 1997, through December 31, 1997. It is therefore recommended that 86% of this residence and parcel be placed back on the tax rolls for 38% of the 1997 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that 86% of this residence and parcel did not qualify for exemption during the period August 15, 1997, through December 31, 1997, was established by the admission in evidence of Department’s Exhibits 1 through 6A.

2. On August 19, 1997, the Jackson County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue and the residence thereon for the 1997 assessment year. (Dept. Ex. No. 2)

3. On February 5, 1998, the Department advised the applicant that it was approving the exemption of 100% of the residence and site for the period January 1, 1997, through August 14, 1997, and 14% of the residence and site for the period August 15, 1997 through December 31, 1997. The Department also advised the applicant that it was denying the exemption of 86% of the residence and site for the period August 15, 1997, through December 31, 1997. (Dept. Ex. No. 3)

4. By a letter dated February 12, 1998, Dr. Leo Garwin, the president of the applicant, requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on June 2, 1998, was held pursuant to that request.

6. The applicant acquired this parcel and the residence thereon pursuant to a warranty deed dated August 17, 1994. (Dept. Ex. No. 2A)

7. The applicant was incorporated as an Oklahoma not-for-profit corporation on August 19, 1993. (Appl. Ex. No. 2)

8. The purposes of that corporation, as set forth in its articles of incorporation, read in part as follows:

The Corporation is formed exclusively for charitable, educational, religious, literary, and scientific purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended (referred to herein as the 'Code'), or the corresponding provision of any future United States internal revenue law. (Appl. Ex. No. 2)

9. From the beginning, the purposes of the applicant have been two fold. The first was to establish and fund the Arthur Grayson Memorial Distinguished Visiting Professorship of Law and Medicine (hereinafter referred to as the "Grayson Visiting Professor"). The second was to establish and fund a pair of annual scholarships for students entering Southern Illinois University (hereinafter referred to as "SIU") in the joint fields of medicine and law. (Tr. p. 8)

10. The agreement between the Board of Trustees of SIU and the applicant concerning the Grayson Visiting Professor is set forth in a document which is identified as Applicant's Exhibit 8. That document was executed in late October 1994. (Appl. Ex. No. 8)

11. In paragraph 1 of that document, it is agreed that the applicant will supplement the agreed salary of the Grayson Visiting Professor up to \$50,000.00 per school year. Said paragraph 1 ends with the following sentence:

The Foundation may also provide free housing for a Grayson Distinguished Visiting Professor. (Appl. Ex. No. 8)

12. The initial term of this agreement is 5 years. (Appl. Ex. No. 8)

13. The parcel here in issue and the residence thereon were purchased with the purpose of making available housing for the Grayson Visiting Professor and also to serve as the principal office of the applicant. (Tr. p. 10)

14. The principal office of the applicant occupies 14% of the residence on this parcel while the remaining 86% is the residential portion to be used by the Grayson Visiting Professor. The 14% of the residence, which is the principal office of the applicant, has been exempt since the time that the applicant acquired the parcel. (Tr. pp. 10 & 11)

15. The first Grayson Visiting Professor was Robert Schwartz of the University of New Mexico. He occupied the 86% or residential portion of the house on this parcel from August 1, 1996, through August 14, 1997. (Dept. Ex. Nos. 2B & 2D)

16. I take Administrative Notice of the Department's initial determination in this matter which exempted the 86% of the residence and parcel during the period January 1, 1997, through August 14, 1997, when it was occupied by Visiting Professor Robert Schwartz. (Dept. Ex. No. 3)

17. I take Administrative Notice of the Department's decision in Docket No. 95-39-5 in which it was determined that the applicant was a charitable organization.

18. During the period August 15, 1997, through December 31, 1997, 86% of the residence on this parcel was occupied by Rupali Gandhi and Kimberly Doody, pursuant to a residential lease. Rupali Gandhi and Kimberly Doody were students in the SIU joint medicine and law degree program. (Tr. pp. 12 & 13)

19. Rupali Gandhi was receiving one of applicant's student scholarships during 1997. Kimberly Doody had received a student scholarship from the applicant two years earlier. (Tr. p. 22)

20. The residential lease agreement between the applicant as "Landlord" and Rupali Gandhi and Kimberly Doody as "Tenants" was dated August 10, 1997. (Appl. Ex. No. 10)

21. The term of the lease is eleven months from August 15, 1997, through July 14, 1998. (Appl. Ex. No. 10)

22. The rent, pursuant to the lease, is payable in advance on the fifteenth day of each month. The rent during the term of the lease is \$550.00 per month. The first rent payment is due August 15, 1997. If the Landlord accepts the rent after the due date, the lease provides that the Tenants shall pay a late charge of \$5.00 per day. (Appl. Ex. No. 10)

23. The Tenants are required to pay a security deposit of \$550.00 payable on or before the first day of the term. All utilities are to be paid by the Tenants to the Landlord. (Appl. Ex. No. 10)

24. The Landlord has the right to terminate this lease upon any violation of the terms or conditions of the lease including nonpayment of rent or any other sums due and owing from the Tenants to the Landlord. (Appl. Ex. No. 10)

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.

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).

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....

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).

Applicant in its brief contends that during the period August 15, 1997, through December 31, 1997, when 86% of the residence and parcel were leased by the applicant to Rupali Gandhi and Kimberly Doody that said residential area qualified for exemption pursuant to the school exemption found at 35 ILCS 200/15-35. The portions of Section 200/15-35 which are cited in the applicant's brief read as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of the state or by a corporation incorporated in any state in the United States. Also exempt is:

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

The applicant then contends that 86% of the residence and parcel which were leased by the applicant to Rupali Gandhi and Kimberly Doody during the period of August 15, 1997, through December 31, 1997, were used for university purposes.

However, this contention overlooks subparagraph (b) of 35 ILCS 200/15-35 which reads as follows;

(B) PROPERTY OF SCHOOLS ON WHICH THE SCHOOLS ARE LOCATED AND ANY OTHER PROPERTY OF SCHOOLS USED BY THE SCHOOLS EXCLUSIVELY FOR SCHOOL PURPOSES, INCLUDING, BUT NOT LIMITED TO STUDENT RESIDENCE HALLS, DORMITORIES AND OTHER HOUSING FACILITIES FOR STUDENTS

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).

Subparagraph (b) is clearly the portion of the school exemption provision which applies to student housing facilities. It is also very clear that this subparagraph requires that the property be owned by the school or university. That is not the case here. This parcel is owned by the applicant which has been determined to be a charitable organization and not a school.

The attorney for the applicant also cites two cases in the brief. The first of these cases is MacMurray College v. Wright, 38 Ill.2d 272 (1967), which was cited for the proposition that a school property would qualify for exemption if the property were reasonably necessary for the accomplishment and fulfillment of the educational objectives of the institution. Unquestionably, MacMurray College was a school and it owned the parcels there in issue. In this case, the parcel is not owned by SIU but rather by the applicant which is a charitable organization and not a school. Consequently, this contention is without merit.

The other case cited by the attorney for the applicant is Association of American Medical Colleges v. Lorenz, 17 Ill.2d 125 (1959). That case is cited by the applicant's attorney for the proposition that property may be used exclusively for school purposes even though it is not devoted directly to classroom work. The Court in that case determined that the property was owned by an educational institution which used the property in the furtherance of medical education including sponsoring medical school admission tests, evaluating students, performing placement functions, appraising the curricula of medical schools, and participating in the accreditation of medical schools. While the contention of the applicant is correct in that property may be exempted under the school exemption when it is not used for classroom work, that is not the issue in this case. Again, it must be pointed out that the parcel here in issue and the residence thereon are owned by a charitable organization and not a school or educational institution. In

addition, it should be pointed out that the school exemption does contain a provision concerning student housing, namely subparagraph (b), which requires ownership by a school or university. Since the applicant, a charitable organization owns this parcel, it cannot qualify under subparagraph (b) of the school exemption.

Based on the foregoing facts, I conclude that it has been determined that the applicant is a charitable organization. I also conclude that the applicant owned this parcel and the residence thereon during the entire 1997 assessment year.

Illinois Courts have consistently held that the use of property to produce income is not a charitable use. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied.

Illinois Courts have also held that if property, however owned, is let for return, it is used for profit and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill.135 (1934) and Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983). In this case, the lease is an arms length lease of residential property from the applicant to two individuals. There is nothing charitable about this lease.

I therefore conclude that 86% of this residence and parcel were leased or otherwise used for profit and therefore did not qualify for exemption for the period August 15, 1997, through December 31, 1997.

I therefore recommend that 14% of the residence and 14% of Jackson County Parcel Index No 15-20-481-032-0040 be exempt from real estate taxation for the 1997 assessment year.

I further recommend that 86% of the residence and 86% of Jackson County Parcel Index No. 15-20-481-032-0040 be exempt from real estate taxation for 63% of the 1997 assessment year.

Finally, I recommend that 86% of the residence and 86% of Jackson County Parcel Index No. 15-20-481-032-0040 be placed back on the tax rolls for 38% of the 1997 assessment year and assessed to the Applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 7, 1999