

**PT 01-75**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**KANKAKEE COUNTY  
TRAINING CENTER  
FOR THE DISABLED,  
APPLIANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No.            98-PT-0087  
                  (97-46-0030)  
                  (97-46-0032)  
                  (97-46-0033)  
                  (97-46-0035)**

**P.I.N.S:        17-06-310-010  
                  09-21-201-013  
                  09-20-322-006  
                  16-01-401-020**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Dennis J. Baron of Deck & Baron on behalf of the Kankakee County Training Center for the Disabled (hereinafter the “applicant”); Ms. Brenda L. Gorski, Assistant State’s Attorney for the County of Kankakee, on behalf of the Kankakee County Board of Review (hereinafter the “Board”).

**SYNOPSIS:**            These consolidated proceedings raise the limited issue of whether real estate identified by Kankakee County Parcel Index Numbers 17-06-310-010, 09-21-201-013, 09-20-322-006 and 16-01-401-020 (hereinafter collectively referred to as the “subject properties”) were "exclusively used for charitable or beneficent purposes ...." within the meaning of Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (hereinafter the “Code”), during the 1997 assessment year. The underlying controversies arise as follows:

Applicant filed a series of Applications for Property Tax Exemption with the Board, which, after due review thereof, recommended to the Illinois Department of Revenue (hereinafter the "Department") that all of the requested exemptions be denied. The Department then issued initial determinations herein, which found as follows:

PROPERTY	DETERMINATION
17-06-310-010	<ul style="list-style-type: none"> <li>• Entire property exempt for 100% of 1997 assessment year</li> </ul>
09-21-201-013	<ul style="list-style-type: none"> <li>• Same as above</li> </ul>
09-20-322-006	<ul style="list-style-type: none"> <li>• Same as above</li> </ul>
16-01-401-020	<ul style="list-style-type: none"> <li>• Entire property exempt for 68%<sup>1</sup> of 1997 assessment year</li> </ul>

Dept. Group Ex. No. 2.

The Board filed timely appeals to all of these determinations and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that all of the aforementioned determinations be affirmed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over these matters, and its positions therein, are established by the admission of Dept Gr. Ex. Nos. 1, 2.
2. The Department's positions in these matters are as follows:
  - (a) All of the subject properties, except parcel 16-01-401-020, are exempt from real estate taxation for 100% of the 1997 assessment year under 35 **ILCS** 200/15-65; but,
  - (b) Parcel 16-01-401-020 is exempt from real estate taxation for 68% of the 1997 assessment year under 35 **ILCS** 200/15-65 and 35 **ILCS** 200/9-185.

Dept. Group Ex. No. 2.

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1. The Department arrived at this percentage, the correctness of which is uncontested herein, because applicant obtained ownership of this property on April 27, 1997. See, Finding of Fact 6,

3. The location of, and improvements situated on, each of the subject properties is as follows:

<b>P.I.N.</b>	<b>LOCATION</b>	<b>IMPROVEMENT</b>
17-06-310-010	1161 Cardinal, Bradley, IL	Home for the developmentally disabled
09-21-201-013	801 Walnut, Kankakee, IL	Same as above
09-20-322-006	490 South Cleveland, Bourbonnais, IL	Same as above
16-01-401-020	2025 W. Budd, Kankakee, IL	Same as above

Dept. Group Ex. Nos. 1,3; Applicant Ex. Nos.

4. Applicant is an Illinois not-for-profit corporation organized for purposes of assisting the developmentally disabled. Applicant Ex. No. 9.

5. Applicant owns several facilities which have been fully or partially exempted from real estate taxation under terms of the following Departmental determinations:

<b>P.I.N.</b>	<b>FACILITY</b>	<b>DOCKET NO.</b>
09-31-204-006	Offices	93-46-0051
17-07-207-006	Integrated Living Facility	94-46-0016
09-33-323-006	Recycling Facility & Training Center	95-46-0018
09-33-323-027	Recycling Facility & Training Center	95-46-0019
09-33-323-023	Recycling Facility & Training Center	95-46-0020
09-33-323-026	Recycling Facility & Training Center	95-46-0021
09-30-424-002	Recycling Facility & Training Center	94-46-0014
17-06-312-013	Community Integrated Living Facility	94-46-0015
09-31-204-006	Office/Shelter/Workshop	93-46-0051

Administrative Notice.

6. Applicant obtained ownership of the subject properties by means of the following instruments:

<b>P.I.N.</b>	<b>INSTRUMENT</b>	<b>DATE</b>
17-06-310-010	Warranty Deed	May 24, 1996
09-21-201-013	Warranty Deed	May 9, 1996
09-20-322-006	Warranty Deed	June 20, 1996
16-01-401-020	Executor's Deed	April 28, 1997

Applicant Ex. Nos. 1, 2, 3, 4.

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*infra* at p. 3 and 35 ILCS 200/9-185, which governs alterations in exempt status precipitated by changes in ownership.

7. Applicant operates residential homes that provide medical, transportation, vocational and other basic life services to the developmentally disabled at the subject properties. Tr. pp. 79-81, 88.
8. Those who receive services at these homes have been identified as developmentally disabled by the Illinois Department of Human Services (“IDHS”) under its Community Integrated Living Arrangement (“CILA”) program. Tr. pp. 79-81, 92-94.
9. IDHS operates the CILA program pursuant to legislative directives contained in the Community-Integrated Living Arrangements Licensure Certification Act, 210 ILCS 135/1, *et seq.* (hereinafter the “CILA Act”), the Community Services Act, 405 ILCS 30/1, *et seq.* (hereinafter the “CSA”) and the Regulations contained in 59 Ill. Admin. Code, Ch. I, §§ 115.10-115.510. Administrative Notice.
10. Section 30/1 of the CSA contains a legislative declaration of public policy which states, *inter alia*, that IDHS is to facilitate establishment of a comprehensive and coordinated network of private and public services for persons with mental illnesses and/or persons with developmental disabilities. Administrative Notice of 405 ILCS 30/1.
11. The goals of this network are, per the declaration of public policy, to: (a) avoid dislocating the mentally ill and developmentally disabled from their home communities; (b) prevent unnecessary institutionalization of such persons; and, (c) maximize effectiveness of community resources of so as to decrease overall demands on State-operated facilities or other services provided directly by the State. *Id.*
12. Section 30/2 of the CSA provides, *inter alia*, that this network is to include “Community Residential Alternatives to Institutional Settings,” or residential

facilities which offer services that “promote the acquisition of independent living skills and integration with the community.” Administrative Notice of 405 **ILCS** 30/2(f).

13. Pursuant to this mandate, Section 2 of the CILA Act provides for the creation of “an array of community-integrated living arrangements” that “promote independence in daily living and economic self-sufficiency” for persons with mental illnesses and/or developmental disabilities. Administrative Notice of 210 **ILCS** 135/1, 2.
14. All CILA homes are required to offer services that include: (a) initial assessments which produce individualized treatment plans; (b) supportive counseling and problem-solving assistance; (c) skill training; and, (d) assistance with medical, money management and transportational issues. Administrative Notice of 59 Ill. Admin. Code, Ch. I, §§ 115.220, 115.230, 115.240.
15. These services must be offered on a round the clock basis and administered only by duly qualified professionals or trained staff persons working under the supervision of such professionals. *Id.*
16. All CILA homes must abide by a “no decline option,” which means that they may not refuse to provide services to any individual for any reason except lack of capacity to accommodate the particular level of disability in question. Thus, for example, a CILA home that services only persons suffering from autism will not be required to service persons with other disabilities. Administrative Notice of 59 Ill. Admin. Code, Ch. I, §§ 115.200(b).
17. Applicant and other agencies that operate CILA homes must also abide by certain well-defined operational mandates which require, *inter alia*, that they perform

quarterly inspections to ensure compliance with applicable safety, comfort and service-providing requirements. Administrative Notice of Ill. Admin. Code, Ch. I, §§ 115.300, 115.300(f).

18. IDHS provides applicant with most of the operational funding for the CILA programs, although some of the medical services are funded by Medicaid assignments. Applicant Ex. Nos. 7, 8; Tr. pp. 91-92, 114.

19. CILA home residents, such as those who live at the subject properties, receive Social Security Disability Income or other governmental assistance payments. They also earn small amounts of hourly wages by working at one of applicant's training facilities. Tr. pp. 93-94.

20. All CILA home residents are required to pay applicant monthly rentals of \$225.00 plus a monthly grocery allowance of \$120.00. Applicant Ex. Nos. 10, 11; Tr. pp. 117-118.

21. Applicant does not evict anyone from one of its CILA homes for financial reasons, including inability to pay. Nor does it suspend any of the services it provides at the subject properties if residents become unable to pay. Tr. pp. 94-97.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that all of the Department's determinations in these consolidated cases 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.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, 15-65(a), wherein all property owned by “institutions of public charity” are exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable purposes” and “not leased or otherwise used with a view to profit.” 35 **ILCS** 200/15-65(a). The statutory requirements for this exemption are that: (1) the property be owned by an entity that qualifies as an “institution of public charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

The parties have stipulated that only the exempt use requirement is at issue herein. Tr. p. 157. That requirement is, per the plain meaning of Section 15-65, that the properties in question must be “exclusively” or primarily used for purposes that qualify as “charitable” within the meaning of Illinois law. 35 **ILCS** 200/15-65. Methodist Old People's Home, *supra*; Morton Temple Association, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991).

By definition, charitable uses are those which benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also undertaken by entities that: (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 them; 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 they dispense. Methodist Old People's Home v. Korzen, *supra*.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1<sup>st</sup> Dist. 2000)).

Providing shelter and other basic necessities to persons with mental illnesses and/or developmental disabilities serves the public interest and reduces the burdens of government where, as here, the General Assembly has specifically directed applicant and other community-based organizations to provide these services in order to reduce demands on State-operated institutions. *See*, 405 ILCS 30/1, 2; 59 Ill. Admin. Code, ch. I, §115.100(b). Nevertheless, the Board contends that the subject properties are not in exempt use because applicant operates them as income-producing rental properties. Tr. p.

This argument is not without appeal, as applicant does in fact charge rent to those who reside and receive services at the subject properties. Thus, without more, one could argue, as does that Board, that the subject properties are not in exempt use because they are leased or otherwise used for profit, in violation of Section 15-65. However, not every rental situation constitutes a use for profit. *Compare, People ex. rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 140 (1924) (holding that rental properties used primarily for purposes of producing income for their owners are not in exempt use); *with Children's Development Center v. Olson*, 52 Ill.2d 332 (1972) (holding that properties leased primarily for purposes of serving the tax-exempt functions of their owners are in exempt use). Hence:

it is the primary use to which the property is devoted *after the leasing* which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income.

Children's Development Center v. Olson, at 336. [emphasis added].

Here, the primary purpose after leasing is to provide basic human necessities to, and appropriate levels of care for, the mentally ill and/or developmentally disabled. The State has a profound interest in ensuring the accountability of social service agencies, such as applicant, which it entrusts with direct responsibility for care of those populations. For this reason, the State subjects these agencies to rigorous auditing requirements that mandate full disclosure of all income sources and the expenditures associated therewith. (Applicant Ex. Nos. 7, 8).

By ensuring accountability in this way, the State has made it all but factually and legally impossible for applicant to use the subject properties for purposes that do not serve the basic needs of those whom the State entrusts to its care and for whom the State must provide these services. Consequently, whatever rental income applicant receives from such persons is merely an incidental byproduct of the otherwise charitable uses associated with meeting those needs. Under these circumstances, the fact that applicant derives such incidental rental income does not destroy the subject properties' exempt status.

The extensive regulatory schemes which govern the operation of CILA homes provide further evidence that the subject properties are not "leased or otherwise used with a view to profit" in violation of Section 15-65. These schemes, the substance of which require that the subject properties and all other CILA homes be used only for their legislatively-mandated purpose, do not apply to privately owned rental properties. *See*, 405 **ILCS** 30/1, 30/2(f); 210 **ILCS** 135/1, 135/2; 59 Ill. Admin. Code, Ch. I, §§ 115.220, 115.230, 115.300. They also impose "no decline options," quarterly inspection duties, staffing requirements, service obligations and other well-defined operational mandates, which differentiate this applicant's use of the subject properties from that of a commercial landlord. *See*, 59 Ill. Admin. Code, Ch. I, §§ 115.220(b), 115.230, 115.300(f). Therefore, I respectfully reject the Board's contention that said properties are not in exempt use because applicant operates them as commercial rental properties.

The Board next argues that exempting the subject properties violates public policy by providing the said properties with an unfair competitive advantage vis-à-vis other rental properties. Tr. p. 154. This argument assumes that all rental properties are

similarly situated for exemption purposes. However, the holding in Children's Development Center disproves this assumption by differentiating between two distinct classes of rental properties.

The first class consists of those rental properties that do not qualify for exempt status because they are primarily used to produce income for their owners; the second consists of those rental properties which are *not* primarily used for that purpose, and therefore, qualify for exempt status because income production is an incidental derivative of other exempt uses. The subject properties fall into the latter exempt classification for the reasons set forth above. Therefore, I am unable to discern how granting exemptions herein would create unfair competition in the rental market.

Based on the foregoing, I conclude that all of the subject properties were “exclusively” used for charitable or beneficent purposes, as required by 35 **ILCS** 200/15-65, during all relevant portions of the 1997 assessment year. Therefore, all of the Department’s determinations in these consolidated matters should be affirmed.

WHEREFORE, for all the above-stated reasons, it is hereby recommended that:

- A. Kankakee County Parcel Index Number 17-06-310-010 be exempt from real estate taxes for 100% of the 1997 assessment year under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*;
- B. Kankakee County Parcel Index Number 09-21-201-013 be exempt from real estate taxes for 100% of the 1997 assessment year under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*;

- C. Kankakee County Parcel Index Number 09-20-322-006 be exempt from real estate taxes for 100% of the 1997 assessment year under Section 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*; and,
- D. Kankakee County Parcel Index Number 16-01-401-020 be exempt from real estate taxes for 68% of the 1997 assessment year under Sections 15-65 and 9-185 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

11/8/01

Date

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Alan I. Marcus  
Administrative Law Judge