

PT 02-11

Tax Type: Property Tax
Issue: Religious Ownership/Use
Charitable Ownership/Use

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

McNESS FOUNDATION,

Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket No: 01-PT-0047

Real Estate Exemption

For 2000 Tax Year
P.I.N. 18-18-01-301-006

Stephenson County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard C. Baker, on behalf of the Applicant; Mr. George Foster on the behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether Stephenson County Parcel, identified by index number 18-18-01-301-006 (hereinafter the “subject property”), qualifies for exemption from 2000 real estate taxes under either 35 ILCS 200/15-40, which exempts, “[a]ll property used exclusively for religious purposes,” and not leased or used with a view to profit, or 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes.

The controversy arises as follows: On December 21, 2000, the McNess Foundation (hereinafter the “Applicant”), which operates La Hacienda Christian Retreat Center, (hereinafter “La Hacienda”) on the subject property applied for a property tax exemption with the Board of Appeals of Stephenson County (hereinafter the “Board”). Dept. Ex. No. 1. The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that an exemption for tax year 2000 be granted for the subject property. Dept. Ex. No. 1.

On March 22, 2001, the Department rejected the Board’s recommendation finding that the subject property was not in exempt ownership and not in exempt use in tax year 2000. Dept. Ex. No. 1. On April 10, 2001, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on December 4, 2001, with Ms. Fredericka M. Rosengren, Director, President and Treasurer of the McNess Foundation testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership and use in the year 2000. Tr. pp. 9-10.
2. La Hacienda was the private residence of Ms. Rosengren’s mother, Wilma S. McNess. The subject property was conveyed by quit claim deed from Wilma S. McNess to the McNess Foundation on November 12, 1998. The property is now

vacant other than during retreat periods. McNess Foundation is the only user of the subject property. Tr. pp. 27-30, 65; Applicant's Ex. No. 9.

3. The McNess Foundation was incorporated under the "Not For Profit Corporation Act of Illinois" on September 24, 1998. Tr. pp. 14-15; Applicant's Ex. No. 6.
4. The McNess Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 15-16; Applicant's Ex. No. 8.
5. The McNess Foundation operates under a set of bylaws adopted by its Board of Directors on September 25, 1998. Tr. pp. 16-17; Applicant's Ex. No. 7.
6. The McNess Foundation does not have any shareholders or members and does not pay dividends. The Foundation's Articles of Incorporation state that in the event of the dissolution of the corporation, any assets remaining "shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for religious or charitable purposes..." Tr. pp. 17-20; Applicant's Ex. No. 6.
7. La Hacienda is located on the top of a bluff in Freeport, Illinois, adjacent to a wooded public park. The house resembles a Spanish mission and contains a chapel, a library for quiet study, and a sunroom used as a meeting room or second dining room. There are sleeping facilities for 18 people. Tr. pp. 21-24; Applicant's Ex. No. 13.
8. In 1999, bedrooms and bathrooms were added to the property to make room for more overnight guests. In 2000, the chapel and library were restored with new windows and doors. Leaks in the stucco and the roof were repaired. Funds for these improvements came from the McNess Foundation. Tr. pp. 29-30.

9. The McNess Foundation does not have any employees. No officer or director, including Ms. Rosengren, receives a salary. A housekeeper, caretaker and caterer work for the applicant as independent contractors. The housekeeper works sixteen hours per week. The caretaker's work is seasonal. Tr. pp. 30-32, 65-66.
10. In 1999, there was one retreat at La Hacienda. From April, 2000, to April, 2001, there were 13 retreats: seven retreats for 1 day or less; four retreats for 2 days; two retreats for 5 days. Although La Hacienda was open in January, 2000, it took time for information to become known and people to respond. Tr. pp. 32-34; Applicant's Ex. No. 10.
11. In tax year 2000, retreats were held at La Hacienda for the following reasons: leadership planning (2); personal grief; session planning; alpha course; crossroads core team; pastoral staff; mission team; pastoral study leave (2); pastoral staff planning; elders training; women's support group. La Hacienda has been used by different denominations, most coming from Northern Illinois. Tr. pp. 34-36.
12. A brochure advertising La Hacienda states that it is "a place of rest, refreshment, and recreation for small groups in Freeport, Illinois." "We are offering this home as a place of retreat, and especially for the work and fellowship of small groups, whatever their mission. It is a place of rest, reflection, friendship, study, discussion, worship and prayer. And walks." Dept. Ex. No. 3.
13. When a group inquires about the retreat center and availability, Rosengren sends out an application form, contract and cover letter which explains that there are two criteria for using the retreat center: the group must be affiliated with a tax-exempt

organization and the program while at the retreat must not be in conflict with Christianity. Tr. pp. 62-64.

14. Costs to use the facility, as listed in the advertising brochure, are \$75 per person per day for the first day and \$50 per person per day thereafter. The cost includes meals. There are also “day meeting accommodations for forty, one or two meals provided,” at \$200 per day, \$6-12 per person per meal. Tr. pp. 36-38; Applicant’s Ex. No. 11.
15. In the year 2000, McNess Foundation had total revenue of \$134,567 as follows: \$10,765 (8%) in dividend and interest income; \$6,550 (5%) from users of the retreat center; \$116,885 (87%) from gains and losses on investments. Tr. pp. 41-43; Applicant’s Ex. No. 12A.
16. In the year 2000, McNess Foundation had total expenses of \$68,240. Of this amount, \$27,520 was for one-time repair and maintenance expenses to the retreat center. Applicant’s net income in 2000 was \$66,327. Tr. pp. 43-44; Applicant’s Ex. No. 12A.

CONCLUSIONS OF LAW:

An examination of the record establishes that the applicant has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from real estate taxes for the 2000 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation 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 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 v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions 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.* At the evidentiary hearing, applicant argued that the subject property was exempt under the Property Tax Code because it was used for religious purposes and, alternatively, because it was owned by a charitable institution and used for charitable purposes. The provisions of the Property Tax Code which govern the disposition of the instant proceeding as property used for religious purposes are found in Section 200/15-40. Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). However, this is no longer the case because statutory changes have eliminated the ownership requirement. *Id.* Section 15-40 of the Property Tax Code now simply provides that “[a]ll property used exclusively for religious purposes...and not leased or otherwise used with a view to profit, is exempt.” 35 ILCS 200/15-40.

The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not for any secondary or incidental purpose.” Pontiac Lodge No. 294 A.F. and A. M. v. Department of Revenue, 243 Ill.App.3d 186 (4th Dist. 1933).

Based on the above definitions, I am unable to conclude that McNess Foundation’s rental of La Hacienda qualifies for religious exemption. Ms. Rosengren testified that McNess Foundation and La Hacienda Retreat House are not “a member of any religious organizations.” Tr. pp. 67-68. “The McNess Foundation doesn’t lead the Bible study. We provide only the location and the meals. And the group coming in brings in its own programming.” Tr. pp. 72-73.

Ms. Rosengren testified further that there are two qualifications for using the retreat center:

One is that the group be affiliated with another tax exempt organization, and the second criteria is that their program while they’re at the retreat, the work they do there is not in conflict with Christianity. Tr. p. 62.

The criteria for using the retreat center are relayed to applicants in a cover letter and contract. Tr. pp. 63-64. “And in the contract it states that the purpose of this – it states the vision of this retreat which is a place – as we’ve listed all those activities, and it – that it is a place where people gather not in conflict with Christianity.” Tr. p. 64. The

brochure advertising the retreat states that “[W]e are offering this home as a place of retreat, and especially for the work and fellowship of small groups, whatever their mission.” Dept. Ex. No. 3.

The criteria for use of the center and the advertising brochure do not limit use of La Hacienda to religious organizations. The requirement that users of the retreat center be affiliated with another tax-exempt organizations and conduct activities at the center not in conflict with Christianity are characteristics of many non-religious organizations. For example, the Girl Scouts is a non-exempt organization with activities not in conflict with Christianity. Whereas the Girl Scouts would meet the criteria for using La Hacienda, their use of the property would not be considered religious.

Additionally, the brochure advertising La Hacienda states that the retreat is being offered for “fellowship of small groups, whatever their mission.” “Fellowship” is defined as “a group of people with the same interests.” Webster’s New World Dictionary, (3d. ed. 1988). There is nothing inherently religious about “fellowship” and it is not included in the definition of “religious use” as defined by McCullough. The Girl Scouts could meet at La Hacienda for “fellowship.” “Whatever their mission” as used in the advertising brochure implies that a small group, affiliated with a tax-exempt organization, could meet at La Hacienda for any reason whatsoever. The testimony and evidence do not support the conclusion that the property is “exclusively” used for religious purposes, as required by the Property Tax Code, in light of La Hacienda’s criteria for use of the retreat center.

The applicant submitted a list of the thirteen users of the retreat center in the year 2000. Applicant’s Ex. No. 10. Ten of the users appear to be religious organizations

conducting retreats and these ten used the property for 12 ½ days of the 24 ½ days that La Hacienda was rented in the year 2000. Three of the users are individuals, affiliated with churches, who were using the retreat for apparently non-religious reasons. One user was on a “personal grief retreat” for two days. Two users were on “pastoral study leave” for five days. Ms. Rosengren testified that “[O]ne of the pastors came and worked on his dissertation on study leave. He was there several times.” Tr. p. 35. My research indicates that there is no precedent for finding that “pastoral study leave” and “personal grief retreat” are religious activities. These activities took place for 12 of the 24½ days that La Hacienda was rented in the year 2000. Based on this evidence, I cannot conclude that the property was used primarily for religious purposes in the year in question. In light of the criteria for using La Hacienda, it appears to be merely gratuitous or the result of targeted marketing that religious groups used the property at all in the year 2000.

The second requirement for a religious exemption is that the subject property not be leased or otherwise used with a view to profit. 35 ILCS 200/15-40. In the instant case, it must be recognized that there would be no activity at all at La Hacienda if the subject property was not leased, since users must sign a contract agreeing to rent the property before using the center. Tr. pp. 63-64. The McNess Foundation earned a profit of \$66,327 in the year 2000. This profit included gains of \$116,885 from investments apparently unrelated to La Hacienda. Applicant’s Ex. No. 12A. Ms. Rosengren testified that based on the fees charged and the expenses of running the retreat center, the McNess Foundation would not make a profit from the retreat ministry. Tr. pp. 46-47. Ms. Rosengren was asked if “looking into the future, based on your understanding of the fees

that you're going to charge, the number of participants who will use the retreat center, do you believe that you will ever be able to pay for the entire operation of the retreat center from the fees that you receive?" She responded "it's not even in the plan." Tr. p. 45.

The financial information does not support the conclusion that La Hacienda will not earn a profit. Revenue from rental of La Hacienda was \$6,550 in tax year 2000. Tr. p. 42. This \$6,550 consisted of 110 people (from single users to a group of 19 users) leasing the retreat center for a total of 24 ½ days. On average, La Hacienda earned \$267 for each of the 24 ½ days (\$6,550 divided by 24 ½). If the retreat were to be used for 3 days per week for each week of the year (156 days), at the average daily rate of \$267, revenue from rentals would equal \$41,652. If 10 people used the retreat center for three days each week, revenue from rentals would equal \$91,000. Even considering that the daily rental amount includes meals, I am unable to conclude that the rentals calculated above would not yield a profit. As pointed out by the Department's counsel in his closing argument, any property that charges money for lodging, "whether a Motel 6 or the fanciest resort," is going to show a loss when rented out for only 30 days of the year. Tr. p. 112.

Applicant also sought exemption for the subject property arguing that it is a charity. Section 15-65 of the Property Tax Code states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:

(a) Institutions of public charity.
35 ILCS 5/15-65.

The above section provides that the property of "institutions of public charity" is not exempt by virtue of ownership alone. In fact, the General Assembly is

constitutionally prohibited from making such property exempt by ownership alone because of the way in which Article IX, Section 6 is worded. The first clause of that Section, which states that “[t]he General Assembly may by law exempt ... only the property of the State, units of local government and school districts” sets forth a very narrow class of entities whose properties are exempt by sole virtue of their ownership. “Institutions of public charity” do not fall within that class. Rather, they fall within the second clause of Article IX, Section 6, which contains an exempt use requirement. Accordingly, the property of a charitable institution cannot be subject to exemption, as a matter of Illinois constitutional law, unless the property is in fact used for a purpose that qualifies as “charitable” as that term is defined by Illinois law.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the court set forth guidelines for determining whether an organization qualifies as an institution of public charity and whether property is used for charitable purposes: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders, earns no profits or dividends; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does 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; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

The applicant submitted a deed showing that Wilma S. McNess, as trustee, quitclaimed the property to the McNess Foundation on November 18, 1998. Applicant's Ex. No. 9. Ms. Rosengren submitted and signed an "Affidavit of Use" sent to the Department as part of the original application for exemption, which states that "[T]he interest in the property was transferred to the McNess Foundation by deeds dated 1998 and 2000, conveying an estate for the life of Fredericka M. Rosengren." Dept. Ex. No. 2. The November 18, 1998, deed has no mention of a life estate and no deed dated in the year 2000 was admitted into evidence. Ms. Rosengren testified that she understood that the property was conveyed to McNess Foundation for and during the term of her lifetime. Tr. pp. 59-60.

In determining ownership of property for tax purposes, the concern is with the "realities of ownership." City of Chicago v. Dept. of Revenue, 147 Ill.2d 484 (1992). The key elements of ownership are control and the rights to enjoy the benefits of the property. People v. Chicago Title & Trust Co., 75 Ill. 2d 479 (1979). Testimony at the evidentiary hearing was that McNess Foundation was the only user of the property and had control over it during the tax year at issue. Tr. p. 29. The November 18, 1998, quitclaim deed shows that the property was conveyed from Wilma McNess to the McNess Foundation. The year 2000 deed, referred to in Ms. Rosengren's "Affidavit of Use" was not admitted into evidence, and there was no documentary evidence that a life estate had been created. Accordingly, I am unable to reach any conclusion as to ownership of the property. I will assume for purposes of this Recommendation, that McNess Foundation exercised control over the property in tax year 2000.

The evidence does not support the conclusion that the McNess Foundation is a charitable institution. One of the guidelines of Korzen is that a charity's funds must be derived from public and private charity. In the year 2000, 8% of McNess' revenue was derived from interest and dividends, 5% from the rental of La Hacienda and 87% from gains and losses on investments. None of McNess' funds were derived from charity and, accordingly, this guideline from Korzen is completely unmet.

Another guideline from Korzen is that the organization not place obstacles of any character in the way of those who would avail themselves of its benefits. Ms. Rosengren testified that she conducted telephone interviews with other retreats in the area to determine her pricing structure. She then chose "the lower of the two pricing structures..." Tr. p. 40. "The thing that's hard is this retreat is so much more nicer than what is more often offered. And I tried not to price it, you know, beyond what people would think they could pay or would want to pay." Tr. p. 41. Costs are \$75 per person for the first day, \$50 per person per day thereafter, with three meals provided. Day meeting accommodations for 40 people, with one or two meals are "\$200 per day; \$6-12 per person per meal." Dept. Ex. No. 3.

Ms. Rosengren testified that no person has yet asked to use the retreat center without paying. "Well, to my knowledge it hasn't happened yet, so I haven't established a policy, though I'm certainly open to considering that." "To date, when a group has come and it's come to my knowledge that a member of the group would have a hard time paying enough to come with her group, the group itself has solved that problem, and they have never even come to me about it." Tr. p. 76.

If the McNess Foundation is dispensing charity, it's dispensing it at a market price in light of Ms. Rosengren's testimony that the prices established were what the market would bear for this type of facility. All persons using the facility have been charged what the market will bear and no one has used the facility at reduced or no cost. Further, Ms. Rosengren's testimony was that she has not established a policy on guests who are unable to pay because no guest has asked to use the retreat center without paying. At the same time, she is aware that individuals using the retreat center have been unable to pay, but that the groups holding the retreat have "solved" the problem. Tr. p. 76. The brochure advertising the facility does not indicate that any kind of price reduction is available for groups or individuals needing the "charity" dispensed at La Hacienda, but unable to afford it. I must presume that the groups "solved" the problem because no other alternative was advertised or available. La Hacienda's pricing structure and the lack of established policy for people unable to pay the advertised prices are undeniably obstacles placed in the way of those who would avail themselves of the "charity" dispensed on the property.

Finally, an inquiry in to whether McNess Foundation is an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code depends in part on the application of the following definition:

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.

Crerar v. Williams, 145 Ill. 625 (1893). In closing arguments, counsel for the applicant pointed out that he had specifically asked Ms. Rosengren if she believed "that this is

bringing the persons who come to your retreats under the sway of religion.” “And she said yes. That’s what it’s for.” Tr. p. 130.

I do not reach this same conclusion. First, according to the definition, charity is a “gift.” There was no testimony or evidence of any “gift” being dispensed by McNess Foundation. Indeed, every individual or group using the facility has paid what the market will bear for this service. Secondly, I do not see how use of the retreat center “persuades” someone to a “religious conviction.” The testimony was actually that some groups with a religious conviction have used the center to enhance that conviction, not to be persuaded to one. Some individuals have used La Hacienda for purely personal, non-charitable, non-religious reasons such as for a “personal grief retreat” and “pastoral study leave.”

Second, according to the definition above, charity is for “the benefit of an indefinite number of persons.” A retreat may benefit the individual attending, but the evidence of record does not allow for a conclusion that the activities, as described, benefit an indefinite number of people. Approximately half of the time that La Hacienda was used in 2000, it was used for “pastoral study leave” and “personal grief retreat.” These activities only benefit the individual. Since La Hacienda, as advertised in the brochure, can be used by groups “whatever their mission,” I am unable to conclude that use of the property would even be exclusively charitable. Finally, I do not see how La Hacienda reduces the burden of government. If La Hacienda did not provide a place for retreats, public interest would not dictate that the State meet the demand for this service.

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. 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 upon 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). There was insufficient testimony and evidence for me to conclude that McNess Foundation is a charitable institution or that the subject property was used for exclusively charitable or religious purposes in tax year 2000.

For these reasons, it is recommended that the Department's determination that denied the exemption from tax year 2000 real estate taxes on the grounds that the subject property was not in exempt ownership or use should be affirmed, and Stephenson County Parcel, Index Number 18-18-01-301-006, should not be exempt from tax year 2000 income taxes.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

January 28, 2002