

**PT 02-20**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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<b>ZOBRIST DEVELOPMENT COMPANY</b>	)	Docket #	00-90-33
<b>Applicant</b>	)	A.H. Docket #	01-PT-0028
	)		
v.	)	P.I. #	06-06-29-300-006
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Steven A. Wakeman of Kingery, Durree, Wakeman & Ryan for Zobrist Development Company; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held on October 15, 2001, to determine whether Tazewell County Parcel Index No. 06-06-29-300-006 qualified for exemption during the 2000 assessment year.

Mr. Ronald Hale, president and CEO of Tazewell County Resource Centers (hereinafter referred to as TCRC) and Ms. Denise Best, vice president of finance and operations of TCRC, were present and testified on behalf of Zobrist Development Company (hereinafter referred to as the "Applicant").

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 2000 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for exempt purposes during the 2000

assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Tazewell County Parcel Index No. 06-06-29-300-006 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 10)

2. On January 5, 2001, the Department received the request for exemption of Tazewell County Parcel Index No. 06-06-29-300-006. The Tazewell County Board of Review recommended granting the exemption. On March 22, 2001, the Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. On April 2, 2001, the applicant timely protested the denial and requested a hearing. The hearing on October 15, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. The applicant acquired the subject parcel by warranty deeds dated August 18, 1999. (Department's Ex. No. 1)

4. The subject parcel is known as the Field Shopping Center. (Dept. Ex. No. 1; Tr. p. 17)

5. The applicant, as lessor, executed a 10 year lease on June 21, 1999, with TCRC, as lessee, for a store area in the Field Shopping Center. The store area contains approximately 16,300 square feet and is known as rooms 29 and 25-B. The annual base rent for the leased area is \$90,400.00 or \$7,533.33 per month. The lease obligates the lessor to pay all real estate taxes and upon lessor's request, the lessee shall reimburse the lessor for the taxes. TCRC reimburses the applicant for the taxes. (Dept. Ex. No. 1; Plaintiff's Ex. No. 13; Tr. pp. 21, 50-53)

6. According to the terms of the lease, the lessee shall not assign the lease in whole or part, nor sublet any part of the premises without acquiring written permission from the lessor.

(Dept. Ex. No. 1)

7. TCRC operates training programs for developmentally disabled persons in the leased area. (Dept. Ex. No. 1)

8. The programs offered in the two leased areas operated on the subject property by TCRC are the seniors program and a workshop program to serve severely disabled people in prevocational training. (Tr. pp. 17-21, 23)

9. TCRC did renovations to the leased area with the approval of the applicant and under provisions of the lease. (Dept. Ex. No. 1; Tr. pp. 40-41)

10. TCRC never intended to own any real estate when it entered into the lease. (Tr. pp. 42-46)

11. TCRC is not liable for federal income tax pursuant to a finding by the Internal Revenue Service that it qualifies as an exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 1)

12. TCRC is also exempt from Illinois sales tax pursuant to a finding by the Department that it is a charitable organization for those purposes. (Dept. Ex. No. 1)

13. TCRC is organized under the general not for profit statute of the State of Illinois. Its bylaws state that it is organized to pursue exclusively charitable, educational, scientific, and benevolent purposes. The majority of its funding comes from federal and state governments. (Plaintiff's Ex. Nos. 9-12; Tr. pp. 32-34, 54)

14. The applicant is a for-profit corporation. (Tr. p. 35)

### **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, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services . . . .

The applicant has applied for a property tax exemption for the property it leases to TCRC. Two elements are required to entitle a parcel to exemption: charitable use and ownership by a charitable organization. Inst. of Gas Tech. v. Dep't of Revenue, 289 Ill.App. 3d 779, 783 (1<sup>st</sup> Dist. 1997) In order to qualify for a property tax exemption on charitable grounds, a taxpayer must show that the property was owned by a charitable organization and was exclusively used for charitable purposes. Resurrection Lutheran Church v. Department of Revenue, 212 Ill.App.3d 964 (1<sup>st</sup> Dist. 1991)

The issues to be addressed are whether the ownership and use of the subject property by the applicant are charitable. It is indisputably clear that the applicant has fee simple title to the subject parcel. The applicant leases rooms 29 and 25-B on that property to TCRC for an annual rent of \$90,400.00. The applicant is a for profit company. No evidence was presented to show that the lease was not a lease for profit.

Instead, the applicant argues that the use of the property by TCRC is charitable and that TCRC has an ownership interest in the property. In support of its argument that TCRC has an ownership interest in the subject property, the applicant relies on a number of cases in which the courts have found ownership in entities that did not hold fee simple title to the real estate. In People v. Chicago Title and Trust, 75 Ill.2d 479, *rehearing denied* (1979), a land trust held title to the property, but, for purposes of liability for unpaid real estate taxes, the court held that the beneficiary of the land trust was the responsible party. It is noted that People v. Chicago Title and Trust does not involve an exemption from real estate taxes, but rather the issue was identifying the entity responsible for the payment of those taxes. Therefore the issue therein is not the same as the issue before me. Further, there is no land trust in this matter. TCRC has no beneficial interest in the property and its only interest is as a lessee. Thus applicant's reliance on this case is misplaced.

The applicant also relies on Christian Action Ministry v. Department of Local Govt. Affairs, 74 Ill.2d 51 (1978) to establish that a contract-for-deed purchaser of a piece of property

can also qualify for a property tax exemption. However, while that happened in Christian Action Ministry, there is no contract-for-deed in this situation.

In Cole Hospital v. Champaign County Bd. of Review, 113 Ill.App.3d 96 (1983) the court found that a conveyance and lease back arrangement, with an option to purchase, entered into by a hospital in order to finance new facilities, did not divest the hospital of ownership for the purposes of a property tax exemption. TCRC never owned the property at issue and there was no leaseback done for financial purposes. I therefore find the facts in Cole Hospital distinguishable from the facts herein.

And finally, the applicant relies upon Chicago Patrolman's Ass'n v. Department of Revenue, 171 Ill.2d 263 (1996) for the proposition that where property is owned by more than one entity, and the two owners are a charitable and a non-charitable organization, that an exemption can be granted for the percentage of charitable ownership and use of the property. Again, that situation is not before me. TCRC owns no portion of the subject property and admits it has no ownership interest. (Tr. pp. 42-46)

None of the cases relied upon by this applicant present facts that are in any way comparable to those before me. I find the facts about the lease situation at issue are similar to those addressed by the court in Coles-Cumberland Professional Development Corp. v. Department of Revenue, 284 Ill.App.3d 351 (1996) *leave to appeal denied*, 171 Ill.2d. 563 (1997). In Coles-Cumberland, Coles-Cumberland leased property to the charitable lessee, Lincolnland Home Care for \$45,000.00. The \$45,000.00 was collected as a one-time rent payment that corresponded to the approximate value of the property. The rent was payable in an immediate payment of \$30,000.00 and a subsequent payment of \$15,000.00. Lincolnland was obligated to pay a monthly maintenance fee of \$375.00. Just as in the facts before me, Lincolnland could not assign its leasehold without Coles-Cumberland's consent. Coles-Cumberland could sell, subject to the lease, the fee simple at any time. The court held that the lease was a lease for profit and Coles-Cumberland did not qualify for a property tax exemption. I also find the lease at issue is a lease for profit.

A significant distinction in Coles Cumberland is that the lessee was undisputedly charitable. The applicant herein asserts that TCRC is a charitable organization by virtue of the fact that the majority of its funding comes from state and local governments, it has an exemption from the federal government for income tax purposes and from the Department for sales tax purposes, and that it aids developmentally disabled persons. The fact that an organization had been granted a letter of exemption from federal income tax or from Illinois sales tax is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4<sup>th</sup> Dist. 1988); Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2<sup>nd</sup> Dist. 1980); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). In order to do an analysis of whether the use of a subject property is charitable, the courts have set up guidelines and criteria pursuant to those suggested in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968). The applicant has not addressed those guidelines in either its use of the subject property or the use by TCRC.

The language of the charitable exemption statute is clear. Property that is leased for profit is not exempt. The applicant owns the subject property. It is a for profit entity. It leases rooms 29 and 25-B to TCRC for an annual rent of \$90,400.00. That is a lease for profit and does not qualify for a property tax exemption. The applicant even admits that once TCRC is gone from this property, the applicant would not be entitled to an exemption for the property. (Tr. p. 64) It also is not entitled to one at this time.

For the foregoing reasons, it is recommended that Tazewell County Parcel Index No. 06-06-29-300-006 remain on the tax rolls for the year 2000 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
April 3, 2002