

PT 02-23

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

GENESEO GOOD SAMARITAN CENTER)		
Applicant)	Docket #	00-37-33
v.)		
)	A.H. Docket #	01-PT-0037
)	P. I. #	08-21-407-049-9000
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John W. Bean of Nash, Nash, Bean, and Ford for Geneseo Good Samaritan Center; Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on November 14, 2001, to determine whether Henry County Parcel Index No. 08-21-407-049-9000 qualified for exemption during the 2000 assessment year.

Mr. Michael Olson, administrator of the Good Samaritan Village, owned by the Evangelical Lutheran Good Samaritan Society a/k/a Geneseo Good Samaritan Center, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issue in this matter is whether the applicant used Parcel Index No. 08-21-407-049-9000 for exempt purposes or was in the process of adapting the real property for exempt use 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 Henry County Parcel Index No. 08-21-407-049-9000 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. 6)

2. On January 31, 2001, the Department received the request for exemption of Henry County Parcel Index No. 08-21-407-049-9000. On March 29, 2001, the Department denied the requested exemption finding that the property was not in exempt use. On April 13, 2001, the applicant timely protested the denial and requested a hearing. The hearing on November 14, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

3. Applicant acquired the subject property by a warranty deed dated January 19, 1970. The property consists of 5.05 acres and contains a one-story 12,346.25 square foot apartment building containing 12 units. (Dept. Ex. No. 1)

4. The building on the subject property is part of applicant's Geneseo Good Samaritan Village. The village contains a 72-bed nursing facility and independent living units consisting of duplex and apartment complexes. (Dept. Ex. No. 1)

5. The Evangelical Lutheran Good Samaritan Society is a North Dakota not-for-profit corporation. It operates approximately 240 nursing homes in 25 states and is the largest not-for-profit provider of nursing home services in the United States. (Respondent's Ex. No. 1)

6. The Evangelical Lutheran Good Samaritan Society is exempt from the payment of federal income tax pursuant to a finding by the Internal Revenue Service that it qualifies as a charitable organization under section 501(c)(3) of the Internal Revenue Code. (Respondent's Ex. No. 1)

7. In September 1999, construction was started on the apartment complex on the

subject property. The complex was opened on May 1, 2000, and achieved 100% occupancy within six weeks. Applicant has a large waiting list for the apartments. Only two units had been re-rented by the time of the hearing. (Respondent's Ex. No. 1; Tr. p. 21)

8. The applicant interviews a potential resident for the apartment complex to ensure that the person has the cognitive ability to live independently. The applicant does not take a financial statement from a potential resident, but provides that person with the rent schedule. Potential residents for the apartments fill out an occupancy agreement to indicate their desire to be a resident. (Respondent's Ex. No. 1; Tr. pp. 21-22, 35)

9. The applicant takes a priority payment for placing the potential resident on the waiting list. The occupancy agreement states that a non-refundable fee of \$250.00 is charged to be placed on the waiting list. (Dept. Ex. No. 1; Respondent's Ex. No. 1; Tr. pp. 21-22, 25, 35)

10. The applicant reserves the right to terminate the occupancy agreement if a resident does not maintain the unit and his/her person to the applicant's satisfaction. (Dept. Ex. No. 1; Respondent's Ex. No. 1)

11. The termination portion of the agreement also allows the applicant to terminate the agreement if a resident fails to meet the terms of residency set forth in the resident handbook.¹ (Dept. Ex. No. 1; Respondent's Ex. No. 1)

12. There are no Housing and Urban Development restrictions regarding potential residence in the applicant's apartments. Residents are restricted to persons aged 62 and older. (Respondent's Ex. No. 1; Tr. pp. 23, 46)

13. The rents for applicant's apartments are \$975.00 a month for a one-bedroom apartment and \$1,150.00 per month for a two-bedroom. A resident pays a security deposit of one month's rent², to be refunded provided the unit is returned in good condition. Accounts,

¹ The handbook was not offered at hearing.

² The testimony was that the security deposit was \$500.00, but the occupancy agreement states that "Resident will pay to Society the sum of one month's rent as a security deposit." The witness admitted that the \$500.00 amount was incorrect. (Dept. Ex. No. 1; Tr. p. 26, 48)

which are 10 days or more past due, are subject to a late payment charge of 1.5% of the unpaid balance. The late fee has not been enforced. (Respondent's Ex. No. 1; Tr. pp. 25-26, 41-42)

14. Applicant provides one meal a day, monthly social activities, emergency security, housekeeping, general maintenance, laundry rooms, parking, storage space, and scheduled transportation for no extra charges. An emergency call system is in each apartment. A beauty and barbershop are available at the village with services provided at established rates. An apartment resident has preferred admission to applicant's nursing home if the need arises. (Tr. pp. 22-24)

15. On November 1, 1999, applicant had capital campaign donations of \$29,180.00 for the apartment building construction. The total cost of construction for the project was 1.1 million dollars. The remainder of the funds used to construct the apartments came from reserved funds intended to be used for expansion of the village. (Respondent's Ex. No. 1; Tr. pp. 29-31, 45)

16. Applicant has established a charitable allowance program that would allow the applicant "to sustain a person in an apartment for an entire month at that one bedroom rate which is \$975.00". The applicant made a financial allowance for that contingency and incorporated it into its operating budget. (Respondent's Ex. Nos. 3, 4; Tr. pp. 27-28)

17. Applicant submitted an operating statement for the period ending September 30, 2001. The operating revenue for the 12-unit congregate living area shows actual income of \$12,400.00 from room charges for the current month. Year-to-date actual income appears on the statement as \$112,821.00. There is an entry of \$-961.00³ for a charitable allowance for a private room for the current month. The year to date amount for that category is \$-8,749.00. Applicant budgeted a monthly amount equal to the rent for a one-bedroom apartment to be used if a resident does not have sufficient resources to pay the necessary rent. (Respondent's Ex. No. 3;

³ Neither this amount or the \$-8,749.00 amount indicate true negative amounts as this money was not used in 2000. In order to make an allowance in the total operating revenue category for the charitable allowance, a negative number was needed to balance the books.

Tr. p. 56)

18. The applicant also submitted an operating statement for the period ending December 31, 2000. For the twelve apartment units the applicant had revenue from room charges of \$93,890.00, which was 100% of its revenue for that area. The exhibit reflects the “bad debt write-off” amount of \$7,800.00 for those apartments⁴. For that period, applicant had total operating revenue of \$3,115,319.00, operating expenses of \$2,906,372.00, and a net revenue gain of \$259,674.00. (Respondent’s Ex. No. 4)

19. On April 4, 1972, the board of directors of the applicant adopted the following resolution:

BE IT RESOLVED that the minutes of the Ev. Lutheran Good Samaritan Society reflect the policy and practice of the Society since its inception in 1922, that no person who applied for treatment or care is denied admission or once admitted is discharged because of poverty or riches, creed, station or color. All residents are accepted without the imposition of such conditions as to unreasonably amount to a denial of the facilities of the Society to objects of Charity. (Respondent’s Ex. No. 2; Tr. pp. 17-18)

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

⁴ Applicant changed its accounting and financial systems from the year 2000 to 2001. The terminology and category used for the “bad debt write off” became the “charitable allowance program”. (Tr. pp. 39-40)

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 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 Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter referred to as "Methodist Old Peoples Home"). 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:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

The applicant asserts that the subject property is operated in an identical manner to an eight unit independent living complex that is also located within applicant's village. The

Department granted an exemption in 1987 to applicant's nursing home and the eight apartments units pursuant to Docket No. 87-37-58. (Respondent's Ex. No. 2) However, the applicant did not qualify for an exemption pursuant to Docket Nos. 95-37-114 and 95-114-115 for the 1995 assessment year for the duplexes that are also located in the applicant's village.

Although some of applicant's other buildings may have previously qualified for property tax exemptions, that exemption does not mandate that I find the subject properties exempt. In fact, that determination has no relevance to the proceeding before me. Since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). Therefore the applicant herein must prove that the property at issue is used for charitable purposes in 2000.

In analyzing the applicant's use of the subject property under the guidelines set forth in Methodist Old Peoples Home, according to applicant's operating statements, which are broken down into separate categories, its only source of income for the 12 apartment units is from private pay room charges. This income is not from private and public charity as suggested in the guidelines.

Applicant acquired the subject property in 1970. It began to develop the 12-unit apartment building at issue in 1999 and completed it in 2000. An amount of \$29,180.00 was collected for the construction of the building. That is less than 3% of the total cost of 1.1 million dollars for the building. The rest of the money was paid from funds applicant held for expansion purposes. According to the applicant's operating statement, its primary source of income from all

sources is from private pay room charges,⁵ not from public and private charity. I therefore find that the applicant has not established that it derives its funds for this property mainly from public and private charity.

The apartments were full within six weeks. Applicant charges a potential resident a security deposit of one month's rent. Applicant did not establish that the security deposit was waived in 2000. Although the board of directors of the applicant adopted a resolution in 1972, that no person would be denied admission or discharged from applicant's facilities due to poverty, there is no indication that policy was implemented with regard to the security deposit in the year 2000. The occupancy agreement has no provision that alerts the resident to a waiver of fees policy nor was there anything in the record that the applicant advised residents that security deposits could be waived.

The applicant also charges a \$250.00 non-refundable fee to be placed on the waiting list for the apartments. There is a long waiting list and only two residents had vacated apartments by the time of the hearing in 2001. The applicant takes potential residents from the waiting list. The applicant did not establish that it had a policy of waiving the waiting list fee if a potential resident could not afford it. While the \$250.00 amount may not be substantial compared to the \$975.00 per-month rent for a one bedroom apartment and the \$1,150.00 rent for a two bedroom apartment⁶, if a potential resident cannot afford the waiting list fee, that person would never become a resident and would never be able to avail itself of any property benefits. I therefore find that the applicant, with its waiting list fee and security deposit requirements, places obstacles in the way of those that need and would avail themselves of the charitable benefits dispensed. In addition, by those practices, the applicant does not dispense charity to all that need and apply for it and does not benefit an indefinite number of persons for their general welfare. Nor does it reduce the burdens of government.

⁵ For example, the operating statement for the period ending September 30, 2001, (Respondent's Ex. No. 3) showed that for the 72 nursing beds, 63.1% of the revenue was from private residents and 36.9% was from Medicare/Medicaid. For the 8 apartment units, 98.6% of revenue was from private pay room charges.

⁶ The amounts of the security deposits.

The applicant established a charitable policy account wherein the amount of rent for a one-bedroom apartment was set aside each month. By the end of the 2001 fiscal year, the account contained \$8,749.00 but had not been utilized⁷. Although the financial statements showed negative numbers for the charitable policy fund, that was an accounting entry to balance the books. The fund does not reflect that the applicant has used the charitable allowance and in fact the applicant admitted that it did not use the fund in 2000. (Tr. pp. 34-35)⁸

The applicant adopted a charitable resolution in 1972 that it will not deny admission or evict a resident for lack of funds. However, the applicant did not establish that any charity was dispensed on the subject property in 2000, the taxable year at issue. The applicant restricts its residents to persons 62 years of age or older who must be capable of independent living. The applicant has not established that any of those amounts or criteria were waived in 2000.

The fact that the applicant did not waive any of its fees in 2000 coupled with the applicant's stringent health requirements establish that the applicant is not an organization that benefits an indefinite number of persons, or reduces the burdens of government. Nor does the applicant dispense charity to all that need and apply for it. In addition, those requirements place obstacles in the way of those needing and seeking the benefits the applicant provides. There is nothing in the applicant's contractual obligation with the residents to compel them to legally maintain a resident if they become sick or unmanageable and, in fact, the applicant reserves the right to terminate the occupancy agreement if the resident fails to maintain the unit or his or her person to applicant's standards.

The main source of applicant's income in 2000 was from resident fees. That income is not mainly from public or private charity. The Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption. Small v. Pangle, 60 Ill.2d 510 (1975). However, the courts have also concluded that where most residents are

⁷The applicant testified that they had one resident who thought she was out of money and could not pay her rent. It turned out that the resident forgot to add a zero in her bank balance and did not need financial assistance. (Tr. p. 26)

⁸ In fact the testimony was "Q. And so part of the reason you don't have people in these apartments right now on a waiver of payment or anything like that is that they haven't been in existence long enough to have people spend down their assets to the point where they're on public aid; would that be your explanation of why? A. Yes, yes."

required to pay a substantial amount of "prepaid rent", that requirement clearly represents an obstacle to the receipt of the benefits offered by an old people's home and have determined that this situation does not qualify for a property tax exemption. Good Samaritan Home of Quincy v. Illinois Department of Revenue, 130 Ill.App.3d 1036 (4th Dist. 1985). The security deposit for an apartment is equal to one month's rent in amounts ranging from \$975.00 to \$1,150.00, amounts that are clearly not insignificant.

In Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2nd Dist. 1995, *rehearing denied, leave to appeal denied* 164 Ill.2d 585) the appellate court addressed a factual situation similar to this one. In applying the guidelines set forth in Methodist Old Peoples Home, the court found that the substantial fees charged by Wyndemere, the fact that it did not derive its funds mainly from public and private charity, and the fact that obstacles were placed in the way of those seeking charitable benefits precluded the court from granting Wyndemere a sales tax exemption as a charitable organization. The court stated:

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits persons who need and seek the benefits offered but are unable to pay. (Small v. Pangle)

Additionally, we find that Wyndemere failed to show that obstacles would not be placed in the way of those seeking the charitable benefits or that the primary purpose for which the property is used is for charitable purposes. It is clear from the record that the primary purpose of Wyndemere is not to provide charity, but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it. *Id.* at 460-61.

In 2000, applicant had no established practice of providing accommodations or living arrangements for indigent residents or for people who were knowingly unable to pay applicant's fees. No waivers or free services were granted in 2000. The amount in the charitable allowance fund would not be sufficient to cover the rental cost of a one-bedroom apartment for more than a few months. It would be even less time for occupants of a two bedroom apartment. The amount is a *deminimus* sum when compared to the cost of the apartments over a long range of time. The benevolent policy is speculative at best and the amount of money set aside pales in comparison

to the money needed to afford the applicant's services. Such a policy does not allow the applicant to benefit an indefinite number of persons for their general welfare.

The applicant's village complex is operated like a business. There has been no indication these rentals are not comparable to market value rentals in the area. Nor has the applicant established that fees were waived on the subject property. It cannot be said that the applicant is charging insignificant amounts of money. There was nothing submitted by the applicant to show that they will not make a profit from this venture, and, in fact, in 2000 the applicant made a net profit of more than \$250,000.00 from all its ventures.

While admittedly, the population is getting older, and therefore the applicant is targeting a group of people that are going to need living quarters adapted to the special needs of the elderly, that alone does not satisfy the guidelines established in Methodist Old Peoples Home. In particular, it has not been established that the applicant benefits an indefinite number of people that would avail themselves of the benefits applicant dispenses.

Further, applicant has not established that it derives its funds from public and private charity, that it dispenses charity to all who need and apply for it, that it benefits an indefinite number of people, and that it does not place obstacles in the way of those who would need or avail themselves of applicant's services. I therefore find that the applicant has not established that the use of the subject property is for charitable purposes.

For the foregoing reasons, it is recommended that Henry County Parcel Index No. 08-21-407-049-9000 remain on the tax rolls for the 2000 tax year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
April 12, 2002