

PT 02-4

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

ILLINOIS ELDERLY HOUSING CORP.	)	A.H. Docket #	99-PT-0062
OF MARION COUNTY	)	Docket #	98-61-12
Applicant	)	Parcel Index #	11-00-022-775
	)		11-02-000-044
v.	)		11-00-024-300
	)		11-00-026-085
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Matthew Crain, of Crain, Miller, and Milner Ltd. for Illinois Elderly Housing Corporation of Marion County.

Synopsis:

The hearing in this matter was held at the Regional State Office building, 2309 West Main Street, Marion, Illinois on September 28, 2000, to determine whether or not Marion County Parcel Index Nos. 11-00-022-775, 11-02-000-044, 11-00-024-300, and 11-00-026-805 qualified for exemption during the 1998 assessment year.

John D. Shaw, executive director of the Marion County Housing Authority, (hereinafter referred to as the "Housing Authority"), Larry A. Hodge, president of Controlled Management Company, Inc. (hereinafter referred to as "CMC"), Sherry Hodge, tenant services manager of Bob White Elderly Housing Corporation/CMC, and William P. Crain, senior partner of the law firm of Crain, Miller and Milner, attorney for the Illinois Elderly Housing Corporation of Marion

County (hereinafter referred to as the “Applicant”) were present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcels during the 1998 assessment year; secondly, whether the applicant is a housing authority or a charitable organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 1998 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemptions 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 Marion County Parcel Index Nos. 11-00-022-775, 11-02-000-044, 11-00-024-300, and 11-00-026-805 did not qualify for a property tax exemption for the 1998 assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 11)

2. On June 24, 1999, the Department received the property tax exemption application from the applicant for Marion County Parcel Index Nos. 11-00-022-775, 11-02-000-044, 11-00-024-300, and 11-00-026-80. On October 21, 1999, the Department denied the requested exemptions because “[T]he property is not in exempt ownership. The property is not in exempt use.” The applicant timely protested the denial. (Dept. Ex. No. 1)

3. Applicant was formed in 1978 as a not for profit corporation that would be the issuer of bonds for the benefit of the housing authority. These bonds were used to construct 39 low-income section 8 “Housing Assistant Payment” contract units, known as the Glenwood II project. These units were constructed under the auspices of the United States Department of Housing and Urban Development (hereinafter referred to as “HUD”). Title to these units is in the housing authority, which leases them to applicant for management purposes. The Glenwood

II project property is not at issue in this matter. (Applicant's Ex. No. 19; Tr. pp. 25, 74-81, 106)

4. The applicant was incorporated under the General Not For Profit Corporation Act of the State of Illinois on October 17, 1977, for:

The purposes for which this corporation is formed are purely public and charitable and the objects to be carried on and promoted by it are as follows:

(a) To create a charitable, nonprofit corporation to promote and advance decent, safe and sanitary housing for persons of low income, and particularly the elderly or handicapped and to act as the instrumentality of the Housing Authority of the County of Marion, Illinois (the "Housing Authority") to construct a housing project or projects suitable for public housing purposes or other charitable purposes not inconsistent therewith and to maintain and operate the same as authorized under the Act;

(b) To provide charitable, nonprofit housing for such persons of low income as the instrumentality of the Housing Authority and United States Government laws pertaining to the same;

(c) To acquire by lease, purchase, lease-back, or otherwise, real estate or any interest therein located in the County of Marion and in any political subdivision within Marion County, Illinois, and to construct or otherwise acquire and equip buildings and structures which may be utilized by the Housing Authority for low-rent housing and other civic purposes authorized by law; and (by sale, lease, sub-lease or otherwise), to make by lease or otherwise any part or all of such properties available to or for the benefit of the Housing Authority, or its successors, or failing such succession, the County of Marion, Illinois;

(d) To promote the common good and general welfare of the County of Marion, State of Illinois, its inhabitants, surrounding territories and their inhabitants, benefiting society by reducing the causes of crime, poor health and blighted conditions by providing decent, safe and sanitary housing;

(e) To borrow funds necessary to pay the cost of acquiring, constructing, maintaining and operating such properties and facilities, the indebtedness for which borrowed money may be evidenced by securities of this corporation of any kind or character issued at any one or more times which may be either unsecured or secured by any mortgage, trust deed, or any other lien upon any part or all of the properties and assets at any time then or thereafter owned by or acquired by this corporation;

(f) To conduct its business and affairs so as to vest in the Housing Authority all right, title and interest of this corporation in any or all of its properties and assets (subject only to any liens, charges, or encumbrances that may then exist thereon and also subject to any rights or claims of any creditors of this corporation), in order that the Housing [sic] or the County of Marion, Illinois, may acquire such properties and assets either without any consideration on its part or upon such other basis as may be mutually agreed upon by this corporation and the said Housing Authority provided that whenever this corporation shall have fully paid all of its indebtedness incurred in connection with the issuance of its bonds, notes or other evidences of indebtedness to be issued in order to finance the acquisition of real property and the construction of buildings, structures, or improvements (otherwise than in connection with any refunding, or refinancing of such bonds), then upon the request of said Housing Authority this corporation shall effect a transfer to the said Housing Authority or to the County of Marion of all the properties and affairs of the corporation, subject to any liens, charges, or encumbrances which may then exist thereon and also subject to any then existing rights of any creditors of the corporation;

(g) Without limiting the generality of the foregoing, this corporation shall have all the powers, privileges, rights, and immunities necessary or convenient for carrying out the purposes for which this corporation is formed, and the Directors hereby claim for this corporation all the benefits, privileges, rights and powers created, given, extended or conferred by the provisions of all applicable laws of the State of Illinois pertaining to nonprofit corporations and any additions or amendments thereon.

The corporation is a not for profit non-stock corporation and no part of the income or profits of said corporation shall ever be distributed to any members, directors, or officers thereof. The corporation is of a type which is charitable and for civic improvements and which is to provide uniform low-cost housing. (Dept. Ex. No. 1)

5. The applicant acquired parcel index numbers 11-00-022-775 and 11-02-000-044 by a warranty deed dated November 12, 1987. The applicant acquired parcel index number 11-00-026-805 by a quit claim deed dated October 4, 1994. (Dept. Ex. No. 1)

6. In its request for a hearing in this matter, the applicant asserts:

The property associated with Property Index Number 11-00-024-300 was inadvertently included with the Application for Property Tax Exemption filed by the Illinois Elderly Housing Corporation of Marion County. Upon review, it has come to our attention that this property was at no time transferred to the

ownership of the Illinois Elderly Housing Corporation of Marion County. In fact, the Marion County Housing Authority currently owns the above-referenced property. In addition under said ownership, said property previously received a non-homestead property tax exemption certificate from the Department of Revenue.

As the property associated with Property Index Number 11-00-024-300 is still owned by the Marion County Housing Authority, and had previously based upon said ownership, received a non-homestead property tax exemption certificate, the denial and subsequent recasting of this property as a taxable parcel should be reversed. (Dept. Ex. No. 1)¹

7. The housing authority approves the appointment of members of the applicant's board. The amendments to applicant's articles of incorporation state that two commissioners of the housing authority must be members of the applicant's board. The applicant, with the approval of the housing authority, selects the remaining three board members. Three members of applicant's board during the taxable year in question were not commissioners of the housing authority. The board members of the applicant do not derive a personal benefit as a result of the operation of the applicant. (Dept. Ex. No. 1; Applicant's Ex. No. 19; Tr. pp. 17-18, 22, 43, 75)

8. The applicant reports monthly to the board of the housing authority. (Tr. p. 17)

9. The housing authority receives annual financial statements from the applicant. (Tr. pp. 20-22)

10. The board of directors of the applicant is the group of persons vested with the management of the affairs of the applicant. (Dept. Ex. No. 1; Applicant's Ex. No. 19)

11. Located on the subject properties are 16 buildings, 9 of which are duplex apartments and 6 of which are triplex apartments leased to the elderly for housing. A community service building is also located there. The buildings at issue are located on Bob White Lane and Bob White Court in Salem, Marion County, Illinois, and are known as the Bob White Apartments. (Dept. Ex. No. 1; Applicant's Ex. Nos. 5, 22; Tr. pp. 13-14, 39).

¹ I checked with the office of Patty Brough, Marion County Supervisor of Assessments. The applicant is the owner of record of Parcel Index Number 11-00-024-300.

12. The acquisition of the subject properties and apartments was funded in part by monies of the applicant and in part by conventional financing. (Tr. pp. 102-103)

13. Bob White Elderly Housing Corp. was formed to shield the housing authority and the applicant from liability for the people that are hired by Bob White Elderly Housing Corp. and who provide services to the tenants. In addition to CMC, Bob White Elderly Housing Corp. helps manage the apartment complex. The applicant and Bob White Elderly Housing Corp. have a common board of directors and provide the same type of services. In 1998, Bob White Elderly Housing Corp. had a contract with CMC to do the maintenance, lease agreements, and general operation activities for the applicant. Bob White Elderly Housing Corp. and/or CMC also arrange for the certified nursing assistants/tenant services homemakers who perform the additional duties offered by the applicant for fees. (Applicant's Ex. No. 21; Tr. pp. 19, 23-26, 38, 41-42, 49-53, 95-97)

14. CMC earns \$3,500.00 per month for performing lease agreements, maintenance, and general operation activities for Bob White Elderly Housing Corp. on the subject properties. CMC is a for-profit entity. (Applicant's Ex. No. 21; Tr. pp. 42, 50)

15. The housing authority also has a contract with CMC perform the maintenance, lease agreements, and general operation for the housing authority. (Tr. p. 19)

16. In 1999 for the triplex apartment buildings on the subject properties, the one bedroom apartment's base rent was \$450.00 per month. The two bedroom apartments had a base rent of \$525.00 in 1999. Those figures rose by \$50.00 per month in 2000. (Applicant's Ex. Nos. 7, 8, 11, 22; Tr. pp. 44-45)

17. The other apartments of the applicant at issue rented from \$575.00 to \$635.00 in 2000. (Applicant's Ex. No. 8)

18. The rents charged by the applicant are similar to rents charged at other assisted living facilities in the area. (Tr. pp. 63-64)

19. In order to qualify for applicant's housing, a potential resident must be at least 60 years old and capable of staying on his or her own overnight. The apartments on the properties in question are used as a minimum assistance living facility that cannot handle tenants with severe dementia or who might need skilled nursing assistance. (Applicant's Ex. Nos. 9, 12; Tr. pp. 30-34, 59-61)

20. The applicant obtains the names of potential new residents from doctors, by word of mouth, from nursing homes, hospitals, the visiting nurses' association, home health care and real estate agencies, tenants, the Department of Public Health, insurance agencies, and other rental agencies. (Applicant's Ex. Nos. 16, 17; Tr. pp. 61-63)

21. A registered nurse for CMC completes a medical profile of each potential tenant. If the potential tenant becomes a resident, the medical profile is updated on a regular basis and kept in the tenant's apartment. (Applicant's Ex. No. 13; Tr. pp. 34-36)

22. Potential residents are placed on the waiting list according to a priority code and unit size needed based upon HUD guidelines. Factors to be considered include the urgency of the housing need, whether the person is a resident of Marion County, whether the person is a veteran, the age/disability of the person, and whether the person has dependent minors. (Dept. Ex. No. 1)

23. A registered nurse is at the Bob White apartments on a daily basis. (Applicant's Ex. No. 5; Tr. p. 36)

24. The apartments at issue come with a medical alert system for the resident. The medical alert system is a pendant-worn push button that the tenant uses if in trouble or need of help. (Tr. pp. 41-42)

25. There are additional optional services that are available at the apartment complexes including meals, both congregate at the community building and home delivered; housekeeping; transportation; and personal care, such as an on-site beauty shop, homemaker services, and laundry facilities. Additional charges are collected for these services. If a tenant

needs assistance with showering or housekeeping, a charge is made for that help given by the certified nursing assistants/tenant services homemakers. (Applicant's Ex. Nos. 5, 8, 14; Tr. pp. 37-38, 52, 67)

26. Either Bob White Elderly Housing Corp. or CMC provides the certified nursing assistants/tenant services homemakers. CMC oversees the two registered nurses, the only people that can dispense medications. Bob White/CMC monitor tenant medications, contact doctors when necessary, show apartments, and help if a tenant needs monitoring or assistance with showering. Bob White/CMC provide the optional services for the tenants for additional fees. The noon meal at the community building is provided daily for a fee. Bob White/CMC also provide free limited transportation to doctor's offices and shops with 48-hour advance notice. (Applicant's Ex. Nos. 5, 14, 15; Tr. pp. 55-57, 66)

27. The community building located on the subject properties houses the office of the tenant services manager. The tenant services manager receives her paycheck from CMC. In addition to her office in that building, there's a sitting area, a dining room, a laundry facility, and a beauty shop. Socialization activities organized by the tenant services manager take place in the building. (Tr. pp. 57-65)

28. The financial statement for the applicant for the year ending March 31, 1999, in the unrestricted net asset category discloses rental income of \$61,827.00; housing assistance payments – HUD² - of \$98,392.00; investment income of \$11,199.00; and other income of \$6,791.00 for a total of \$178,209.00. (Dept. Ex. No. 1)

29. The financial statement for the applicant also contains the financial information for Bob White Elderly Housing Corp. in a separate column. (Dept. Ex. No. 1; Tr. p. 27)

² There is nothing in evidence to establish that the applicant received HUD payments for the properties at issue; therefore, I conclude that the financial information of the applicant also contains information about Glenwood II since HUD payments are received for that property. The evidence establishes that the applicant operates Glenwood II, as a lessee, for the housing authority.

30. The applicant does not have a 501(c)(3) designation from the Internal Revenue Service. (Tr. pp. 30, 98)

31. There is never a time when the applicant waives rents if a tenant cannot afford to pay it. (Tr. p. 54)

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)

The applicant asserts that the subject properties qualify under either the exemption for housing authorities found at 35 **ILCS** 200/15-95 or the exemption for charitable organizations found at 35 **ILCS** 200/15-65.

The exemption for housing authorities states:

All properties of housing authorities created under the Housing Authorities Act³ is exempt if the property and improvements are used for low rent housing and related used. * * * 35 ILCS 200/15-95

Housing Authorities were created to do away with the menace of slums. 310 ILCS 10/2. The Illinois Supreme Court determined that housing authorities qualify for a property tax exemption under the charitable exemption in Krause et al. v. Peoria Housing Authority et al., 370 Ill. 356, 366 (1939) See also, Springfield Housing Authority v. Overaker, 390 Ill. 403 (1945). The housing authority property tax exemption is a legislative determination that any housing, owned by a housing authority created under a specific section of the Illinois statutes, is exempt from tax when used for low rent housing and related uses.

The applicant was formed in 1978 for the technical purpose of issuing tax exempt bonds for a Section 8 housing project known as Glenwood II. Glenwood II is owned by the housing authority and leased to the applicant for management. The applicant was incorporated under the Illinois General Not For Profit Corporation Act. It is a distinct and legally separate entity from the housing authority.

The applicant maintained its corporate identity and has evolved into an entity that had funds of its own from an unknown source that it used to help purchase the property at issue. The applicant applied for conventional financing for the additional funds needed to purchase the subject property. There is no evidence of record that HUD sets the policies of the applicant or is involved with the properties at issue. Although the applicant still reports and submits its financials to the housing authority, for purposes of this property these actions are a formality, as there is no evidence of record that indicates a legal mandate for housing authority approval of applicant's ownership activity on the property at issue. The board of directors of the applicant is vested with the management of the applicant. The veto power and authority for the properties at issue is in the applicant's control.

³ 310 ILCS 10/1 *et seq.*

Under Illinois law, a corporation is a legal entity separate and distinct from its shareholders, directors, and officers and the same principle applies even where one corporation wholly owns another and the two have mutual dealings. Joiner v. Ryder System Inc. 966 F. Supp. 1478 (C.D. Ill. 1996). One of the most important and pervasive principles underlying corporations law is the “entity theory.” This theory provides that a corporation is a separate entity, distinct from its shareholders and other corporations with which it may be affiliated. Main Bank of Chicago v. Baker, 86 Ill. 2d 188 (1981); Stamp v. Inamed Corp. 777 F.Supp. 623 (N.D. Ill. 1991). The applicant is an entity formed separate and apart from the housing authority. There is nothing in the record to support a conclusion that it was created pursuant to the Illinois Housing Authority Act or that it functions with the same rights and duties of entities within that statute’s purview. Therefore, the applicant does not qualify for a property tax exemption under 35 ILCS 200/15-95.

The other argument made by the applicant is that it qualifies for a property tax exemption as a charitable organization under 35 ILCS 200/15-65. That section of the statutes 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 not been determined to be an exempt organization under paragraph three of Section 501(c) of the Internal Revenue Code. Neither do its by-laws provide for a waiver or reduction of entrance fees or fees for services based upon an ability to pay. Therefore the applicant cannot qualify for a property tax exemption under subsection (c) above.

35 ILCS 200/15-65 also applies to institutions of public charity and/or charitable organizations. 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 financial statement of the applicant discloses income from rents, interest, and housing assistance payments from HUD. As the applicant has not established that the federal government subsidizes the rents for the apartment properties at issue, it is reasonable to conclude that the income in its financial statement from HUD is attributable to the Glenwood II project that it leases from the housing authority.

The chief source of applicant’s income for the Bob White apartments is from rent. Therefore, the applicant fails to establish that it derives its funds mainly from public and private charity. The evidence also substantiates that the rents charged are comparable to rates charged by other entities in the same area for assisted living facilities. In addition, the testimony was that the applicant will not waive rents if a tenant is unable to pay. Thus, the applicant does not reduce the burdens of government, it places obstacles in the way of persons who wish to avail themselves of the services of the applicant, it does not dispense charity to all who need and apply for it, and it does not benefit an indefinite number of persons persuading them to an educational or religious conviction for their general welfare. 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). In this matter, however, the evidence presented is that the applicant only rents this property to those who have the ability to pay, thereby preventing anyone in need of charity the opportunity to benefit from applicant's property ownership.

An applicant must prove that the property at issue is owned by a charitable organization and used for charitable purposes. This applicant has failed to establish that it is a charitable organization using the subject properties for charitable purposes.

Regarding the exemption request for PIN 11-00-024-300, the applicant included that number in its exemption request that it submitted to the Board of Review of Marion County. A review of the records of the supervisor of assessments shows that the applicant is the owner of record of this parcel. The Board of Review acted upon the exemption request, as provided by statute⁴ and forwarded it to the Department. The Department determined that parcel did not qualify for exemption. The taxpayer failed to address the parcel at the hearing. I therefore find that Parcel Index No. 11-00-024-300 is at issue, the burden of proving an entitlement to an exemption is upon the applicant, and the Department's determination that Parcel Index Number 11-00-024-300 is not in exempt ownership and use should be upheld until such time as it is determined to be exempt.

For the foregoing reasons, it is recommended that Marion County Parcel Index Nos. 11-00-022-775, 11-02-000-044, 11-00-024-300 and 11-00-026-085 remain on tax rolls for the 1998 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 28, 2002

⁴ 35 ILCS 200/16-70.