

PT 05-19

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

**COMPREHENSIVE COMMUNITY SOLUTIONS,
INC.**

Applicant

v.

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

04 PT 0046

(03-101-144)

PIN 11-27-211-023

11-27-211-019

11-27-211-020

Mimi Brin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Richard M. Butera, Butera Law Offices, on behalf of Comprehensive Community Solutions, Inc.; John Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

In April 2004, Comprehensive Community Solutions, Inc. (hereinafter “Comprehensive” or “Applicant”) filed an Application for Non-homestead Property Tax Exemption with the Illinois Department of Revenue (hereinafter “Department”) for properties located at 907, 915 and 917 S. Main Street, Rockford, Illinois (hereinafter collectively referred to as the “subject property”) for the tax year 2003 (hereinafter “tax year”). The exemption request was made pursuant to §15-65 of the Property Tax Code, 35 ILCS 200/1 *et seq.* (hereinafter “Code”) The Winnebago County Board of Review had previously recommended that an exemption be given except for the 2.73% of PIN 11-27-211-023 that was leased to a for-profit entity. Department Gr. Ex. No. 1, p. 1

Subsequent to its review, the Department denied any exemption for the subject property. Id. at p. 2 Comprehensive protested the Department's denial and the matter came to hearing. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:¹

1. On April 29, 2004, the Department denied Comprehensive's Application for a Non-homestead Property Tax Exemption for the tax year 2003 for the properties located at 907, 915 and 917 S. Main Street, Rockford, Illinois, on the basis that the subject property was not in exempt ownership or exempt use during the tax year. Department Gr. Ex. No. 1, p. 2
2. PIN 11-27-211-023 is the 907 S. Main Street property. Applicant Ex. No. 1 (Affidavit of Building Usage) It is used by the applicant for its Neighborhood Tool Bank and Project Welcome Home programs. Id. Applicant also uses it as a training center in its YouthBuild program, as well as for storage for administrative and program needs. Id. 1825 square feet of this building is leased by applicant to a for-profit business, and it was found not to be exempt by the Winnebago Board of Review (Applicant Ex. No. 6; Department Gr. Ex. No. 1, p. 1) and applicant concedes that this area is not exempt from the imposition of real estate tax. Tr. pp. 21-22
3. PIN 11-27-211-020 is property located at 917 S. Main Street. Applicant Ex. No. 1 The first floor is used as the main administrative offices for applicant. Id. The second floor is used as a GED program classroom as

¹ Unless otherwise noted, all Findings of Fact and Conclusions of Law refer to the tax year 2003.

well as a computer training lab for the YouthBuild program. Id. The lower level of this property is used as a student locker room. Id.;² Tr. p. 46

4. PIN 11-27-211-019 is a parking lot adjacent to the 917 S. Main Street building and is used by applicant's employees. Applicant Ex. No. 1
5. Comprehensive owned the property during the tax year at issue. Applicant Ex. Nos. 7, 8 (Settlement and Chicago Title and Trust Co. documents showing Comprehensive as buyer and owner)
6. Comprehensive was incorporated in June, 1992 in the State of Illinois, pursuant to the Illinois General Not For Profit Act. Applicant Ex. No. 10 (Secretary of State document)
7. Comprehensive's mission is:

to bring about fundamental transformation of neighborhoods, communities and the circumstances of those who live there, through programs and services which emphasize building human capital, communities and affordable housing, including but not limited to: 1) Planning, developing and implementing programs which are designed to train, educate and make more self-sufficient at risk individuals, especially young people, including education, job training, counseling and assistance in finding employment; 2) Providing decent housing that is affordable to low-and moderate-income people, including but not limited to construction, rehabilitation, and management of such housing; and, 3) Fostering sustainable communities through collaborative, neighborhood-based services and support which improve the social and economic fabric of the community.

Applicant Ex. No. 5 (Mission Statement)

² Applicant Ex. No. 1, the Affidavit of Building Usage, executed by Kerry D. Knodle on March 10, 2004, states that the lower level is also used as the student lunchroom facility. However, during his testimony at hearing, Knodle stated that this level is used as a locker room, "[A]nd we hope eventually to convert that into a kitchen and cafeteria down there for the students." Tr. p. 46 I, therefore, conclude that the cafeteria and kitchen did not exist on this property during 2003.

8. Comprehensive has been determined to be exempt from Federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

Applicant Ex. No. 9 (IRS letter, October 24, 2000)

Conclusions of Law:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its authority granted under the Constitutional, the General Assembly enacted specific exemptions to the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (hereinafter referred to as the “Code”). Comprehensive claims exemption from property tax pursuant to section 15-65 of the Code. Applicant claims exempt status citing sections 15-65 (a) and (c) that state, in relevant part:

§ 15-65 Charitable purposes. 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.

xxx

(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 or its successor, and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual’s ability to pay, or an entrance fee, assignment of assets or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If the not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

35 ILCS 200/15-65 (a), (c)

Both of these statutory provisions require ownership by particular entities and that the property is actually and exclusively used for charitable purposes. Id.; Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill.2d 273 (2004); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968); Institute of Gas Technology v. Department of Revenue, 289 Ill. App.3d 779, 783

As to §15-65(a), an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise relieves the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893) It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) 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. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968)

Although these factors are not to be applied mechanically or technically (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995)) they are examined for a determination as to whether an entity qualifies as an institution of public charity. The Department's position is that the applicant has failed to show that it is a charitable institution, and, further, that it failed to show that it used the subject property for statutorily mandated purposes during the tax year at issue.

Regarding the issue of whether Comprehensive qualifies as an institution of public charity, by virtue of its IRS 501(c)(3) designation, it has no capital stock or shareholders. Unfortunately, however, this applicant neglected to make any credible offering as to its finances. Because it did not make a showing of any financial statements, it is impossible from this record to ascertain the primary source of its income and how it spends its funds. The applicant addressed its financial circumstances only through the testimony of its executive director, Kerry Knodle (hereinafter "Knodle"). Knodle testified that the applicant presently has an "agency-wide budget of about \$1.5 million from all sources of funding" and has 18 full-time employees including a bookkeeping staff. Tr. pp. 42-3 Applicant did not present any documents evidencing this. Thus, while Knodle estimates that applicant receives 85% of its funding from grants and other contributions (Tr. p. 39), there is no competent evidence associated with applicant's books and records to verify this, or any other financial fact presented. This is especially important because Comprehensive does take monies from other entities to

administer at least some of its programs. Id. While Knodle did testify that applicant does not charge the individual participants in its programs, such as YouthBuild or the administration of the GED program, it remains an open question as to whether Comprehensive receives its funding for these programs through fees it receives from referring agencies for its services. For instance, Knodle testified regarding a training program that the Rockford Housing Authority pays for (Tr. p. 35) and Comprehensive is also paid for its “Project Welcome Home” program whereby applicant matches needy families to its community furniture bank. Tr. pp. 34, 36

Applicant also trains individuals through its YouthBuild program to build houses. Tr. p. 50 Knodle testified that applicant, itself, built a new single family home for the low-income market (id.) and also “did what’s called mixed income development” with low-income and market rate houses. Id. He additionally testified that Comprehensive owns “16 units of low income rent housing, three duplexes and a ten-family building” (Tr. p. 49) all of which are restricted to low-income persons. Certainly the persons getting training in construction through YouthBuild benefit from the training, but, because there are no financial documents of record, I do not know how applicant uses the monies it receives from what seem to be commercial enterprises. Therefore, I cannot conclude that the benefits of one of its major programs (Tr. p. 33) do not inure to itself or that the monies it makes from its commercial enterprises are not the primary sources of its income. I also cannot ascertain whether applicant uses these funds primarily for charitable endeavors-that is, does it offer its programs and services to as many individuals as is monetarily possible, or is the extent of its charity self-limiting to those for whom fees are paid to it by other agencies.

Nor is there any competent evidence, other than the hearing testimony of Knodle, as to how Comprehensive, the not-for-profit corporation, operates. There are no Articles of Incorporation or By-laws in evidence. Knodle stated that applicant's board must be comprised of "a certain portion of low income individuals or representatives of low income neighborhoods who serve actually in the governance of the organization" (Tr. p. 51), yet no documentation was offered in support of this statement. Knodle discussed how it is the board that reviews and sets salaries (Tr. pp. 59-60), but no documentation was offered on this point. Knodle started this corporation and is its executive director. Tr. pp. 32, 42, 55 It is, therefore, important that there is evidence, other than his own testimony, establishing that an independent board governs Comprehensive. Similarly, Knodle said that no fees were charged to participants (Tr. pp. 35-6), but there is no documentary evidence that it is the policy of Comprehensive to function in this manner.

In the case of Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987), the appellate court determined whether the plaintiff, a not-for-profit corporation, was a charitable organization. In discussing its analytical process, the court stated that "[t]he first step in determining whether an organization is charitable is to consider the provisions of its charter." (citing Rotary International v. Paschen, 14 Ill.2d 480 (1958)) Id. at 795 Whereas the charter in that case gave its purpose as promoting and conducting charitable activities (id.), the Mission Statement offered by this applicant says nothing about promoting and conducting charitable activities. It speaks to the programs run by applicant, which are certainly commendable, however, there is nothing that lets anyone know that assistance is available to whomever needs it, either affordably or without charge. See Rotary International v. Paschen, supra

at 488, 489 (“It is firmly established in this State that the objects of a not-for-profit corporation may be commendable, yet not charitable.” (citations omitted)) Since no other documentary evidence was offered by applicant, I must conclude that, while Comprehensive intends to provide programs that assist persons in need, it does not intend to do so with charity in mind. Id.

It is because there are such significant evidentiary voids in this record that I am unable to conclude that applicant is an institution of public charity qualified to have its real property exempt from taxation. Since this statutory provision requires that property be in exempt ownership as well as exempt use, I cannot recommend that the Department’s determination disallowing exemption be altered.

Comprehensive also seeks exemption under §15-65(c), that applies to “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... .” 35 **ILCS** 15-65(c) Applicant’s Mission Statement advises that the applicant’s programs benefit, *inter alia*, low-income and at-risk individuals. Nevertheless, the Illinois Supreme Court recently held that an entity claiming exemption under this section must show that its use of the property is primarily for charitable or beneficent purposes, and it must prove its entitlement in this regard using the criteria enunciated in Methodist Old People’s Home, as discussed above. Eden Retirement Center, Inc. v. Department of Revenue, *supra*. Again, because there are no Articles of Incorporation, By-laws and financials in evidence, it is unclear whether applicant operates as a business that receives fees for its services, whether it serves persons for whom fees are not paid, whether it uses monies it receives for its commercial operations

to make available its programs to persons who need program benefits and whether any charity that it does is its primary purpose and the primary purpose for which the subject property is used. As stated previously, commendable acts, in and of themselves, are not sufficient to warrant a grant of exemption for property tax purposes. The law also holds that it is not enough for the taxpayer to stand on its Internal Revenue Service grant of federal tax exemption as a 501(c) not-for-profit corporation as evidence of its charitable use of property. Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 291 (federal income tax exemption does not provide material facts about exclusive use of property required by the Illinois Constitution) A review of this record establishes that applicant failed to show that its use of the subject property is primarily for charitable or beneficent purposes.

When the Department, in closing argument, mentioned that Comprehensive failed to offer any financial information regarding the source of its funding, other than the testimony of Knodle, applicant's counsel vigorously objected, effectively saying that because the Department did not present any evidence to the contrary, either by documentation or witness examination, the testimony of Knodle must be accepted as unrebutted and conclusive on the matters on which Knodle testified. Tr. pp. 77-81 I cannot agree with Comprehensive.

It is basic to Illinois law that "property tax exemption statutes, such as 15-65, 'are to be strictly construed and are not to be extended by judicial interpretation beyond the authority given in the constitution.'" Eden Retirement Center, Inc. v. Department of Revenue, *supra* at 288; Rotary International v. Paschen, *supra* at 486 It is also well settled in Illinois that "the burden of proving the right to exemption is upon the party

seeking it... .” Eden Retirement Center, Inc. v. Department of Revenue, supra at 289 In determining whether property is exempt from taxation, “every presumption is against the intention of the State to exempt property” (Rotary International v. Paschen, supra at 487), thus, all facts are to be construed and all debatable questions resolved in favor of taxation. Id. Further, the burden is on the exemption claimant to prove clearly and conclusively its entitlement to the exemption sought (Gas Research Institute v. Department of Revenue, supra at 434), with the clear and convincing evidentiary standard “defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996)

Based upon these seminal principles of law, Comprehensive did not meet its initial burden of proof in this matter. By presenting only the testimony of its executive director on matters as significant as its sources of funding and the manner in which it operates, the applicant failed to clearly and convincingly prove that it meets the requirements of an institution of public charity as those have been enunciated by the Illinois Supreme Court, even when these requirements are balanced. Morton Temple Association, Inc. v. Department of Revenue, supra at 796 (“[s]tatements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institutions of the burden of proving that its property actually and factually is so used.” (citing Methodist Old Peoples Home v. Korzen, supra and Skil Corporation v. Korzen, 32 Ill.2d 249 (1965)) Because of these evidentiary shortfalls, it also did not meet its burden of proving that it used its property primarily pursuant to the criterion established and set

forth in Methodist Old People's Home. Id. As a result, it is not that the Department failed to address what may be uncontroverted evidence, it is that the evidence presented by applicant was legally insufficient, in the first instance, to establish its right to property tax exemption on the subject property for the tax year at issue.

Wherefore, for the reasons stated above, it is recommended that Winnebago County, PIN # 11-27-211-023, 11-27-211-019 and 11-27-211-020 not be exempt from the imposition of 2003 property taxes.

3/29/05

Mimi Brin
Administrative Law Judge