

PT 09-21

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

**CITIZENS LANDMARK
PRESERVATION,
APPLICANT**

v.

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

Docket No: 08-PT-0036

**Real Estate Exemption
For 2007 Tax Year**

P.I.N. 16-04-331-031, 032 through 038

Cook County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Earline Hunter, *pro se*, on behalf of Citizens Landmark Preservation; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Cook County Parcels, identified by index numbers 16-04-331-031, and 032 through 038 (hereinafter the “subject property”) should be exempt from 2007 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On March 17, 2008, Citizens Landmark Preservation (hereinafter “Citizens”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 2007 real estate taxes for the subject property. The Board reviewed Citizens’ Complaint and recommended that the 2007 exemption be denied. The Illinois Department of Revenue (hereinafter the “Department”) accepted the Board’s recommendation in a determination dated September 18, 2008. This determination found that the subject property was not in exempt ownership, not in exempt use, and that Applicant was not the owner of the subject property in 2007. Dept. Ex. No. 1. Citizens filed an appeal of the Department’s denial of exemption. On August 6, 2009, a formal administrative hearing was held with Earline Ruffin and Rashidah Ali testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial of exemption 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 or use during

2007 and that the Applicant was not the owner of the subject property in 2007.

Tr. pp. 8-9; Dept. Ex. No. 1.

2. The subject property is located at 5200 West Chicago Avenue in Chicago. Tr. pp. 5, 7.
3. The subject property is held under trust agreement number 31436 (Cosmopolitan Bank and Trust Company Land Trust Department) dated March 6, 2002. The beneficiaries of the trust are John Young Sr., John Young Jr., Earline Ruffin, and Shawnee Nicole Ruffin. Tr. pp. 10-11; Dept. Ex. No. 2.
4. On October 27, 2008 (after the Department's denial of exemption for tax year 2007), John Young Sr. and Earline Ruffin signed a quitclaim deed conveying their interests in the subject property to Citizens. John Young Jr. and Shawnee Nicole Ruffin did not sign the quitclaim deed. Tr. pp. 11-12; Dept. Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that Citizens has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2007 real estate taxes. 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 limitations 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 or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by “institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes.” 35 ILCS 200/15-65. Charitable ownership and charitable use together entitle a parcel to exemption from taxation. Lena Community Trust Fund v. Department of Revenue, 322 Ill. App. 3d 884 (2d Dist. 2001). I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that the subject property is owned by Citizens and that the subject property is used for charitable purposes.

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the year at issue in these proceedings, 2007, the subject property was owned by private individuals. To qualify for exemption for charitable purposes, 35 ILCS 200/15-65 requires that property be owned by a charitable organization. In order for property to be exempt for charitable purposes, it must, first, be owned by a charitable organization. Turnverein “Lincoln” v. Board of Appeals, 385 Ill. 135 (1934). Citizens cannot meet this requirement for assessment year 2007 because the subject property was owned by private individuals, and not by a charitable organization.¹

Furthermore, the Applicant in the instant case was Citizens. Citizens lacked standing to bring a complaint seeking to exempt the subject property from 2007 real estate taxes under Section 15-65 of the Property Tax Code because the record does not show that Citizens was the owner of the subject property in that year. 35 ILCS 200/15-65.

The issue of standing rarely comes up in exemption cases because the property owner, who is liable for real estate taxes under Section 9-175 of the Property Tax Code, is also the Applicant in most cases. Section 9-175 states that the owner of the property on January 1 in any year shall be liable for the taxes of that year. 35 ILCS 200/9-175. Because Section 9-175 imposes this liability, the owner’s standing is not questioned, as the owner is presumed to have a “direct and substantial” financial interest in the outcome of the exemption proceeding. Highland Park Women’s Club v. Department of Revenue, 206 Ill. App. 3d 447 (2d Dist. 1991).

In the instant case, however, the persons who owned the subject property on January 1, 2007 are not the Applicant herein. The owners have a separate and distinct

¹ The record does not show that Citizens can meet the requirement of ownership of the subject property by a charitable organization in 2008 because there was no evidence that John Young Jr. and Shawnee Nicole Ruffin ever quitclaimed their interests in the subject property to Citizens.

legal identity from the Applicant, Citizens. Consequently, only the owners, and not Citizens, can benefit from the statutory grant of standing contained in Section 9-175.

The Property Tax Code establishes procedures for the filing and administrative review of exemption complaints. Here, the owners of the property did not file an appropriate exemption complaint with the Board. The owners did not seek any determination that their use of the subject property qualified as exempt. Neither the Property Tax Code nor the Departmental Hearing Regulations authorize me to conclude that the owners and Citizens are the same entity. Any conclusion that they are the same entity eludes the mandated statutory review process required by the Property Tax Code. There is currently no statutory or regulatory authority that allows me to permit such circumvention. Accordingly, I am unable to conclude that Citizens has the requisite financial stake to bring a complaint seeking to exempt the subject property from 2007 real estate taxes under Section 15-65 of the Property Tax Code.

If Citizens had owned the subject property in 2007, I would still recommend that the exemption be denied because there was no evidence at the hearing as to the charitable use of the subject property. The only testimony as to the charitable use of the property was as follows: “Well in 2007, we were training elderly women at the facilities to manage and run the banquet hall in regards to the cooking and the training of other students to develop a café.” “In 2007, we also had an operating office, two offices there, for which we shared non-profit activities under a joint venture agreement, 2008.” Tr. p. 20. The owners did not ask that any document be admitted into evidence and no documents were admitted into evidence on behalf of the Applicant or owners.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Illinois Supreme Court outlined the following “distinctive characteristics”

of a charitable institution: (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; (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. The two sentences in the record regarding the charitable use of the subject property are simply not enough for me to determine whether Citizens qualifies as an “institution of public charity,” in accordance with the characteristics detailed in Korzen.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2007 real estate taxes on the grounds that the subject property was not owned or used by an institution of public charity and that the Applicant was not the owner of the property should be affirmed, and Cook County Parcels, Index Numbers 16-04-331-031 and 032 through 038 should not be exempt from 2007 real estate taxes.

ENTER:

Kenneth J. Galvin

November 16, 2009