

PT 95-31
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

NEW HOPE TRUST FUND, INC.)
Applicant) Docket #92-16-600
) Parcel Index #29-12-320-043
v.)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Robert D. Quinlivan, Attorney for New Hope Trust Fund, Inc.

SYNOPSIS: The Cook County Board of Review filed an Application for Property Tax Exemption with the Illinois Department of Revenue (the "Department") for New Hope Trust Fund, Inc. (the "Applicant"). The Department denied the application finding that the property was not in exempt use and ownership. The Applicant filed a protest to the findings of the Department and requested a hearing. At the hearing it was found that the owner of the property is the Applicant. The property is leased to New Hope Center, Inc. for \$3,175.00 per month. New Hope Center, Inc. operates Big Bear Day Care on the property for children with disabilities and those without. Big Bear Day Care is subsidized in part by the Department of Children and Family Services. It is recommended that the Director of the Department find that the parcel herein question was in exempt use and ownership for the 1992 assessment year.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Cook County permanent parcel index number 29-12-320-043 should not be exempt from

property tax for the 1992 assessment year was established by admission into evidence of Dept. Ex. Nos. 1-6.

2. New Hope Center, Inc. was incorporated in Illinois on June 22, 1960. (Dept. Ex. No. 5)

3. In 1989, New Hope Center, Inc. was advised to undergo a reorganization. Two new not-for-profit corporations were formed in conjunction with the reorganization, the Applicant and New Hope Association, Inc. (Tr. p. 18)

4. The reorganization was done to enable board members of the organization to focus more particularly on the functions of the specific organization and to avoid board burn-out. (Tr. pp. 18-19)

5. New Hope Association was formed to handle the fund raising, overall policy and direction for the system of three corporations. (Tr. p. 19)

6. As a result of the reorganization, all of the programs and real assets of New Hope Center, Inc. were subsumed into the three organizations. (Tr. p. 21)

7. Applicant was incorporated under the General Not-For-Profit Corporation Act of the State of Illinois on June 22, 1990. (Dept. Ex. No. 5)

8. The purposes of the Applicant are:

(a) Promote the interests of New Hope Association, Inc., an Illinois not-for-profit corporation, in its charitable, educational, and benevolent activities.

(b) Promote the interest of any not-for-profit and federally tax exempt organizations which are affiliated with New Hope Association, Inc., the purposes of which are not inconsistent with those of the corporation.

(c) Own, lease or otherwise deal with all property, real and personal, to be used in furtherance of these purposes, except that the corporation may not create or acquire wholly owned or controlled corporations without the express approval of the sole corporate member.

(d) Contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies

in furtherance of these purposes.

(e) Otherwise operate exclusively for charitable, religious, scientific or educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code in the course of which operation:

(i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

(ii) No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Internal Revenue Code.

(iii) Notwithstanding any other provisions of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under 501(c)(3) of the Internal Revenue Code or (b) by a corporation, contributions to which are deductible under 170(c)(2) of the Internal Revenue Code. (Dept. Ex. No. 5)

9. The Applicant has one member, New Hope Association, Inc. (Tr. p. 28)

10. The Applicant purchased the property in question, known as 1630 East 154th Street, on September 27, 1991. (Dept. Ex. No. 1)

11. Located upon the property was a 6,000 foot masonry single story church and an improved parking lot. (Tr. pp. 30-31)

12. Extensive renovation was required on the property. The Applicant received financing from the Illinois Facilities Fund for the purchase and renovation of the property. Illinois Facilities Fund is an Illinois Agency whose sole purpose is to lend money to other not-for-profit organizations to acquire properties in which to run their programs. (Tr. p. 32)

13. The Applicant raised an additional \$50,000 for the balance of the

cost of renovations from corporations, foundations and private contributors. (Tr. pp. 32-33)

14. The Applicant met all the Department of Children and Family Services' standards in terms of the renovation. The property has three major classrooms, a reading loft, two play areas, one small office and reception area and a kitchen where hot lunches and breakfasts are prepared every day. A large play area is located outside. (Tr. pp. 34-35)

15. New Hope Center operates Big Bear Day Care on the parcel in question. New Hope Center leases the property from the Applicant for \$3,175.00 per month as rent. (Dept. Ex. No 5)

16. For the period of July 1, 1993 through June 1, 1994, the schedule of monthly loan payments to Illinois Facilities Fund for Big Bear Day Care were \$3,732.00 per month. (Dept. Ex. No. 5)

17. Funding for Big Bear Day Care is provided through a combination of private tuition and the Department of Children and Family Services Title XX program. (Dept. Ex. No. 5)

18. The day care serves both children with disabilities and without. Only six to eight children with disabilities are in the day care center at one time. The proportion is done deliberately because that is about the ratio in which disabilities occur in the mainstream of society. The Applicant and New Hope Center do not want 30 to 50 children with disabilities in a day care center. The Center wants six disabled children to have a maximum of growth potential, to be integrated with their peers, and to learn and grow in an environment that matches what they will encounter in society. (Tr. pp. 36-37)

19. The Department of Children and Family Services provides subsidies for 42 of the 60 children that are enrolled in the day care center. (Tr. p. 38)

20. Due to the timing of a request for proposal grant and the fact

that the grant was only for 42 children, the Applicant decided that they needed to open the facilities to the public. (Tr. p. 42)

21. The purposes and goals of Big Bear Day Care are:

... to help every child, one at a time, become independent, self-confident, and especially enthusiastic learners. This is achieved by allowing children to learn at their own pace and [sic] in ways that are best suited for them. Along the way giving moral support and encouragement for their efforts.

Our curriculum identifies goals in the following areas of development:

- Social: to help children feel comfortable in their new environment, make friends, and feel they are part of the group.
- Emotional: to help children feel confident, and experience self-pride in their efforts. To help develop a positive attitude on life.
- Cognitive: to help children become confident learners. Allowing them to find their own solutions to a problem, ask questions, and to try out their own ideas.
- Physical: to help children increase large and small muscle skills and feel good about what their bodies can do. (Dept. Ex. No. 5)

22. Big Bear Day Care has a \$20.00 non-refundable registration fee per child. Tuition is \$90.00 per child for a full-time five-day week. Big Bear Day Care is a site administered day care provider for the Department of Children and Family Services. Families who are deemed eligible receive subsidized day care services based upon family size and total household income. As such, families will not be denied day care services based upon inability to pay. (Dept. Ex. No. 5)

23. Big Bear Day Care has taken people who are unable to pay. (Tr. p. 54)

24. As to the \$20.00 non-refundable registration fee, if necessary, the Applicant would waive the fee. (Tr. p. 54)

25. The basic cost per child at Big Bear Day Care is \$21.00 per day. Of this, \$19.00 per day is provided for the developmentally disabled

children and \$16.22 per day for the children that are subsidized under the Department of Children and Family Services program. Children not covered under those programs are charged \$18.00 per day. (Tr. pp. 59-60)

26. The Applicant has applied for recognition as a 501(c)(3) exempt organization from Federal income tax. (Dept. Ex. No. 5)

27. For fiscal year 1994, the three organizations' income by source was: 52.4% from the Department of Mental Health, 14.5% from the Department of Public Aid, 15% from LTC contracts (LTC is a State agency), 6.5% from the Department of Rehabilitation and Department of Children and Family Services, .6% from program fees and 1.9% from other sources. (Dept. Ex. No. 5)

28. New Hope Center, Inc. had assets and liabilities of \$2,368,421.00 for the year ending June 30, 1994. For the same period, the Day Care Center had support and revenues of \$269,465.00; Operating Expenses of \$295,363.00; for a net loss of \$25,898.00. (Dept. Ex. No. 5)

29. New Hope Center, Inc. and the facility located at Cook County parcels number 29-25-102-019 and 29-25-102-020 qualified for a property tax exemption in 1989 pursuant to Docket number 89-16-410. (Applicant's Ex. No. 1)

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.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of

beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a 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). Finally, 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).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and

(6) The primary use of the property is for charitable purposes.

In *Oak Park Club v. Lindheimer*, 369 Ill. 462 (1938) the Illinois Supreme Court found that the fact that no profit was made by a corporation claiming to be a charitable organization was not of controlling importance in determining whether its property was exempt from taxation.

The Supreme Court in the case of *Childrens Development Center v. Olson*, 52 Ill.2d 332 (1972), held that where one exempt entity leases property to another exempt entity, which uses said property for an exempt purpose, the lease will not be considered a lease for profit.

Based upon the foregoing, I find that the Department has previously determined that *New Hope Center, Inc.* is a charitable organization. I further conclude that the Applicant is also a charitable organization. The benefits derived from the Applicant are for an indefinite number of persons and the Applicant has no capital, capital stock or shareholders and does not profit from the enterprise. The funds for Big Bear Day Care and the Applicant are derived mainly from private and public charity and are held in trust for the objectives and purposes expressed in the charters. Charity is dispensed to all who need and apply for it and no obstacles are placed in the way of those seeking the benefits. I further find that the primary use of the property is for charitable purposes.

I therefore recommend that Cook County parcel index number 29-12-320-043 be exempt from real estate tax for the 1992 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

June 23, 1995