

PT 95-48  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

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

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FAMILY FOCUS, INC. )  
Applicant ) Docket # 91 L 50581  
) On Remand from the  
) Circuit Court of  
) Cook County  
) Dept. Docket No. 88-16-185  
)  
v. ) Parcel Index # 10-13-201-027  
) (Cook County)  
)  
THE DEPARTMENT OF REVENUE ) George H. Nafziger  
OF THE STATE OF ILLINOIS ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Brian S. Maher appeared on behalf of Family Focus, Inc. (hereinafter referred to as the "applicant").

SYNOPSIS: This recommendation is being rewritten pursuant to the Order of the Circuit Court of Cook County in Family Focus, Inc. v. Illinois Department of Revenue, Docket No. 91 L 50581, issued January 25, 1995, which ordered that certain additional findings of fact be made in this matter.

Ms. Dolores Holmes, director/business manager of the applicant's 2010 Dewey facility, Mr. Donald Wirth, director of parks, recreation, and forestry of the City of Evanston, Mr. Leonard Zieve, treasurer of the applicant, and Miss Diane Pyle, director of business operations and services of the applicant were present at the original hearing held on November 13, 1990, and testified on behalf of the applicant.

The issues in this matter include first, whether Mt. Moriah Lodge No. 28 (hereinafter referred to as "Mt. Moriah"), is a charitable organization. The second issue is whether Mt. Moriah used the 1,547 square feet of space

it leased from the applicant during the period February 22, 1988, through December 31, 1988, in furtherance of the charitable purposes of the applicant. The third issue is whether the space leased to Mt. Moriah was leased by the applicant with a view to profit. The fourth issue is whether the 5,887 square feet of space leased to the City of Evanston Recreation Department (hereinafter referred to as "Recreation Department") during the period February 22, 1988, through December 31, 1988, was used by the Recreation Department in furtherance of the charitable purposes of the applicant. The last issue is whether the space leased to the Recreation Department was leased by the applicant with a view to profit. Following the submission of all of the evidence and a review of the record, it is determined that Mt. Moriah is not a charitable organization. It is also determined that Mt. Moriah did not use the 1,547 square feet of space, which it occupied during the period February 22, 1988, through December 31, 1988, in furtherance of the charitable purposes of the applicant. It is further determined that the space leased to Mt. Moriah was leased by the applicant, with a view to profit. In addition, it is determined that the applicant has failed to establish that the 5,887 square feet of space leased to the Recreation Department during the period February 22, 1988, through December 31, 1988, was used for the charitable purposes of the applicant. Finally, it is determined that the space leased to the Recreation Department was leased with a view to profit.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that the parcel here in issue and the building thereon, qualified for exemption from real estate tax for 86% of the 1988 assessment year, except for the 1,547 square feet on the first floor leased to Mt. Moriah, and the 5,887 square feet of the second floor leased to the Recreation Department, was established by the admission in evidence of Department's Exhibits 1 through 6C.

2. On April 5, 1989, the Cook County Board of Appeals transmitted a Statement of Facts in Exemption Application, concerning the parcel here in issue for the 1988 assessment year, to the Illinois Department of Revenue (Dept. Ex. No. 2).

3. On June 23, 1989, the Department approved the exemption of the parcel here in issue and the building thereon, for 86% of the 1988 assessment year, except for 1,547 square feet of the first floor, leased to Mt. Moriah, and 5,887 square feet of the second floor, leased to the Recreation Department (Dept. Ex. No. 3).

4. On July 11, 1989, the applicant's attorney requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The original hearing held in this matter on November 13, 1990, was held pursuant to that request.

6. The applicant was incorporated on June 30, 1976, pursuant to the "General Not For Profit Corporation Act" of Illinois, for purposes which included the following:

"...the principal purposes of the Corporation shall be to provide (i) educational programs on child development toward more effective parenting; (ii) a meeting place for contacts with other parents of young children; and (iii) community contacts and referrals for the provision of social, medical and legal services."

7. The applicant acquired the parcel here in issue and the former school building located thereon, pursuant to a quitclaim deed dated February 22, 1988 (Dept. Ex. No. 2E).

8. The former school building located on this parcel, which had stood empty since 1979, was in the heart of the low income black community on the west side of Evanston (Tr. p. 13)

9. The applicant acquired this building to house a program for pregnant and parenting adolescents, as well as to house an adolescent pregnancy prevention program.

10. The applicant then sought out not-for-profit organizations in the community whose goals were compatible with the goals of the applicant, to occupy the space in the building that the applicant did not need.

11. Ms. Dolores Holmes, when asked what her current responsibilities were, at page 14 of the transcript, answered as follows:

"A. I first have to try to keep it filled to make sure that we can reap as much revenue as possible. It's an old building, No. 1. And the rental of the gas bill and the lighting bills are extremely high, and so I have to try to make sure that we can keep tenants in the building. That's No. 1.

No. 2 is to make sure that the building is in, as much as possible, good operating condition, and to work with those groups that are there to do joint programming for our families."

12. The applicant's witness testified that the applicant had a long association with the "Masons", which had allegedly provided services for the children being assisted by the applicant by providing Easter egg hunts, Thanksgiving baskets, and Christmas parties (Tr. p. 15).

13. The lessee of the 1,547 square feet in the building is to Mt. Moriah, and not to the "Masons".

14. The applicant's witness went on to state that Mt. Moriah used the space it leased in this building, which was a double room, for its meetings.

15. Those meetings would have included lodge meetings and degree work meetings to raise new members through the degrees.

16. The income and expense statement of Mt. Moriah for 1989, which was alleged to be very similar to the 1988 income and expense statement, showed that only approximately 7% of the Mt. Moriah's income was used for charitable purposes.

17. Based on the foregoing, I therefore find that the applicant has failed to establish that the 1,547 square feet of space on the first floor leased to Mt. Moriah, was used in furtherance of the charitable purposes of the applicant.

18. The space leased by the applicant to the Recreation Department consisted of 5,887 square feet on the second floor, and contained an auditorium, a box office, a rehearsal room, and an area used to build scenery.

19. This area was leased by the Recreation Department during the period February 22, 1988, through December 31, 1988, to be used as a community theater.

20. The only evidence that the 5,887 square feet leased to the Recreation Department was used for the charitable purposes of the applicant were a couple of references by the witnesses to the fact that several of the participants in the applicant's programs also tried out for, and got, parts in the Recreation Department's theatrical productions. However, no detailed evidence of the number of participants in the applicant's programs who were so involved during 1988, or how this activity was of benefit to them, appears in the transcript.

21. During 1988, the theater charged a \$6.00 admission charge to its productions. Free seats to the dress rehearsals were provided to persons who couldn't afford to pay. Also, if all the seats for a production were not sold, the unsold seats would be given to persons who wanted to attend, but could not afford to pay.

22. Based on the foregoing, I find that the applicant has failed to establish that the 5,887 square feet of the second floor leased to the Recreation Department was used in furtherance of the charitable purposes of the applicant.

CONCLUSIONS OF LAW: Article IX, Section 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."

1989 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,...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;...."

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); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). 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 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). 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); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

Concerning the 1,547 square feet leased to Mt. Moriah during the period February 22, 1988, through December 31, 1988, the Applicant's attorney, in his brief, cited the case of *Cook County Masonic Temple Association v. Department of Revenue*, 104 Ill.App.3d 658 (1st Dist. 1982) for the proposition that Mt. Moriah, as a Masonic lodge, was a charitable organization. Applicant's attorney, in his brief, correctly pointed out that Mt. Moriah was not a party to the *Cook County Masonic Temple*

Association case, and further, did not own the parcel it occupied. In addition, the Cook County Masonic Temple Association case is distinguishable from the case here in issue, because in that case the parties agreed that the numerous temple associations were charitable organizations. The Appellate Court then concluded that the temple buildings were used for charitable purposes. In this case, I have previously found as a matter of fact, not only that Mt. Moriah is not primarily a charitable organization, but also that Mt. Moriah has failed to establish that it used the portion of said building, which it leased in furtherance of the charitable purposes of the applicant.

In the case of *People ex rel. Thompson v. The Dixon Masonic Building Association*, 348 Ill. 593 (1932), the Supreme Court, at page 596, concluded:

"...but a building used primarily for social or fraternal purposes or for lodge meetings for the conduct of ritualistic work is not exempt from taxation."

Again, in the case of *The People ex rel. Nelson v. The Rockford Masonic Temple Building Association*, 348 Ill.567 (1932), at page 569, the Supreme Court concluded that Masonic lodges and related organizations are organized for the following primary purposes:

"...to promulgate the ideals of Masonry, which include the maintenance of a high moral standard of living and administration to the religious and spiritual life of its members. In carrying out these ideals charity is but an incidental feature. It is not the principal or the exclusive object of the organization and under the constitution of the State no exemption from taxation can be enjoyed by an organization which does not have charity as its primary object."

In his brief, the attorney for the applicant cites the case of *Childrens Development Center, Inc. v. Olson*, 52 Ill.2d 332 (1972). In that case, the School Sisters of St. Francis, a religious organization, leased a portion of a former convent to Childrens Development Center, Inc., an organization determined to be charitable by the Court. In that case, the Court held that the leasing of property by an exempt organization to an

exempt organization which used the property for an exempt purpose, was not a lease for profit.

The Court stated this position at pages 335 and 336 of the opinion.

First, at page 335, the Court said:

"It is not questioned that the activities conducted by Center are charitable and that if the property were owned by Center and these activities conducted thereon it would be tax exempt. Also, if Sisters were to conduct a similar operation on the property instead of Center, it appears that the property would be tax exempt.

Then, at page 336, the Court said:

"Following the leasing the primary use to which the property was devoted was serving the tax-exempt charitable purpose of Center. This did not destroy the tax-exempt status of the leased property although the letting produced a return to Sisters."

It has been previously determined that Mt. Moriah does not qualify as a charitable organization. Consequently, the *Childrens Development Center, Inc. v. Olson*, case does not apply.

It should be noted that the Illinois Courts have consistently held that the use of property to produce income, is not an exempt use, even though the net income is used for exempt purposes. *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136 (1924). See also *The Salvation Army v. Department of Revenue*, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should be noted that if property, however owned, is let for a return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial, whether the owner makes a profit, or sustains a loss. *Turnverein "Lincoln" v. Board of Appeals*, 358 Ill. 135 (1934).

Concerning the 5,887 square feet of the second floor leased by the applicant to the Recreation Department, it has previously been determined that the applicant has failed to establish that said lease was in furtherance of the charitable purposes of the applicant.

In addition, it should be pointed out that in the case of Village of

Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983), the Appellate Court distinguished the case of Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), cited by Applicant's attorney, in his brief, and discussed above. In the Village of Oak Park case, the Court held that a parking lot leased by a church to the Village of Oak Park, did not qualify for exemption. The Court went on to point out that unlike the charitable and religious exemptions discussed in the Childrens Development Center case, the exemption for cities turns solely on ownership, and consequently, Childrens Development Center v. Olson, supra, does not apply.

I consequently recommend that Cook County parcel No. 10-13-201-027 and the building thereon, be exempt from real estate tax for 86% of the 1988 assessment year, except for 1,547 square feet leased to Mt. Moriah on the first floor and 5,887 square feet leased to the Recreation Department on the second floor.

I further recommend that said 1,547 square feet of the building leased to Mt. Moriah on the first floor and 5,887 square feet leased to the Recreation Department on the second floor, remain on the tax rolls for the 1988 assessment year.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

August , 1995