

PT 97-4  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

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

---

---

NEIGHBORHOOD HOUSING	)		
SERVICES OF ELGIN, INC.,	)	Docket Nos.	Parcel Nos.
Taxpayer.	)	95-45-103	06-14-238-002
v.	)	95-45-104	06-14-236-007
	)		06-14-236-017
THE DEPARTMENT OF REVENUE	)	John E. White,	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

---

---

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter involves two applications for property tax exemption for parcels of real property situated in Kane County, Illinois. The parcels are owned by the applicant, Neighborhood Housing Services of Elgin, Inc. ("NHS" or "applicant"). The Illinois Department of Revenue ("Department") denied the applications, and applicant protested those denials.

A hearing on applicant's protest was held at the Department's Office of Administrative Hearings. The issues were whether the properties were owned by an exclusively charitable organization, and whether the properties were used exclusively for charitable purposes. NHS presented evidence consisting of its books and records, and the testimony of its executive director. I am including in the recommendation findings of fact and conclusions of law. I recommend the application in Docket No. 95-45-103 be granted, and the application in Docket No. 95-45-104 be denied.

**Findings of Fact:**

**Facts Regarding Applicant's Organization and Operations:**

1. Applicant is an Illinois not-for-profit corporation. Applicant Group Ex. No. 1, Illinois Secretary of State seal, portion of applicant's articles of incorporation, and survey (dated 2/22/95) of Parcel 1.
2. Applicant receives most of its funding from public and private charity. Applicant Group Ex. No. 3, pp. 8-9 (1995 Form AG-990-IL, Charitable Organization Supplement to Illinois Attorney General's Office), pp. 10-15 (federal 1995 Form 990) (of applicant's total revenues received in 1995 (\$482,992), \$348,453 was from government grants, and \$77,155 was from direct public support); Applicant Group Ex. No. 1, Applicant's Audited Financial Statements, p. 8 (restricted funds received from Neighborhood Reinvestment Cooperation, a public, non-profit organization founded by act of Congress in 1975).
3. Applicant provides housing rehabilitation services for the City of Elgin and the surrounding community. See Applicant Group Ex. No. 1, Audited Financial Statements, p. 6. Applicant attempts to revitalize declining Elgin neighborhoods through cooperation with city, state and federal governments. Applicant Group Ex. No. 1, Applicant's 1994 Annual Report.
4. Some of applicant's programs include:
  - loan intake and marketing in cooperation with lending institutions for the rehabilitation of owner occupied housing in target areas of the community, administration of a matching fund rental rehabilitation program for the City of Elgin, administration of a revolving loan fund

for low interest home improvement loans, direction of a home ownership program which provides grants for down payments and closing costs to families attending an educational program as well as paint and tool lending programs.

Applicant Group Ex. No. 1, Audited Financial Statements, p. 6.

5. The Department determined that applicant was an exclusively charitable organization when it issued a state tax exemption number to applicant for purposes of the Retailers' Occupation Tax Act and the Use Tax Act. Applicant Ex. No. 3, p. 8 (of exhibit).

**Facts Regarding the Parcels, Generally:**

6. One of the two applications involves property used as applicant's office (Applicant Group Ex. No. 1, Application for Property Tax Exemption and affidavit of use; Tr. pp. 12-16), the other involves an application for property leased to the City of Elgin and used as the residence of an Elgin police officer. Applicant Group Ex. No. 2, Application for Property Tax Exemption and affidavit of use; Tr. pp. 12-16.
7. Applicant is the title owner of the parcels described in the exemption applications. Applicant Group Ex. No. 1, Warrantee Deed from Donald and Marjorie Eggers to applicant, dated 4/27/95; Applicant Group Ex. No. 2, Trustee's Deed from Capital Bank & Trust to applicant, dated 2/15/95.

**Facts Regarding Property in Docket No. 95-45-103:**

8. The application in docket no. 95-45-103 involves one parcel of real property, which has a parcel identification number ("PIN") of 06-14-238-002 (hereinafter "Parcel 1"). Parcel 1 has a commonly known street address of 161 Franklin Blvd., Elgin, Kane

County, Illinois. See, e.g., Applicant Group Ex. No. 1, Application for Property Tax Exemption.

9. Parcel 1 is improved with a 2-story, single family residence building which had previously been converted to a 2-unit apartment building. Applicant Group Ex. No. 1 (photo of parcel and affidavit of use).
10. Parcel 1 is rented to the City of Elgin, under a written month-to-month lease at a monthly rent of \$610.00 per month. Applicant Group Ex. No. 1, Lease, dated 6/1/95; Tr. p. 17.
11. Parcel 1 is used primarily as the residence of an Elgin police officer, as part of the Elgin Police Department's Resident Officer Program. Applicant Group Ex. No. 1, Lease; Tr. p. 17.
12. The application filed regarding Parcel 1 property was a partial year exemption (6/1/95 to 12/31/95). Taxpayer Group. Ex. No. 1, Application for Property Tax Exemption.

**Facts Regarding Property in Docket No. 95-45-104:**

13. Docket No. 95-45-104 involves two contiguous parcels of real property, designated by PINs 06-14-236-017 and 06-14-236-007 (hereinafter collectively referred to as "Parcel 2"). Parcel 2 has a commonly known street address of 300-302 Douglas Avenue, Elgin, Illinois. See, e.g., Applicant Group Ex. No. 2, photos and survey of Parcel 2, Application for Property Tax Exemption.
14. Parcel 2 contains two structures: a 4,500 square foot brick building and a 13-space brick garage. *Id.*; Tr. p. 10.
15. During the year the application was filed, applicant used the Parcel 2 property as its offices. Tr. pp. 10-12.

16. The application filed regarding the Parcel 2 properties was a partial year exemption (3/30/95 to 12/31/95). Taxpayer Group. Ex. No. 2, Application for Property Tax Exemption.

**Conclusions of Law:**

The Illinois Property Tax Code exempts from taxation real property owned by institutions of public charity, if:

such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;

35 **ILCS** 200/15-65 (1995). As a statutory provision exempting property from taxation, section 15-65 of the Property Tax Code must be strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The burden of establishing the right to the exemption is on the one claiming the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967). All debatable questions should be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434 (1st Dist. 1987).

In both property tax matters and ROT/UT matters, Illinois courts use the same criteria to determine whether an entity is an exclusively charitable organization. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2d Dist. 1995); see also, Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996) (affirming determination that association was not exclusively charitable because it did not satisfy certain criteria). Those criteria, first articulated by the Illinois Supreme

Court in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968), are:

1. Whether the benefits taxpayer provides are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduces the burdens on government;
2. Whether taxpayer's organization has any indices of a for-profit structure, such as capital, stock, or shareholders;
3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;
4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with taxpayer;
5. Whether taxpayer places any obstacles in the way of those seeking benefits from it;
6. The term "exclusively used" means the primary purpose for which the property is used [or for which the organization's benefits are provided] and not any secondary or incidental purpose.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d at 156-57; DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 214 Ill. App. 3d 461, 468 (1st Dist. 1991) (Methodist Old Peoples Home criteria to be used as guidelines, not benchmarks; each need not be "proved" before charitable status recognized).

Generally, the first five Methodist Old Peoples Home criteria are used to determine whether the entity claiming the exemption is, itself, an exclusively charitable organization. The last criteria is relevant when determining whether the property is being used

exclusively for charitable purposes. In this case, I find it unnecessary to examine in detail applicant's organization and activities to determine whether it satisfies the first five Methodist Old Peoples Home criteria. The Department has already made a determination that applicant was an exclusively charitable organization when it issued applicant an Illinois tax exemption number. Applicant Ex. No. 3, p. 8 (of exhibit); 35 **ILCS** 120/1g (1994). The Department does not claim, nor does any evidence in the record suggest, that the Department erred when it issued the charitable exemption number to this applicant. Because no evidence in the record leads me to doubt the correctness of the Department's prior determination, I conclude that applicant is organized and operated as an exclusively charitable organization.

A conclusion that an applicant is an exclusively charitable organization exempt from state sales and use taxes, however, is not determinative of whether the property at issue was used primarily for charitable purposes during the applicable tax year. Clark v. Marion Park, Inc., 80 Ill. App. 3d 1010 (2d Dist. 1980). Here, the Department denied applicant's applications for exemption because the properties were not in exempt ownership, and were not in exempt use. As to the first basis for denial, and while applicant introduced documentary evidence that it holds title to all properties involved in its two applications, "ownership" for purposes of a real property exemption is not limited to a review of the record titleholder of the property. People v. Chicago Title & Trust Co., 75 Ill. 2d 479, 489 (1979) ("The key elements of ownership are control and the right to enjoy the benefits of the property. . . . Revenue collection is not

concerned with the 'refinements of title'; it is concerned with the realities of ownership.").

On its application for exemption regarding Parcel 2, applicant wrote that it intended to rent some of the building space to area organizations. Use of property with a view toward profit is one of the criteria that militate against a finding of exclusively charitable use. See Methodist Old Peoples Home, 39 Ill. 2d at 158 (charging fees and allocating living space based on fees charged "seems more related to the bargaining of the commercial market place"); People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924) ("If real estate is leased for rent, whether in cash or other form of consideration, it is used for profit"). I presume it was those statements that formed the basis of the Department's determination that the properties were not in exempt ownership.

At hearing, however, applicant's executive director testified that, while applicant originally anticipated that it would rent space in the Parcel 2 building, applicant subsequently decided against such a use of the property, because its own need for office space had increased. Tr. pp. 11-12. Applicant's executive director testified that only applicant occupies or uses either structure located on the property included in Parcel 2. See Tr. pp. 10-12. Specifically, Mr. Wasilowski testified that applicant alone used the garage to house the vehicles and/or store the materials it used in the organization's activities, and that it alone used the 6-flat building as office space. I find Mr. Wasilowski's testimony credible on those points, and Elgin's activities are substantiated by its financial and other books and records. Therefore, I conclude that the properties

described as Parcel 2 were owned by an exclusively charitable organization, and were used exclusively for charitable purposes.

I cannot recommend the Director grant the application for exemption regarding the Parcel 1 property because I find that property was not used exclusively for charitable purposes. The Parcel 1 property was rented by applicant to the City of Elgin, and used as the residence of an Elgin police officer. Applicant charged the City of Elgin \$610.00 per month rent for the building. Wasilowski testified that applicant intended to lease the Parcel 1 property for the exact amount of its mortgage, but that damage to the property caused it to undertake additional mortgaged repair of the property. Even if applicant was losing money by charging the city rent that was less than applicant's mortgage on the property, there was no evidence to suggest that the rent applicant charged did not reflect the fair market rent for similar properties in the area. Applicant's lease of the property strongly suggests that applicant used the property with a view toward profit.

I also conclude that the key benefits of ownership of the residential property were enjoyed by the officer who lived there. People v. Chicago Title & Trust Co., 75 Ill. 2d at 489. The officer's individualized right of enjoyment militates against a finding of an exclusively charitable ownership or use. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 214 Ill. App. 3d 461, 470-71 (1st Dist. 1991) ("as it relates to a non-profit corporation . . . the determining feature of 'profit' with respect to a charitable institution is whether there is an inurement of benefit to a private individual."). A police

officer's exercise of rights attendant to the enjoyment of a personal residence is in no way more charitable than any other individual's use of a residence. Certainly, no Illinois statute or court decision has made property used as the personal residence of a police officer exempt from property taxation.

Nor does the fact that the officer volunteered to live and work in a less than desirable neighborhood make the officer's individualized right of enjoyment of his residence exclusively charitable. The City of Elgin pays the rent to the Parcel 1 property (see Applicant Ex. No. 3, Chicago Tribune, dated 7/21/95 ("For their participation, the officers [in the Resident Officer Program] are provided rent-free housing.")), thereby making the officer's use and enjoyment of the property even more directly profitable to him. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 214 Ill. App. 3d at 470.

Moreover, and while applicant's executive director testified that the parlor of the Parcel 1 property was used by the officer/resident as an office (see Tr. 14-15), no objective evidence was introduced which showed whether the officer used a specific area exclusively for police business, what such use would entail, or what percentage of the building was purportedly used for police business.<sup>1</sup> And even if applicant had introduced such evidence, I would still be reluctant to conclude that the property was being used exclusively for charitable purposes. Many individuals work at home, including

---

<sup>1</sup>. This is not a case wherein the lessee municipality's use of the property predominates over the non-exempt use of the property by the individual officer (and his family) as a personal residence. See Tr. p. 15 (the parlor office "is used strictly by the resident officer in that neighborhood.").

employees of exempt organizations. The Illinois General Assembly, however, has never granted a property tax exemption for an individual's business use of a residence. Ill. Const. art. IX, § 6 (1970) (limiting the General Assembly's power to make laws exempting property from taxation). I conclude that applicant has not shown that the Parcel 1 property was owned or used exclusively for charitable purposes.

I recommend the Director grant the application for partial year exemption (i.e., a 76% exemption for the period 3/30/95 to 12/31/95) for the Parcel 2 properties (PINs 06-14-236-007 and 06-14-236-017). I recommend the Director finalize the Department's denial of the application for partial year exemption for the Parcel 1 property (PIN 06-14-238-002).

Date

John E. White

A  
**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
 James R. Thompson Center  
 100 West Randolph Street, Level 7-900  
 Chicago, Illinois 60601  
 (312) 814-3070

NEIGHBORHOOD HOUSING ) SERVICES OF ELGIN, INC., ) Taxpayer. )	PROPERTY TAX ) Docket Nos. )	EXEMPTION ) Parcel )
Nos.		
v.	95-45-103	06-14-238-002
	95-45-104	06-14-236-007
<b>THE DEPARTMENT OF REVENUE</b>		06-14-236-017
<b>OF THE STATE OF ILLINOIS</b>		

**NOTICE OF DECISION**

To:

Stuart Wasilowski Neighborhood Housing Services of Elgin, Inc. 201 North Gifford Street Elgin, Illinois 60120	Supervisor of Assessments for Kane County Kane County Government Center 719 Batavia Avenue Geneva, Illinois 60134
---	---

Illinois Department of Revenue  
 Office of Administrative Hearings  
 101 West Jefferson Street  
 Springfield, Illinois 62794

**YOU ARE HEREBY NOTIFIED** that the attached recommended decision of the Administrative Hearings Division of the Illinois Department of Revenue in the above entitled cause has been accepted by the Director as dispositive of the issues therein. This recommendation is now a final administrative decision and establishes your rights or responsibilities regarding the subject matter of the hearing. Should this decision be adverse to you, you may pursue your rights to administrative review by filing a complaint in the Circuit Court under the requirements of 735 ILCS 5/3-101 et seq., within 35 days of the date of mailing of this notice.

Date of Decision

Kenneth E. Zehnder, Director  
Illinois Department of Revenue