PT 98-38
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

MATHER HEALTH CARE INC./ MATHER FOUNDATION, APPLICANTS	**Docket Nos. 93-16-1422 94-16-1211**
	Real Estate Exemption for the 1993 and 1994 Tax Years
v.	**P.I.N. 11-18-109-057**
	Cook County Parcel
STATE OF ILLINOIS DEPARTMENT OF REVENUE	**Robert C. Rymek Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mark R. Davis and Nina H. Tamburo of O'Keefe, Ashenden, Lyons & Ward on behalf of the applicants. Jack M. Siegel of Altheimer & Gray and Kathleen Brenniman on behalf of the intervenor, the City of Evanston.

SYNOPSIS: At issue is whether Cook County Parcel Index Number 11-18-109-057 (hereinafter the "subject property" or "Wagner") should be exempt from 1993 and 1994 real estate taxes under section 15-65 of the Property Tax Code[1] which provides:

[1] The applicants seek exemption from both 1993 & 1994 real estate taxes. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), our supreme court held property tax exemption issues necessarily depend on the statutory provisions in force during the time for which the exemption is claimed. Thus, the 1993 exemption application is technically governed by section 19.7 of the Revenue Act of 1939 (35 ILCS 205/19.1, 19.7 (1992)), while the 1994 exemption is governed by section 15-65 of the Property Tax Code (35 ILCS 200.15-65 (1994)). However, section 15-65 of the Property Tax Code is simply a recodification of section 19.7 of the Revenue Act of 1939 and the legislature did not intend for the recodification to make "any substantive changes in the meaning, effect or application" of the prior law.

> 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:
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> * * *
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> (c) Old people's homes *** 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 *** and either (I) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individuals ability to pay, of any 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 or 1959, as amended. 35 ILCS 200/15-65 (1994).

This controversy arose as follows:

The applicants, Mather Health Care, Inc. (hereinafter "MHC") and the Mather Foundation (hereinafter the "Foundation"), filed Property Tax Exemption Complaints with the Cook County Board of (Tax) Appeals on April 11, 1994, and June 30, 1995, seeking property tax exemptions for the subject parcel for the 1993 and 1994 tax years. On April 26, 1994 and July 26, 1995, the intervenor filed objections to the applicants' complaints. On June 24, 1994, the Board recommended that the 1993 exemption request be denied. On August 9, 1995, the Board recommended "no action" on the 1994 exemption request. On November 3, 1995, the Illinois Department of Revenue (hereinafter the "Department") denied the 1993 exemption request concluding that the subject property was not in exempt ownership and not in exempt use. On November 22, 1995, the Department denied the 1994 exemption request, again concluding that the subject property was not in exempt ownership or exempt use. The applicants filed timely appeals from the Department's denials of exemption and the exemption

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Pub.Act 88-455, eff. January 1, 1994 (preamble); accord <u>County of Hamilton v. Dep't of Revenue</u>, 279 Ill. App. 3d 639 (1996). Accordingly, in the interest of brevity and clarity, only the Property Tax Code version of statute will be cited in this recommendation.

requests were consolidated for hearing. On September 18, 1996 and October 18, 1996,[2] a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel not be exempted from either 1993 or 1994 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department's jurisdiction over this matter and its position that:

    (a) the subject property was not in exempt use;

    (b) the subject property was not in exempt ownership; and

    (c) that a 1973 covenant with the city of Evanston provided that the property would remain taxable for a period of 50 years.

2. The subject property is located at 820 Foster Avenue, in Evanston, Illinois. Dept. Gr. Ex. No. 1.

3. The subject property is improved with a five-story building, which is approximately 73,500 square feet in size and commonly known as the Wagner Health Center (hereinafter "Wagner" or the "Wagner Facility"). Tr. I[3] pp. 21-22, 61-63; Dept. Gr. Ex. Nos. 1, 10.

4. The Foundation owns and operates two old people's homes called Fairfield Court and The Mather. The Foundation funds another home called the

[2] The hearing was held on two separate dates, several weeks apart, due to a sudden medical emergency.

[3] "Tr. I" refers to the transcript of the September 18, 1996 hearing date. "Tr. II" refers to the transcript of the October 18, 1996 hearing date.

Georgian[4] (hereinafter these three homes will collectively be referred to as the "Foundation Homes"). Tr. I pp. 131-133.

5. MHC was organized in 1991 to purchase the subject property for use as a health care facility for the residents of the Foundation Homes. The Foundation did not purchase the subject property directly because the Foundation was concerned about potential liability resulting from acts of the subject property's previous owner. Tr. I pp. 109-112, 122; Tr. II pp. 12-13.

6. MHC acquired title to the subject property via a special warranty deed dated August 22, 1991. That deed incorporated by reference an October 25, 1973 covenant "to maintain the property subject to real property taxation." App. Ex. No. 3.

7. On November 1, 1994, MHC transferred title of the subject property to the Foundation via a warranty deed. App. Ex. No. 4.

8. MHC and the Foundation are both organized as not-for-profit corporations. App. Ex. Nos. 1, 7.

9. MHC and the Foundation share the same corporate officers and the same board of trustees. Tr. pp. 110-111.

10. MHC and the Foundation were both granted exemption from federal income taxation under section 501(a) of the Internal Revenue Code based on the Internal Revenue Service's conclusion that they qualified as organizations described in Section 501(c)(3) of the Internal Revenue Code. App. Ex. Nos. 5, 6.

[4] It is unclear from the record whether this is the same Georgian that was denied

11. MHC and the Foundation both have by-laws which provide, *inter alia,* that they:

(a) are organized to operate for charitable purposes residences and related health care facilities for the elderly;

(b) shall not require residents to pay fees as a condition of continued residence in their facilities; and

(c) have the discretion to make financial arrangements "designed to be consistent with the overall financial stability" of the organization including "suitable financial arrangements with residents, governmental cost reimbursement payments, where appropriate, and other means."

App. Ex. Nos. 2, 8.

12. A small portion of the subject property was briefly leased to the Department of Public Aid for use as a facility for the developmentally disabled in late 1992 and early 1993. Tr. I pp. 144-146. No profit was generated by that lease agreement. Tr. II pp. 60-61.

13. During 1993 and 1994 the subject property was used primarily as a nursing home for the elderly. Tr. I pp. 37-41, 137-141.

14. In 1993 and 1994 the vast majority of Wagner's residents came as transferees from Foundation Homes. Tr. II pp. 16-18.

15. Mr. Edward F. Otto is the president of the Foundation and was paid $125,000 in 1993 and about the same in 1994. Tr. I p. 163

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exemption in <u>Methodist Old Peoples Home v. Korzen</u>, 39 Ill. 2d 149 (1968).

16. Ms. Carol Sussenbach was the treasurer of the Foundation and was paid $93,500 in 1993. Tr. II pp. 5, 92.

17. The Foundation was funded by income from its endowment and trust funds along with payments from residents. Tr. I pp. 130-131.

18. The term "life-care residents" refers to those residents who have contracted to have services provided to them for the rest of their life regardless of their health or financial status. Tr. I pp. 134-136.

19. Life-care residents pay an entrance fee and a monthly service fee. Tr. II p. 109.

20. In 1993 unsubsidized life-care contracts at Foundation homes involved an average entrance fee in excess of $75,000 and a monthly service fee of approximately $2,000. Tr. II pp. 96-99.

21. In 1993 and 1994, the majority of Wagner residents paid their own fees and were not subsidized by the Foundation. App. Ex. No. 12.

22. All residents of Foundation Homes are charged full rates, and then the Foundation pays the difference for what the residents are unable to pay. Tr. I p. 155.

23. In 1993 and 1994, the majority of Foundation Homes residents were unsubsidized. App. Gr. Ex. No. 20.

24. The residence agreements from the Mather and Fairfield Court provide, *inter alia*, that:

    (a) prior to admission, the resident must submit to a pre-admission physical and satisfy the minimum health requirements established by the Foundation's Medical Director;

(b) the resident must provide a detailed financial disclosure statement listing all assets and expected sources of income;

(c) the resident must pay a non-refundable earnest money deposit;

(d) the Foundation has the sole discretion to grant a waiver of fees and will not grant a waiver if it would impair the ability of the Foundation to operate on a sound financial basis;

(e) Upon any termination of the agreement, the resident or the estate of the resident shall remain obligated for the payment of the monthly service fee for two months after termination of the agreement;

(f) the resident must be and remain an eligible Medicare beneficiary and the Foundation's responsibility for payment is secondary to that of Medicare.

App. Gr. Ex. No. 11 Doc. A, B.

25. Exhibit B to the residency agreement provides that the Foundation will provide the resident with limited nursing services in the Wagner Health Care Center for up to 180 days. Thereafter, the Wagner Health Care Center will be made available to the resident at a cost equal to 150% of the current "Monthly Service Fee." Continuation of the agreement is conditioned upon the resident being and remaining an eligible Medicare beneficiary. App. Gr. Ex. No. 11 Docs. A, B.

26. The ability to pay was a condition to entry at the Georgian. Tr. I p. 174.

27. The primary purpose of the Wagner Health Center was to provide health care to "life-care residents" from Foundation Homes. Tr. I. pp. 132-133.

28. In 1993 only one resident at Wagner did not come from one of the Foundation facilities and that resident was not subsidized by the Foundation. Tr. I. p. 178.

29. Prior to admitting applicants who did not come from Foundation Homes, the Wagner would consider the finances of those applicants and turn down people that did not meet certain undisclosed financial criteria. Tr. I pp. 178-179.

30. Wagner's summary income statement shows that in 1993 Wagner had income of $4,229,323 and expenses of $6,169,503. App. Gr. Ex. No. 14 Doc. A.

31. Wagner's summary income statement shows that in 1994 Wagner had income of $4,659,546 and expenses of $7,315,145. App. Gr. Ex. No. 14 Doc. B.

32. In 1993 and 1994 Wagner's expenses were apportioned approximately as follows:

	1993	1994
Nursing	37%	39%
Dining	14%	14%
Administration	15%	14%
Undefined General Exp.	12%	12%
Depreciation	3%	6%
Other Expenses[5]	19%	15%
TOTAL	100%	100%

App. Gr. Ex. 14.

33. In 1993 and 1994 Wagner's income came almost entirely from payments from Foundation Homes, with the largest portion of those payments (46% in 1993 and 41% in 1994) coming from the Georgian. Tr. II pp. 49-50, 94; App. Gr. Ex. 14.

34. Wagner's income from the Foundation Homes included: (1) monthly payments from residents to the Foundation Homes which were then passed through to Wagner; and (2) payments from the Foundation to the Foundation Homes which were then passed through to Wagner. Tr. II. p. 50-53.

35. In 1993 approximately 65% of Wagner's income came from resident payments while 35% came from the Foundation. App. Gr. Ex. No. 16 Doc. A.

36. In 1994 approximately 73% of Wagner's income came from residents while 27% came from the Foundation. App. Gr. Ex. No. 16 Doc. B.

CONCLUSIONS OF LAW

[5] "Other expenses" include approximately a dozen other minor expense categories (*e.g.* utilities, physical therapy, housekeeping, etc.) none of which individually accounted for more than 5% of the total expenses.

An examination of the record establishes that the applicants have not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1993 or 1994 tax year. Accordingly, under the reasoning given below, the determinations by the Department that the subject property did not qualify for exemption in 1993 and 1994 should be affirmed. 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 states in relevant part:

> 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:

* * *

> (c) Old people's homes *** 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 *** and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individuals ability to pay, of any 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 or 1959, as amended. 35 ILCS 200/15-65 (1994).

In the case at hand, the applicants claim that the subject property should be exempt because it meets the prerequisites for exemption set forth in section 15-65. Before addressing the applicants' section 15-65 claim, I must first address a contention raised by the intervenor, which if valid, would obviate the need to consider the applicants' section 15-65 exemption claim.

The intervenor contends that the applicants are estopped from seeking tax exemption for 1993 and 1994 because of the 1973 covenant under which the subject property was to be maintained "subject to real property taxation" for fifty years (see App. Ex. No. 3). The applicants respond that the Department "lacks subject matter jurisdiction over the purported restrictive covenant and, therefore, cannot consider it, much less enforce it." App. Reply Brief at 11.

Because an administrative agency is a creature of statute, which has no inherent or common law powers, the agency's authority is limited to that which is granted by the legislature. County of Whiteside v. Illinois Property Tax Appeal Board, 276 Ill. App. 3d 182, 658 N.E.2d 418 (3rd Dist. 1995). The Department's authority to review property tax exemptions comes from section 16-130 of the Property Tax Code, which simply states that the Department shall "determine whether the property is or is not legally liable to taxation." My research reveals no previous case law directly addressing the question of whether, under section 16-130, the Department may consider land covenants when determining if property is "legally liable to taxation."

Clark v. Marian Park, Inc., 80 Ill. App. 3d 1010 (2nd Dist. 1980), is the case closest to being on point. In Marian Park, the city of Wheaton entered into an annexation agreement under which certain exempt property would be placed on the county tax rolls when a firm construction financing commitment was obtained for the subject property. Several years later, the county collector obtained a judgment ordering the sale of some of the land to pay delinquent real estate taxes. The owner filed an objection and a hearing was held. Following the hearing, the trial court held that although the owner was a charitable organization and exempt from real estate taxation, the exemption was waived under the terms of the annexation agreement. Both parties appealed. The appellate court reversed the circuit court's determination that the owner was an exempt organization, but affirmed the circuit court's determination that any exemption was waived by the annexation agreement.

For our purposes, the import of Marian Park lies in the fact that the viability of the annexation agreement was apparently first addressed by the circuit court, not the Department. Under ordinary circumstances, this would lead to the conclusion that the circuit court, rather than the Department, has original jurisdiction over such taxation agreements. However, the accuracy of such a conclusion is called into question by the fact that in Marian Park the circuit court also appears to have exercised original jurisdiction over the issue of whether the applicant was entitled to a charitable exemption, which is an issue the Department ordinarily has original jurisdiction over pursuant to authority now found at 35 ILCS 200/8-35. The appellate opinion in Marion Park sets forth limited facts from which it is unclear precisely why the circuit court exercised original jurisdiction over both issues and it appears that neither party raised any jurisdictional question. Under these circumstances, I conclude that Marion Park does not resolve the question of whether the Department has jurisdiction to consider private agreements under which a party impliedly waives any possible exemption to taxation by agreeing to pay the taxes.

Because section 16-130 is somewhat unclear as to whether the Department has jurisdiction to consider a party's private agreement to pay property taxes and because neither the legislative history nor any court rulings directly address this issue, I am forced to resolve this issue based upon public policy considerations. In so doing, I note that an argument can be made that the Department should consider such agreements so that excessive administrative resources will not be spent resolving complex exemption issues when such issues are moot due to contractual waivers. On the other hand, an equally persuasive argument can be made that administrative resources would be wasted if the Department were forced to consider not only the standard exemption issues, but also related contractual issues.

While I am bothered by the inherent inefficiency of having the Department address exemption issues which are potentially moot, I also have serious doubts that a Departmental administrative hearing is the most appropriate or efficient forum for resolving private contractual issues merely because they relate to taxation. After carefully considering all the relevant law and public policy considerations, I conclude that private contractual issues, which relate to property tax payments, are best addressed by courts of general jurisdiction and that the legislature intended for the Departmental hearings to be limited to a determination of whether property is entitled to exemption under the relevant statutory provisions. I have found nothing to suggest that the legislature intended for the Department to become involved in disputes over whether such an exemption was, or could be, waived by virtue of a contractual arrangement.

Accordingly, the Department does not have jurisdiction to consider the effect of the land covenant in the case at hand. Thus, the only issue that may be properly addressed at this time is whether the subject property is entitled to exemption under section 15-65(c) of the Property Tax Code.

Before addressing the issue of whether the subject property is entitled to an exemption under section 15-65(c), I believe it would be helpful to set forth a summary of the web-like funding relationship that existed between the Foundation, Wagner, the Foundation Homes, and the residents of those homes. This complex funding relationship can be seen through the diagram shown in Appendix A of this recommendation.

The funding relationship is straightforward up to a point. The Foundation Homes would enter into life care contracts with their residents whereby they would provide residency services in exchange for a large entrance fee and subsequent monthly payments. When those residents became ill or infirm, they were transferred to Wagner for nursing care. While at Wagner, the residents would continue to pay the Foundation Homes who would in turn pay Wagner. Throughout this process the Foundation would help subsidize residents' costs.

What complicates the funding relationship is the fact that the Foundation is not simply an independent beneficent organization, but rather the owner of Wagner[6] and two of the three Foundation Homes. As an owner, the Foundation receives payments from residents and is contractually obligated to them via the "life-care" contracts. Thus, the Foundation's

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[6] MHC was organized simply to purchase the subject property for the benefit of the Foundation. Additionally, MHC and the Foundation share the same corporate officers and the same board of trustees. Under these circumstances MHC is simply the "alter ego" of the Foundation (see Community Mental Health Council, Inc., 186 Ill. App. 3d 73 (1st Dist.1989). Thus, as the applicant's concede in their brief, the Foundation was the equitable owner of the subject property in 1993 and 1994 (see Christian Action Ministry v. Dep't of Local Gov't

"subsidies" to the Wagner, Mather, and Fairfield facilities end up being payments from the Foundation, back to the Foundation, for services the Foundation is contractually required to provide. With this peculiar arrangement set forth as background information, I will address the applicants' arguments regarding whether the subject property was entitled to exemption under section 15-65 of the Property Tax Code.

Statutes exempting property from taxation are to be strictly construed in favor of taxation. Harrisburg-Raleigh Airport Authority v. Dep't of Revenue, 126 Ill. 2d 326, 331 (1989). Moreover, in determining whether property is included within the scope of a tax exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. City of Chicago v. Dep't of Revenue, 147 Ill. 2d at 484, 491-92 (1992). In addition, the taxpayer seeking the exemption bears the burden of proving by clear and convincing evidence that the statutory exemption applies. Evangelical Hospitals Corp. v. Dep't of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991).

Section 15-65 exempts all property of old people's homes that meet the following requirements: First, the applicant must provide "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." Second, either the applicant's bylaws must either provide for a waiver or reduction of fees based on an individuals ability to pay, or the home or facility must be qualified, built or financed under Section 202 of the National Housing Act or 1959, as amended. Third, the subject parcel must not be leased or otherwise used with a view to a

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Affairs, 74 Ill. 2d 51 (1978); Southern Illinois University v. Booker, 96 Ill. App. 3d 1062 (5th Dist. 1981)).

profit. Finally, the subject property must be actually and exclusively[7] used for charitable or beneficent purposes. 35 ILCS 200/15-65 (1994).

Here, there was adequate evidence presented to establish that: (1) the subject property was used as an old people's home; (2) both MHC and the Foundation were exempt organizations under 501(c)(3) of the Internal Revenue Code; (3) both MHC's by-laws and the Foundation's by-laws contained provisions for waiving or reducing fees based on an individuals ability to pay; and (4) the subject property was not leased or otherwise directly used with a view to a profit.[8] However, for reasons discussed in greater detail below, I find that the applicants failed to present clear and convincing evidence that the subject property was used exclusively for charitable or beneficent purposes.

In support of their claim that Wagner was being used for charitable purposes, applicants argue that Wagner met the charitable use requirements set forth in Methodist's Old Peoples Home, *supra* at 156-157.

The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented." *Id.* In Methodist Old Peoples Home the court set forth a number of factors which were to provide a "frame of reference" for arriving at whether property was in fact used for charitable purposes. Specifically the court noted the following as indicia that property is being used for charitable purposes: (1) an indefinite number of persons benefit; (2)

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[7] The word "exclusively," when used in tax exemption statutes means "the primary purpose for which the property is used and not any secondary or incidental purpose." Gas Research Institute v. Dep't of Revenue, 154 Ill. App. 3d 430 (1st Dist.1987).

[8] In late 1992 and early 1993, a portion of the subject property was leased to the Department of Public Aide for use as a facility for the developmentally disabled. However, that use was transitional in nature, very limited in scope and duration, and no profit was generated by

governmental burdens are reduced; (3) there are no shareholders, stock, profits, dividends, or any other private gains; (4) funding is provided primarily by public or private charity; and (5) charity is dispensed to all who need and apply for it with no obstacles to those seeking benefits. *Id.* at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the State's burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

Applying the Methodist Old Peoples Home guidelines to the instant case it becomes apparent that Wagner was not used primarily for charitable purposes. First, an indefinite number of persons was not benefited. Rather the subject property was acquired for, and primarily used by, residents of other Foundation Homes.

Second, it is unclear whether governmental burdens were reduced. There was testimony that the Foundation did not obtain Medicaid funds (Tr. II p. 83). However, there was also testimony that the Foundation accepted Medicare payments (Tr. II pp. 107-109). This suggests that the Foundation was not concerned with reducing the government's burden, but merely had a preference as to which governmental program funds it accepted. See Wyndemere Retirement Community v. Dep't of Revenue, 274 Ill. App. 3d 455 (1995) (denying exemption from sales and use taxes where applicant did not accept Medicaid, but required residents to remain eligible for Medicare benefits). Moreover, the residency agreements themselves: (1) expressly required residents to remain eligible for Medicare; and (2) state that any Foundation subsidies will be secondary to Medicare (App. Gr. Ex. 11 A, B, C). Such language certainly

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the lease agreement. Accordingly, although a lease existed, it can not be fairly said that the subject property was leased with a view to a profit.

suggests that that the Foundation was more interested in accepting government money than in reducing the government's burden.

Third, it is impossible to tell, from the limited evidence presented at the hearing, if any person or entity profited from the operation of Wagner. The applicants did present a financial summary that indicated Wagner itself operated at a loss. However, applicants did not provide financial summaries of the Foundation and the Foundation Homes. Such financial information would be needed to establish that neither the Foundation nor any of the Foundation Homes were generating an overall profit from the life-care contracts and simply using Wagner to fulfill their obligations under those contracts.[9]

Even if such financial information had been provided and showed that the other organizations did not profit, there would still remain some question over whether individuals were profiting from Wagner. In this regard, it is worth noting that there was testimony indicating that the Foundation's corporate officers received substantial salaries (averaging approximately $100,000 in 1993 and 1994). While such salaries do not conclusively establish non-charitable use of Wagner, they certainly could call into question whether the Foundation officers are the primary beneficiaries. See <u>Lutheran General Health Care v. Dep't of Revenue</u>, 231 Ill. App. 3d 652, 662 (1st Dist. 1992).

Fourth, the applicants did not establish that Wagner's funding is provided primarily by public or private charity. The applicants rely on calculations they made which show that in 1993 and 1994 53.6% of Wagner's operating expenses were paid by the Foundation, while only 46.4% were paid by the residents (App. Gr. Ex. No. 15). However, under the facts of this

[9] In this regard, it should be noted that although residents' monthly fees were passed through to Wagner, there is nothing in the record establishing that the residents' large entrance fees were not retained as profits.

case, such figures appear to be of little value due to the methodology employed in determining these figures.

Initially, I note that the Foundation employee who prepared these figures admitted that they were "an estimate." Tr. II p. 53. Additionally, the statistical validity of these figures is highly questionable since they were derived by looking at only two particular points in time. *Id.* Moreover, although it is impossible to definitively determine from the limited evidence presented, it appears that the applicants' figures took into account only the monthly service fees paid by the residents and not take into account the residents' large initial entrance fees.

In addition to the questionable methodology employed by the applicants in deriving their figures, there is also a question as to whether the "subsidies" provided by the Foundation were true subsidies. There was testimony that the Foundation was funded, in part, by payments from residents. Tr. I pp. 130-131. However, the applicants did not establish how much funding the Foundation received from the residents.[10] Thus, it is impossible to tell whether the Foundation's "subsidies" were true subsidies funded by independent sources or whether they consisted primarily of funds originating from the residents themselves which were merely funneled through the Foundation. Accordingly, it is unclear how much, if any, of Wagner's income actually came from independent charitable sources as opposed to from the residents.

Fifth, it does not appear that charity was dispensed to all who need and apply for it, with no obstacles to those seeking benefits. Rather, the purportedly charitable benefits from Wagner were dispensed only to those persons who had life-contracts with the Foundation or

[10] Because the residents' monthly fees went to the Foundation Homes as opposed to the Foundation directly, the large entrance fees appear to be the only payments by the residents which were unaccounted for and could have been used to help fund the Foundation.

the Foundation Homes. Moreover, these contracts were replete with clauses that suggest that the services provided by Wagner and the Foundation Homes
were anything but charitable. See *e.g.*, Applicant's Gr. Ex. No. 11 (Which provides, among other things, that: (1) care at Wagner was limited to 180 days thereafter monthly service fee increases by 50%; (2) residents must remain eligible for Medicare; (3) Foundation must be named the beneficiary of all residents' life insurance policies; (4) resident must personally guarantee payment; (5) Wagner may terminate agreement and discharge the resident when an outstanding bill is 75 days past due; and (6) resident must pay reasonable attorney fees and costs incurred in enforcing agreement.).

In sum, the evidence presented suggests that Wagner was not being used primarily for charitable purposes. Rather, it appears that Wagner was being used primarily to fulfill the contractual obligations of the Foundation and the Foundation Homes. Moreover, the applicant failed to provide adequate evidence to establish that no individual or organization profited or otherwise gained as a result of such contracts. Further, the applicant failed to provide sufficient evidence that Wagner somehow reduced the Government's burdens. As previously noted, the burden was on the applicants to prove by clear and convincing evidence that Wagner was being used primarily for charitable purposes. They failed to do so and are thus not entitled to exemption under section 15-65(c).

The applicants alternatively argue that even if Wagner did not directly satisfy all the section 15-65 exemption requirements, Wagner should still be exempt because its services were "reasonably necessary" for the accomplishment of the charitable purposes of the other Foundation Homes. In support of this argument, the applicants note that our courts have held that where services provided at one property are reasonably necessary" for the efficient administration of an affiliated property which is entitled to a charitable exemption, the first property also qualifies for an exemption even if it would not qualify for such an exemption on a stand-alone basis. See MacMurray College v. Wright, 38 Ill. 2d 272 (1967); Memorial Child Care v. Dep't of Revenue, 238 Ill. App. 3d 985 (4th Dist. 1992); Evangelical Hosp. Corp. v. Dep't of Revenue, 223 Ill. App. 3d 225 (2nd Dist. 1992); Norwegian Am. Hosp. v. Dep't of Revenue, 210 Ill. App. 3d 318 (1st Dist. 1991).

At the hearing in this cause, the applicants attempted to introduce testimonial evidence that certain Foundation Homes (the Mather and Fairfield Court) were exempt from property taxation. However, that testimony was the subject of a sustained objection. The applicants failed to make an offer of proof on the matter. The applicants also failed to offer any documentary evidence that the Mather and Fairfield Court were exempt. Thus, even assuming that the subject property was reasonably necessary for the efficient administration of those facilities, it would be improper to grant the subject property an exemption because there was no clear and convincing evidence that the Mather and Fairfield Court were actually exempt from property taxation.

It is worth noting that even if it is assumed that the subject property was reasonably necessary for the efficient administration of the Mather and Fairfield Court, and even if the applicants had presented adequate evidence that those facilities were exempt from property taxation, there would still remain a question as to whether the subject property would qualify for exemption. Applicants failed to provide a breakdown of how many of Wagner's residents came from the Georgian home as opposed to from the Mather and Fairfield Court. However, it is clear from the record that in 1993 and 1994, the Georgian provided more income to the Wagner than the other two Foundation Homes. Thus, the majority of Wagner residents may have come from the Georgian, which the applicants do not even suggest was exempt. If the Wagner was used primarily by residents of the Georgian, any incidental use by residents of the other two Foundation Homes would be insufficient to justify exemption even if the other two Foundation Homes were exempt and their use of Wagner was reasonably necessary.

In conclusion, the subject property does not qualify for exemption under section 15-65 because the applicants failed to establish by clear and convincing evidence that the subject property was used exclusively for charitable purposes. Likewise, because the applicants failed to show by clear and convincing evidence that the other Foundation Homes were exempt, the subject property does not qualify for exemption as property reasonably necessary for the efficient administration of affiliated exempt property.

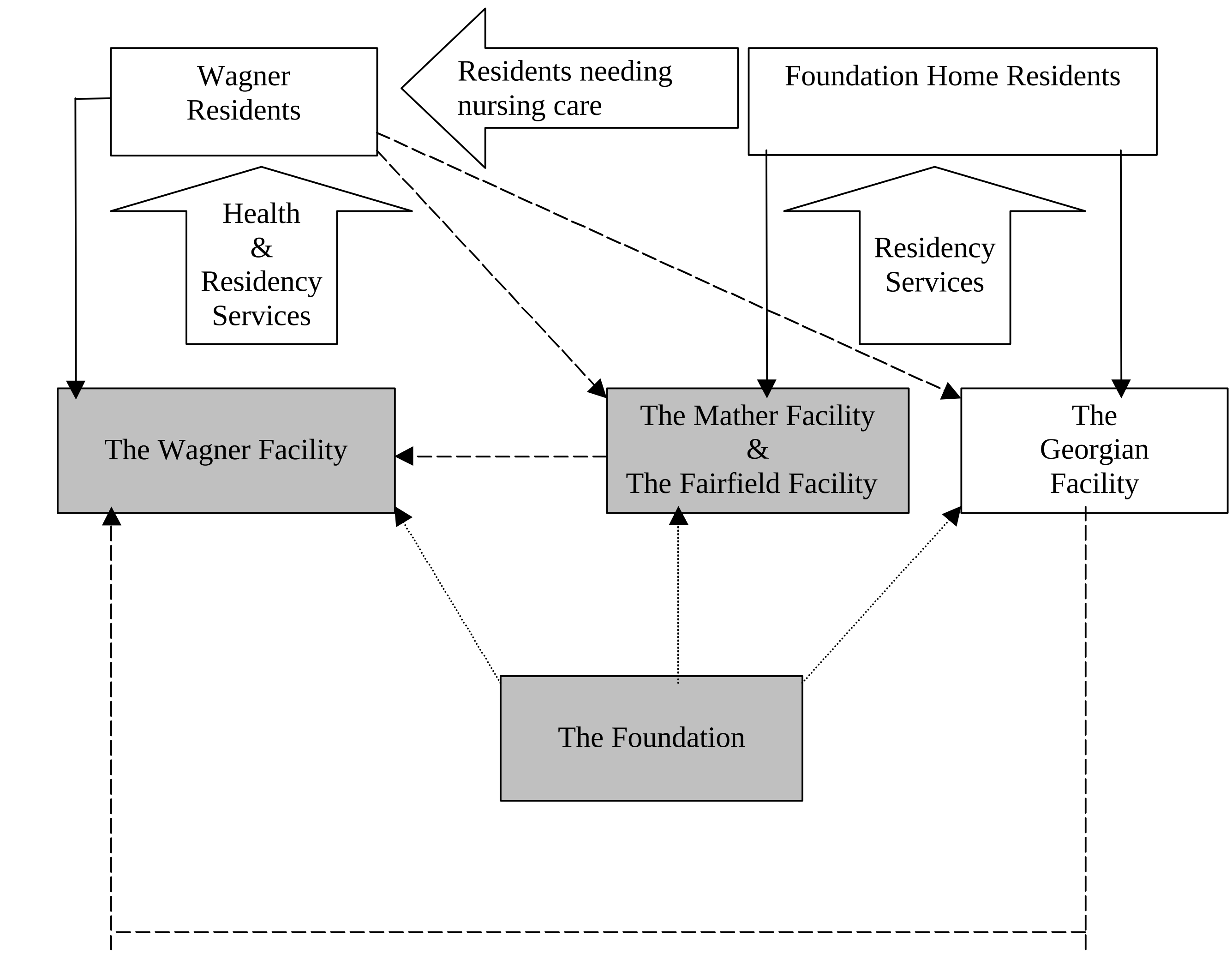
WHEREFORE, for the reasons set forth above, I recommend that the subject parcel be denied exemption from 1993 and 1994 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge

APPENDIX I

The following diagram is a simplified representation of the complex funding arrangements involved in this case. For the sake of clarity, it does not incorporate Medicare payments or minor subsidies made to the residents for personal expenses. Moreover, it does not show the initial entrance fees because it was unclear from the record whether those fees went directly to the Foundation or to the residential facilities.



Represents a "flow-through" monthly payments from residents, through Foundation Homes, to Wagner

Represents standard monthly contractual payments

Represents Foundation "subsidies"

Indicates owned or controlled by the Foundation

Indicates not owned by the Foundation