

PT 99-26

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

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

**LITTLE COMPANY OF MARY
HOSPITAL AND HEALTH CENTER,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No: 98-PT-0017
(95-16-770)**

**Real Estate Tax Exemption
For 1995 Tax Year**

**P.I.N.S: 24-08-126-001
24-08-126-002
24-08-126-003
24-08-126-004**

Cook County Parcels

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney George Arnold of Sosin & Lawler, Ltd. on behalf of Little Company of Mary Hospital and Health Center.

SYNOPSIS

This proceeding raises the limited issue of whether Cook County Parcel Index Number 24-08-126-001, 24-08-126-002, 24-08-126-003, and 24-08-126-004 (hereinafter the “subject property” or “subject parcels”) should be exempt from 1995 property taxes as property used for charitable purposes under Section 15-65 of the Property Tax Code.

This controversy arose as follows:

On January 26, 1996, Little Company of Mary Hospital and Health Center (hereinafter the “applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on March 27, 1996, recommended that 100% of the subject property be granted an exemption for 23% of the 1995 tax year. On November 21, 1996, the Illinois Department of Revenue (hereinafter the “Department”) declined to follow the Board’s recommendation and denied the exemption concluding that the applicant “did not demonstrate property was being used or prepared for an exempt use during 1995.” Dept. Ex. No. 2. Applicant filed a timely appeal and on October 23, 1998, 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 parcels be granted a property tax exemption for 23% of the 1995 tax year.

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 the subject parcels were not in exempt use, or being prepared for exempt use, in 1995.
2. The subject property is located at 9800 Southwest Highway in Oak Lawn, Illinois. Dept. Gr. Ex. No. 1.
3. The subject property is improved with a 5,000 square foot building. Dept. Gr. Ex. No. 1.
4. The applicant was first incorporated in Illinois on June 15, 1893 and was subsequently reincorporated as a not for profit corporation on January 18, 1956. App. Ex. No. 1.

5. The applicant's bylaws and articles of incorporation provide, *inter alia*, that applicant was organized to provide "care for the sick, injured and afflicted" and to promote "gratuitous ministrations to the distressed and indigent." App. Ex. Nos. 1,2.
6. The applicant has no shareholders and declares no dividends. Tr. p. 20.
7. In Department Docket Nos. 85-16-574 and 85-16-575, the Department exempted the applicant's main hospital and the land upon which it is situated from 1985 property taxes. App. Ex. No. 3.
8. The applicant has maintained those exemptions up through, and including, the 1995 assessment year. App. Ex. No. 4.
9. On October 10, 1995, applicant acquired ownership of the subject property via a trustee's deed. App. Ex. No. 10; Tr. p. 24.
10. Prior to the applicant's purchase of the subject property, the subject property had been the site of an abandoned motorcycle sales shop. App. Ex. Nos. 12-14; Tr. pp. 41-42.
11. The applicant purchased the subject property so that it could relocate its Home Healthcare Services Department to help alleviate overcrowding at applicant's main hospital. Tr. pp. 24.
12. The applicant's Home Healthcare Services Department is responsible for providing healthcare services in the homes of individuals who are either terminally ill or who have been released from acute care. The applicant provides these services without regard to an individual's ability to pay. Tr. pp. 12-19; 22.

13. The applicant first began making preliminary plans for using the subject property for its Home Healthcare Services Department in the summer of 1995. These preliminary plans included:
 - (a) discussions with Village of Oak Lawn regarding planning issues; Tr. p. 46
 - (b) feasibility discussions with architects; Tr. pp. 44-45;
 - (c) preliminary engineering; Tr. pp. 50-51.
14. Engineering plans were completed prior to October 13, 1995 and actual demolition of the motorcycle shop interior began “immediately after the closing.” App. Ex. No. 16; Tr. p. 52.
15. On December 15, 1995, the applicant entered into a contract for construction of the improvements to the land portion of the subject parcel. App. Ex. No. 16; Tr. pp. 52-54.
16. On December 19, 1995 the applicant entered into a contract for construction of the improvements to the interior of the building. App. Ex. No. 17.
17. Some exterior work began “even a little bit before the contract was signed” in an effort to avoid inclement weather. Tr. p. 53.
18. Construction was completed and the hospital moved into the renovated building in early April, 1996. Tr. p. 58.
19. After construction was complete, the applicant used the entire building and did not lease any portion of the building out to others. Tr. p. 23.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for 23% of the 1995 tax year. 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).

The Department has previously recognized that the applicant is an institution of public charity. App. Ex. Nos. 3,4. Moreover, it is undisputed that the applicant owned the subject

property as of October 10, 1995. App. Ex. No. 10. Accordingly, the Department did not base its denial of exemption upon a lack of charitable ownership. Dept. Ex. No. 2. Instead, the Department's denial was based on the fact that the applicant "did not demonstrate property was being used or prepared for an exempt use during 1995." *Id.*

At the hearing, the applicant presented evidence that the subject property, like the main hospital, was used to provide health care services to anyone who needed them, regardless of the recipient's ability to pay. Tr. pp. 12, 14-15. The courts of this state have consistently concluded that such activities are charitable in nature. See People ex rel. Cannon v. Southern Ill. Hosp. Corp., 404 Ill. 66,69 (1949). Moreover, the Department previously recognized these identical activities to be charitable in nature when conducted in the applicant's main hospital. App. Ex. Nos. 3,4; Tr. p. 24. In accord with the case law and the Department's prior determination, I conclude that the applicant's activities were charitable in nature. Thus, the real issue becomes at what point in 1995, if ever, did the applicant begin to actually use the subject property for these charitable purposes.

"Intention to use is not the equivalent of use." Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill. App. 3d 572 (1977). I must therefore determine when the applicant's "intention to develop" the subject property turned into actual development and adaptation for charitable use.

The evidence presented at the hearing presents three possible times at which development and adaptation for exempt use may have begun: (1) summer, 1995; (2) mid-October, 1995, and (3) mid-December, 1995.

In summer, 1995, the applicant began discussions with Village of Oak Lawn regarding planning issues. The applicant also engaged in feasibility discussions with architects and had preliminary engineering done. Tr. pp. 46, 50-51. However, I conclude that such activities do not constitute actual development and adaptation for exempt use because (1) the applicant did not actually own the building at that time and (2) these activities were simply preliminary plans which reflected “a mere intention to convert the property for an exempt use.” Weslin Properties Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 586 (1987).

Therefore the question becomes did actual development and adaptation begin in mid-October, 1995, when the applicant acquired title to the subject property, completed the engineering plans, and began actual demolition of the motorcycle shop interior. App. Ex. No. 16; Tr. p. 52. Or, did actual development and adaptation begin in mid-December, 1995, when the applicant first contracted for improvements to the land and building. App. Ex. Nos. 16, 17.

The mid-October activities were limited to finalization of the engineering plans and demolition of the interior of the building and actual construction did not begin until mid-December. However, “[g]iven the complexity of the architectural process of designing a site for a medical campus, and of designing the buildings to be located thereon, it seems virtually impossible to begin construction immediately upon purchase of the land.” *Id.* Accordingly, I find that the applicant’s activities in mid-October were sufficient to constitute “development and adaptation for exempt use.” *Id.* To conclude otherwise would ignore “the realities of modern construction practice.” *Id.*

WHEREFORE, for the reasons stated above, I recommend that the subject parcels be exempt from real estate taxes for 23% of the 1995 tax year which represents that period from October 10, 1995 through December 31, 1995, during which the subject property was in the process of development and adaptation for exempt use.

Date

Robert C. Rymek
Administrative Law Judge