

PT 99-56

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

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| CHAMPAIGN COUNTY ASSOCIATION) | |
| FOR THE MENTALLY RETARDED, INC.) | |
| Applicant) | A.H. Docket # 98-PT-0071 |
| v.) | Docket # 98-10-1 |
| THE DEPARTMENT OF REVENUE) | Parcel Index # 45-20-23-426-021 |
| OF THE STATE OF ILLINOIS) | |

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Guy C. Hall appeared on behalf of the Champaign County Association for the Mentally Retarded, Inc.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on May 6, 1999, to determine whether or not Champaign County Parcel Index No. 45-20-23-426-021 qualified for exemption from real estate taxation for the 1998 assessment year.

Mr. Kenneth Mayol, bookkeeper for Champaign County Association for the Mentally Retarded, Inc. (hereinafter referred to as the "Applicant"), Mr. Gerald C. White, president of the

board of directors of the applicant, and Mr. Kenston Chism, executive director of the applicant were present and testified on behalf of the applicant.

The issues in this matter include, first whether the applicant owned the parcel here in issue and the residence thereon during all or part of the 1998 assessment year; secondly, whether the applicant is a charitable organization; and thirdly whether the applicant either was in the process of adapting this parcel for charitable purposes or used said parcel primarily for charitable purposes during the 1998 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the period February 20, 1998, through December 31, 1998. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant was either in the process of adapting Champaign County Parcel Index No. 45-20-23-426-021 for exempt use or actually used said parcel for primarily exempt purposes during the period February 20, 1998, through December 31, 1998.

It is therefore recommended that Champaign County Parcel Index No. 45-20-23-426-021 be exempt from real estate taxation for 86% of the 1998 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1998 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On July 2, 1998, the Champaign County Board of Review transmitted to the Department an Application for Property Tax Exemption to Board of Review concerning the parcel here in issue for the 1998 assessment year. (Dept. Ex. No. 2)

3. On September 10, 1998, the Department advised the applicant that it was denying the exemption of this parcel and the building thereon for the 1998 assessment year because the property was not in exempt ownership and also because it was not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated September 24, 1998, Mr. Guy C. Hall, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on May 6, 1999, was held pursuant to that request. (Dept. Ex. No. 4)

6. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois on April 19, 1974, for the following purposes:

To further the interest and programs for the mentally retarded in Champaign County. (Dept. Ex. No. 2B)

7. On February 7, 1994, the applicant amended its Articles of Incorporation changing the purposes of the corporation to the following:

The corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of section 501 (c) (3) of the Internal Revenue Code. (Dept. Ex. No. 2C)

8. The applicant acquired this parcel by a warranty deed dated February 20, 1998. February 20, 1998 was also the date that the applicant received possession of the parcel here in issue and the house thereon. (Dept. Ex. No. 2A, Tr. P. 59)

9. As soon as the applicant took possession of this parcel, it began remodeling the house so that it could be used as a Community Integrated Living Arrangement (hereinafter referred to as a “CILA”). The applicant updated the plumbing and electric systems in the house, remodeled the bedroom area of the house and installed a fire alarm system so that the house would meet the Department of Human Service’s requirements to be a CILA. The remodeling was finished during June 1998 and the mentally retarded residents were moved into the house on this parcel on July 4, 1998. (Tr. pp.57 –59)

10. A CILA is a residential facility where persons who are mentally retarded and who have been living in an institutional setting are integrated into a community and live as a family with other persons who are also mentally retarded. (Tr. p. 70)

11. The house on the parcel here in issue is a co-ed residence with a capacity of eight residents. (Tr. pp. 33 & 82)

12. The business office of the applicant is located in the family room of the house on this parcel. The applicant does not own any other real estate. (Tr. p. 56)

13. The applicant employs direct care staff who work with the mentally retarded residents while they are in the home. The direct care staff works with the residents to help them do their cooking, cleaning, and laundry. This staff helps the residents with their personal hygiene and with behavior management. The direct care staff also works with the residents on their money management. (Tr. p. 66)

14. The overnight staff is basically there to supervise the residents and to see that they take their medication. The overnight staff also is there to be of assistance if there is an emergency at night. (Tr. p. 66)

15. Each of the residents has a different schedule during the day. Most of them go to the Developmental Services Center for day programming. There also are a few residents who have jobs in the community in restaurants. (Tr. p. 38)

16. The overall goal of the applicant concerning the residents of this CILA is to help them develop the skills, which are necessary, so that they can live independently. (Tr. p. 69)

17. The applicant does not have any shareholders or capital stock. None of the directors are paid to act as directors. (Tr. p. 19)

18. The primary source of funds to operate this CILA come from the State Department of Human Services, formerly the Department of Mental Health and Developmental Disabilities, and the Social Security Administration. The remainder of the applicant's funds are received from contributions. (Dept. Ex. 2H, Tr. p. 23)

19. The CILA is open to anyone who is mentally retarded who would seek to live there if they otherwise qualify. The applicant does not require any kind of financial history for a prospective resident. (Tr. p. 38)

20. If a new resident is not on Social Security, the applicant will move them into the CILA and then apply for Social Security for them. When the resident is approved, Social Security will either go back and pay the approved amount for the application period or simply begin to pay as of the approval date. If Social Security begins to pay as of the approval date, back Social Security payments, which are not received by the resident, are waived by the applicant. (Tr. p. 33)

21. During 1998 the dues to be a member of the applicant were \$15.00 per year. The applicant would send out a bill for dues to each member. If the member did not pay their dues, the dues were waived by the applicant. (Tr. p. 36)

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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning charitable organizations, 35 ILCS 200/15-65 provides in part as follows:

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:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

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 (1944). Further, 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).

It should be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

I conclude that the applicant owned the parcel here in issue beginning February 20, 1998.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read 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 objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. The benefits of the applicant, I conclude, are available to any retarded person who can benefit from applicant's training in community independent living in view of the fact that the applicant waives or reduces fees in cases of need. The applicant, I conclude, has no capital, capital stock, or shareholders, and does not profit from the enterprise. The applicant's funds are derived from the Department of Human Services, the Social Security Administration, and charitable contributions. In view of the fact that fees are waived or reduced in cases of need, I conclude that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits. Consequently, I conclude that the applicant is a charitable organization.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the 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 of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

I consequently conclude that from February 20, 1998, until July 4, 1998, when the applicant began to use the parcel here in issue and the house thereon for its Community Integrated Living Arrangement for retarded persons, the applicant was in the process of adapting the house on this parcel for use for charitable purposes.

Finally, I conclude that the applicant used this parcel and the house thereon as a CILA for primarily charitable purposes from July 4, 1998, through December 31, 1998.

I therefore recommend that Champaign County parcel Index No. 45-20-23-426-021 be exempt from real estate taxation for 86% of the 1998 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
October 22, 1999