

**PT 01-76**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**HOUSING OPPORTUNITIES  
MEAN EMPOWRMENT TWO,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 00-PT-0040  
(98-16-1262)  
P.I.N: 16-15-117-005, et al.**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Clarence J. Crooks, attorney at law, on behalf of Housing Opportunities Mean Empowerment Two (hereinafter the “applicant”).

**SYNOPSIS:** This matter comes to be considered pursuant to applicant’s request for hearing, which applicant reserved in a Motion for Summary Judgment that it filed with the Illinois Department Of Revenue (hereinafter the “Department”) on July 30, 2001. Applicant filed this motion after the Department issued a determination finding that real estate identified by Cook County Parcel Index Numbers 16-15-117-005, 16-15-117-006, 16-15-117-007, 16-15-117-008, 16-15-117-009, 16-15-117-010, 16-15-117-011, 16-15-117-012, 16-15-117-013 and 16-15-117-014 (hereinafter collectively referred to as the “subject property”) did not qualify for exemption from 1998 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* The underlying controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on January 27, 1999. The Board reviewed applicant's complaint and recommended to the Department that the requested exemption be denied. The Department accepted the Board's recommendation by means of a determination dated March 23, 2000, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed an appeal to this determination and later filed its motion for summary judgment, in which it reserved a right to hearing as to any and all issues decided against its interest.

On August 3, 2001, I issued an Recommendation for Disposition Pursuant to Applicant's Motion for Summary Judgment which recommended that: (a) partial summary judgment be issued in applicant's favor on the issue of exempt ownership;<sup>1</sup> but, (b) the Department's initial determination as to lack of use should be affirmed. The Director of Revenue then accepted this Recommendation *in toto* via Notice of Decision dated August 21, 2001.

Pursuant to the reservation contained in its motion for summary judgment, applicant then presented evidence as to its exempt use at an evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the Department's finding initial finding as to lack of exempt use be modified to reflect that the subject property was in exempt use as of March 10, 1998.

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1. The Recommendation specifically recommended that the Department's initial finding as to lack of exempt ownership be modified to reflect that the subject property was in exempt ownership as of the date applicant acquired legal title thereto, March 10, 1998. This portion of the Recommendation is not at issue herein, as the sole issue raised in this particular proceeding is lack of exempt use. (Tr. p. 5).

**SUPPLEMENTAL FINDINGS OF FACT:**<sup>2</sup>

1. Applicant undertook to have a series of environmental soil tests performed on the subject property after it obtained ownership thereof on March 10, 1998. Tr. p. 10.
2. Throughout 1998, applicant also made numerous attempts to ensure that HUD would continue to maintain the funding reservations that were necessary to construct a Section 202 housing project on the subject property. Applicant Hearing Ex. Nos. 9, 10, 20, 21.
3. Applicant also received and submitted various cost analyses and other documentation which the United States Department of Housing and Urban Development (hereinafter “HUD”) required for the Section 202 project all through 1998. Applicant Ex. Nos. 7, 8, 12, 13, 14, 15, 17, 18, 19, 22.

**SUPPLEMENTAL CONCLUSIONS OF LAW:**

The Recommendation for Disposition Pursuant to Applicant’s Motion for Summary Judgment concluded, in pertinent part, that the documentation applicant submitted in support of said motion was insufficient establish that the subject property was in exempt use as a matter of law. In this context, exempt use is defined as the process of actually adapting and developing the subject property for use as a Section 202 housing project. 35 ILCS 200/15-65, 65(c); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

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2. In the interest of brevity, and to the extent relevant, the Findings of Fact and Conclusions of Law contained in the Recommendation For Disposition Pursuant To Applicant’s Motion for Summary Judgment, a true and correct copy of which is attached hereto and fully incorporated by reference herein, are hereby adopted as Findings of Fact and Conclusions of Law for purposes of this Recommendation. Therefore, any new or additional Findings or Conclusions drawn from the Evidence adduced at hearing shall be referred to as “Supplemental Findings of Fact” or “Supplemental Conclusions of Law,” as the case may be.

Applicant's chief executive officer, Donald Dew, presented extensive testimony as to the numerous complexities that occur while bringing such a project into fruition. (Tr. pp. 10, 14, 18-19, 22-23). Many of these complexities, such as obtaining necessary design and cost approvals from HUD, are ones which bureaucratic delays often prevent from being resolved within the course of a single tax year . Others, such soil testing and the ensuring proper fund reservations from HUD, are necessary prerequisites for making certain that construction can proceed in an appropriate manner.

Applicant actively and aggressively pursued resolution of all these complexities immediately after obtaining ownership of the subject property. It also manifested the capacity to actually adapt and develop said property for its intended use by performing soil testing thereon. Under these circumstances, the realities of modern construction dictate that the complexities associated with building a Section 202 housing project should not constitute impediments to applicant's exempt use. *Accord, Weslin Properties v. Department of Revenue*, 157 Ill. App. 3d 580 (2nd Dist. 1987). Therefore, the Department's determination in this matter should be modified to reflect that the subject property was in exempt use during that 81% of the 1998 assessment year which transpired on or after the date applicant obtained its ownership interest therein, March 10, 1998.

WHEREFORE, for all the above stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 16-15-117-005, 16-15-117-006, 16-15-117-007, 16-15-117-008, 16-15-117-009, 16-15-117-010, 16-15-117-011, 16-15-117-012, 16-15-117-013 and 16-15-117-014 be exempt from real estate taxes under

Section 15-65(c) of the Property Tax Code, but only for 81% of the 1998 assessment year.

November 14, 2001

Date

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Alan I. Marcus  
Administrative Law Judge

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

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MEAN EMPOWERMENT TWO,  
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P.I.N:       16-15-117-005, *et al.***

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**RECOMMENDATION FOR DISPOSITION  
PURSUANT TO MOTION FOR SUMMARY JUDGMENT**

**APPEARANCE:**       Mr. Clarence J. Crooks, attorney at law, on behalf of Housing Opportunities Mean Empowerment Two (hereinafter the “applicant”).

**SYNOPSIS:**           This matter comes to be considered pursuant to applicant’s motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the “Department”) issued a determination in this matter on March 23, 2000. Said determination found that real estate identified by Cook County Parcel Index Numbers 16-15-117-005, 16-15-117-006, 16-15-117-007, 16-15-117-008, 16-15-117-009, 16-15-117-010, 16-15-117-011, 16-15-117-012, 16-15-117-013 and 16-15-117-014 (hereinafter collectively referred to as the “subject property”) did not qualify for exemption from 1998 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* The underlying controversies arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on January 27, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the requested exemption

be denied. The Department accepted the Board's recommendation by means of a determination dated March 23, 2000, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed an appeal to this determination and later filed this motion for summary judgment. Following a careful review of that motion and its supporting document, I recommend that the Department's denial be affirmed for the following reasons:

**FINDINGS OF FACT:**

A. Undisputed Facts

1. The Department's jurisdiction over this case and its position herein are established by the determination in this matter, issued by the Office of Local Government Services on March 23, 2000. Administrative Notice.
2. The Department's position in this case is that the subject property is not in exempt ownership and not in exempt use. Administrative Notice.
3. The Application for Property Tax Exemption (hereinafter the "Application"), received by the Department on October 13, 1999 indicates that the subject property is located at 4650 West VanBuren Chicago, IL.
4. The Application further indicates that: (a) the subject property "is vacant[;]" but, (b) applicant "intends to build 60 units of housing for the elderly commencing in late 1998."
5. Applicant's Articles of Incorporation, contained within its original submission to the Department,<sup>3</sup> indicate that applicant is an Illinois not for profit corporation

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<sup>3</sup>. This and all subsequent Findings of Fact shall be based on documentation contained within applicant's original submission to Department unless context clearly states otherwise.

organized for purposes of providing housing facilities and related services to the very low income elderly.

6. Applicant is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination letter issued by the Internal Revenue Service on June 24, 1997.
7. Applicant obtained ownership of the subject property by means of a quit claim deed dated March 10, 1998. Applicant Motion Ex. No. 8.
8. Applied received all of the funding for its acquisition of the subject property pursuant to the terms of a firm commitment for capital advance financing, dated December 13, 1996, from the United States Department of Housing and Urban Development (hereinafter “HUD”).
9. HUD provided this financing pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. § 1701 *et seq.*
10. The affidavit of applicant president, Donald Dew, indicates that the subject property was vacant as of February, 2000 but was used as parking facilities for applicant’s parent corporation.<sup>4</sup>
11. Mr. Dew’s affidavit further establishes that applicant: (a) purchased the subject property with the intent of constructing thereon a housing facility for the very low-income elderly; (b) expects to commence construction on the facility in March of 2000; and, (c) anticipates that the facility will be occupied within 18 months after the start of construction.

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<sup>4</sup>. Applicant did not submit any organizational documents or other information pertaining to its parent corporation.



B. I take Administrative Notice of the following legal considerations, which are pertinent to this case:

1. The income level for a “very low income” person can not exceed “50% of median income.” Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.<sup>5</sup>
2. A person is considered disabled, under 42 U.S.C.A § 8013(k)(2) if they are determined, pursuant to regulations promulgated by the Secretary of HUD, “to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.” Administrative Notice of 42 U.S.C.A § 8013(k)(2).
3. 42 U.S.C.A § 8013(k)(2) states, *inter alia*, that:

A very low income person shall pay as rent for a dwelling unit [of the type located within the subject property] the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person’s adjusted monthly income,<sup>6</sup> (B) 10 percent of the person’s monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person actual housing costs, is specifically designated by such agency to meet the person’s housing costs, the portion of such payments which is so designated ...[.]

Administrative Notice of 42 U.S.C.A. § 8013(d)(3).

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5. These regulations do not define how “median income” is to be measured.

6. HUD and BEW adjust the resident’s income to account for things such as dependent’s allowance, allowance for handicapped assistance and medical expenses.

4. Applicant and HUD are prohibited from evicting any resident for failure to pay rent. Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.
5. 42 U.S.C.A § 8013(i)(1) provides, *inter alia*, that “an owner shall adopt written tenant selection procedures that are satisfactory to the Secretary [of HUD] as (A) consistent with the purpose of improving housing opportunities for very low income persons with disabilities; and (B) reasonably related to program eligibility and [the program] applicant’s ability to perform the obligation of the lease.” 42 U.S.C.A § 8013(i)(1).

**CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in these consolidated cases. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987). Those issues are, precisely stated, whether: (1) applicant qualifies as the type of entity whose property is subject to exemption under 35 ILCS 200/15-65(c) if used for appropriate purposes; and, (2) the subject property was used for purposes consistent with those set forth in 35 ILCS 200/15-65(c) during the 1998 assessment year.

With respect to the first inquiry, it is initially noted that the statute governing exemption of federally-financed low income projects for the elderly and disabled is found in Section 15 of the Property Tax Code, 35 ILCS 200/1-1, *et seq*, which states that:

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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- (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, 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 [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's 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 of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65(c).

Section 15-65(c), like all other statutes exempting real estate from taxation, must be strictly construed. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Thus, one must exercise great caution in applying it, so as to ensure that only the very limited class of properties described therein actually receive the exempt status which the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the Section 15-65(c) exemption will cause damage to public treasuries and the overall tax base.

In order to prevent this, the General Assembly imposed the following pertinent statutory requirements: first, the property must be owned by an entity that qualifies for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code; second, the property must be improved with facilities that are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.* as amended[;]]” and third, the property must be “actually and exclusively used for charitable or beneficent purposes.” 35 ILCS 200/15-65, 15-65(c).

Applicant, an Illinois not for profit corporation, held the necessary exempt status throughout the tax year currently in question. However, applicant did not own the property it currently is seeking to exempt during the entire 1998 assessment year. Therefore, any exemptions granted to applicant herein are subject to Section 9-185 of the Property Tax Code, which states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

The quit claim deed proves that applicant obtained its “right of possession” on March 10, 1998. Accordingly, Section 9-185 mandates that any exemptions granted to in this case must be limited to the 81% of the 1998 assessment year which transpired on or after that date.

Based on the above, I conclude that the Department’s determination in this matter should be modified to reflect that the subject property was in exempt ownership during

that 81% of the 1998 assessment year which took place on or after March 10, 1998. However, for the following reasons, I conclude that the Department's initial determination as to lack of exempt use should be affirmed.

Applicant did acquire the subject property with the intent of developing it for uses of the type specified in Section 15-65(c). Nonetheless, applicant's actual, rather than intended use, is determinative on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). This is especially true where, as here, applicant's initial application form clearly stated that the property was vacant.

Such vacancy constitutes non-exempt use as a matter of law. Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983). Furthermore, while the affidavit of applicant's president, Donald Drew, indicated that the subject property was being used as a parking facility<sup>7</sup> for applicant's parent corporation, applicant submitted no evidence to establish the latter's exempt status. Absent that evidence, applicant, which bears the burden of proof as to all elements of its exemption claim, (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)), has failed to sustain its burden of proof herein. Accordingly, applicant is not entitled to

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<sup>7</sup>. The statute governing exemption of parking areas is contained in Section 15-125 of the Property Tax Code and provides that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt.

35 ILCS 200/15-125.

judgment as a matter of law. Therefore, its motion for summary judgment should be denied.

WHEREFORE, for all the above-stated reasons, I hereby recommend that real estate identified by Cook County Parcel Index Numbers 16-15-117-005, 16-15-117-006, 16-15-117-007, 16-15-117-008, 16-15-117-009, 16-15-117-010, 16-15-117-011, 16-15-117-012, 16-15-117-013 and 16-15-117-014 not be exempt from 1998 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*

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Alan I. Marcus  
Administrative Law Judge

August 3, 2001  
Date