

PT 03-24
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 02-PT-0016
v.)	PIN 23-1-0673-001-00
)	PIN 23-1-0517-001-00
WEST CENTRAL ILLINOIS AREA)	Tax Year 2001
AGENCY ON AGING)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: George Logan, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Michael C. Connelly of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. for West Central Illinois Area Agency on Aging.

Synopsis:

This case concerns whether property that is located in Adams County and owned by West Central Illinois Area Agency on Aging (“applicant”) qualifies for a charitable tax exemption for the year 2001. The Department of Revenue (“Department”) has conceded that the applicant owns all of the property and that it is a charitable organization. The Department granted the exemption for all except 6,423 square feet of the building that was being built on the property and a proportionate amount of the site and parking lot. The portion for which the Department granted the exemption, which is approximately 90% of the property, includes the portion that the applicant uses. The

portion for which the exemption was denied is used as follows: (a) 1,290 square feet is used by the applicant for administrative offices; (b) 136 square feet is leased to the West Central Illinois Case Coordination Unit; (c) 2,688 square feet is leased to the Board of Library Trustees of Quincy, Illinois; (d) 1,782 square feet is leased to the John Wood Community College Retired Senior Volunteer Program; and (e) 527 square feet is used as a craft store and “senior corner.” The applicant timely protested the denial, and an evidentiary hearing was held. During the hearing, the Department conceded that the 1,290 square feet that is used by the applicant for administrative offices should be exempt. For the remaining property that is at issue, it is recommended that the property be exempt from taxes.

FINDINGS OF FACT:

1. The applicant is a not-for-profit corporation that was organized in 1974. Its by-laws provide that its purpose is “exclusively charitable and educational and in furtherance thereof; to receive and administer such funds as may be made available under Title III of the Older Americans Act, as amended, or any other sources, and provide ongoing coordination, planning, and technical assistance for the delivery of comprehensive services to senior citizens.” (Applicant Ex. #1)

2. The purpose provision of the applicant’s by-laws states that the applicant will have control and jurisdiction of all matters pertaining to the administration of programs and money received through the Illinois Department on Aging (“Department on Aging”). (Applicant Ex. #1)

3. According to the by-laws, the applicant’s principle office shall be located in Quincy, Illinois, and the applicant “has been established as provided in the Older

Americans Comprehensive Services Amendments of 1973” and will serve the counties of Adams, Brown, Calhoun, Hancock, Pike and Schuyler. (Applicant Ex. #1)

4. The Illinois Department on Aging has designated the applicant as an “area agency on aging” as defined in section 3.07 of the Illinois Act on Aging (“Act on Aging”). 20 ILCS 105/1 *et seq.* The Department on Aging designated the applicant to serve the specific counties of Adams, Brown, Calhoun, Hancock, Pike and Schuyler, which is Area 6 under section 3.08 of the Act on Aging (20 ILCS 105/3.08). (Tr. p. 8)

5. On January 9, 1998, the applicant purchased the property that is the subject of this case. The property is located in Quincy. (Applicant Ex. #2)

6. The applicant purchased the property with the intent to construct a “multipurpose senior center” as that term is defined in section 3.09 of the Act on Aging (20 ILCS 105/3.09) and a parking lot. Construction began on the property in November 1999. By November 2002, the construction was almost completed. The building is approximately 64,000 square feet. (Tr. pp. 4-5, 9-10)

7. On November 1, 2002, the applicant entered into a lease agreement with the West Central Illinois Case Coordination Unit---Elder Rights Education Center (“Case Coordination Unit”) for the use of 136 square feet of the property. The term of the lease is 15 years, commencing on the date of occupancy. The term is subject to the availability of funds to the tenant for continued operation. (Applicant Ex. #3, pp. 1-10)

8. The Case Coordination Unit is to pay \$816 annually for rent, which is \$6 per square foot. The agreement states that the rent amount is estimated based on what is necessary to pay the costs of providing the leased space without profit or loss to the

applicant. The parties agree to adjust the rent upward or downward as is necessary based on the actual costs of providing leased space. (Applicant Ex. #3, p. 3)

9. On July 1 of each year, the applicant will provide the Case Coordination Unit a statement of the actual common area costs and expenses paid or incurred by the applicant during the year. The rent will then be adjusted for the coming year of the lease term. The Case Coordination Unit's "prorata share of the costs and expenses * * * shall be that portion of the whole which the floor space of the leased property bears to the total ground floor space from time to time occupied by the Tenants in the Center." In no event shall the prorata increase exceed the sum of \$600 annually. (Applicant Ex. #3, p. 3)

10. The Case Coordination Unit is a not-for-profit organization that has contracted with the Illinois Department on Aging to visit homes of seniors to assess their functional capacity and support system. They also investigate elder abuse and call the Quincy Police Department when they suspect abuse. (Tr. p. 14)

11. The Department has granted an exemption for the portion of the property that is occupied by the Case Coordination Unit and used for their administrative offices. (Tr. p. 47)

12. The 136 square feet that the applicant is leasing to the Case Coordination Unit will be used by a police officer from the Quincy Police Department who is certified to handle crimes against the elderly and elder abuse. The space will be used for conferences with the Case Coordination Unit personnel concerning elder abuse. Also, the Case Coordination Unit expects to use the space to educate seniors concerning fraud and scams against the elderly. (Tr. pp. 11-12, 15-16)

13. The lease agreement between the applicant and the Case Coordination Unit provides in part as follows: “Any use that [the applicant] determines is not a ‘service’ as that term is defined in 20 ILCS 105/3.06 is prohibited. Any use that [the applicant] determines to be inconsistent with a ‘multipurpose’ Senior Center as that term is used in [20] ILCS 105/3.09 is prohibited.” (Applicant Ex. #3, p. 4, ¶16)

14. The lease agreement between the applicant and the Case Coordination Unit provides that the prior written consent of the applicant is required before the Case Coordination Unit may sublet all or portions of the property. Also, “any subletting must be for the use of the lease premises only in such a manner and fashion as shall further the charitable mission of the [applicant] as described in the Illinois Act on Aging (20 ILCS 105/1-11).” (Applicant Ex. #3, p. 8, ¶24)

15. On November 1, 2002, the applicant entered into a lease agreement with the Board of Library Trustees of Quincy, Illinois (“Quincy Library”) for the use of 2000 square feet of the property, with an additional 688 square feet to be conveyed at no cost to the tenant. The 688 square feet is to be used for computer terminals and workstations. The term of the lease is 1 year, commencing on the date that the property is ready for occupancy. The term is subject to the availability of funds to the tenant for continued operation. (Applicant Ex. #3, pp. 12-22)

16. The Quincy Library is to pay \$12,000 annually for rent, which is \$6 per square foot. The agreement states that the rent amount is estimated based on what is necessary to pay the costs of providing the leased space without profit or loss to the applicant. (Applicant Ex. #3, p. 14)

17. On July 1 of each year, the applicant will provide Quincy Library a statement of the actual common area costs and expenses paid or incurred by the applicant during the year. The rent will then be adjusted for the coming year of the lease term. The Quincy Library's "prorata share of the costs and expenses * * * shall be that portion of the whole which the floor space of the leased property bears to the total ground floor space from time to time occupied by the Tenants in the Center." In no event shall the prorata increase exceed the sum of \$600 annually. (Applicant Ex. #3, p. 14)

18. The Quincy Library will use the space to relocate its talking books, large print books and outreach services. The Library will deliver books to homebound seniors. Also, there will be a computer center in the library with internet access. The library staff will be available during normal business hours to assist the seniors with the computers and internet. The computers will also have pre-retirement programs to advise seniors on how to prepare for their retirement. (Tr. pp. 12, 25)

19. The lease agreement between the applicant and the Quincy Library provides in part as follows: "Any use that [the applicant] determines is not a 'service' as that term is defined in 20 ILCS 105/3.06 is prohibited. Any use that [the applicant] determines to be inconsistent with a 'multipurpose' Senior Center as that term is used in [20] ILCS 105/3.09 is prohibited." (Applicant Ex. #3, p. 15, ¶16)

20. The lease agreement between the applicant and the Quincy Library provides that the prior written consent of the applicant is required before the Quincy Library may sublet all or portions of the property. Also, "any subletting must be for the use of the lease premises only in such a manner and fashion as shall further the charitable mission

of the [applicant] as described in the Illinois Act on Aging (20 ILCS 105/1-11).” (Applicant Ex. #3, p. 19, ¶24)

21. On November 1, 2002, the applicant entered into a lease agreement with the John Wood Community College – Retired and Senior Volunteer Program (“Community College”) for the use of 1,782 square feet of the property. The term of the lease is 1 year, commencing on the date that the property is ready for occupancy. The term is subject to the availability of funds to the tenant for continued operation. (Applicant Ex. #3, pp. 23-32)

22. The Community College is to pay \$10,692 annually for rent, which is \$6 per square foot. The agreement states that the rent amount is estimated based on what is necessary to pay the costs of providing the leased space without profit or loss to the applicant. (Applicant Ex. #3, p. 25)

23. On July 1 of each year, the applicant will provide the Community College a statement of the actual common area costs and expenses paid or incurred by the applicant during the year. The rent will then be adjusted for the coming year of the lease term. The Community College’s “prorata share of the costs and expenses * * * shall be that portion of the whole which the floor space of the leased property bears to the total ground floor space from time to time occupied by the Tenants in the Center.” In no event shall the prorata increase exceed the sum of \$600 annually. (Applicant Ex. #3, p. 25)

24. The Community College will use the space for the administrative offices of the Retired and Senior Volunteer Program. This program provides volunteer opportunities for seniors. It coordinates volunteer work for seniors who would like to work at the center or at other community not-for-profit organizations. (Tr. p. 27)

25. The Retired and Senior Volunteer Programs throughout Illinois are all sponsored by various organizations. The Retired and Senior Volunteer Program is not a department of the Community College. (Tr. p. 49)

26. The lease agreement between the applicant and the Community College provides in part as follows: “Any use that [the applicant] determines is not a ‘service’ as that term is defined in 20 ILCS 105/3.06 is prohibited. Any use that [the applicant] determines to be inconsistent with a ‘multipurpose’ Senior Center as that term is used in [20] ILCS 105/3.09 is prohibited.” (Applicant Ex. #3, p. 26, ¶16)

27. The lease agreement between the applicant and the Community College provides that the prior written consent of the applicant is required before the Community College may sublet all or portions of the property. Also, “any subletting must be for the use of the lease premises only in such a manner and fashion as shall further the charitable mission of the [applicant] as described in the Illinois Act on Aging (20 ILCS 105/1-11).” (Applicant Ex. #3, p. 30, ¶24)

28. The applicant leases space to a total of 14 tenants in the building. All 14 tenants pay rent in the amount of \$6 per square foot. The rent was determined based on the estimated cost to keep the building open. The total amount of the rent is not sufficient to cover the operating costs of the building. The applicant receives grants and has fundraisers for the additional income. (Tr. pp. 22, 28-30)

29. The applicant selected its tenants based on their ability to provide services to the elderly. The applicant decided to charge only the amount of rent necessary to keep the building open in order for its tenants to have more funds available to provide services to the elderly. (Tr. pp. 31-32)

30. The market rate for the property that is leased to the tenants is considerably higher than \$6 per square foot. The applicant did not advertise the availability of the property for rent. (Tr. pp. 32, 54)

31. The applicant uses 527 square feet of the property as a craft store and “senior corner.” In the craft store portion, volunteers work eight hours a day to teach seniors to make crafts. Some of the seniors sell their crafts at the store. The proceeds from the sales go to the senior citizen who made the craft. (Tr. pp. 13, 36-38)

32. In the “senior corner” portion of the property, there is a refrigerator that contains soda and water. There is also a rack with a variety of chips and candy bars. The applicant sells these items to anyone who wants to buy them. This is the only place in the building where seniors can purchase these types of items. (Tr. pp. 39-40)

33. Volunteers collect the money for the items sold and record each sale in writing when it is made. During 2001, the applicant earned approximately \$2,000 from the senior corner that it operated at its location prior to the building that is the property at issue in this case. This income goes to the Senior Center operating fund. The applicant operates this service because seniors have requested it. (Tr. pp. 40-43)

CONCLUSIONS OF LAW:

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant 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. * * *

(e) All free public libraries. (35 ILCS 200/15-65(a), (e)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).

Leases

With respect to the property that is leased to the three tenants (the Case Coordination Unit, the Quincy Library, and the Community College), the applicant argues that this property should be exempt because it is still used for charitable purposes, which is required by the leases. Also, a clause in each lease prohibits assignment of the lease without the prior written consent of the applicant, so the property will not be use for any other purpose.

The applicant asserts that the leases are not “for profit” because the tenants are paying less than market value rent. In addition, the rent is at the same rate that the applicant is charging other tenants in the same building. Because the Department granted the exemption for the property covered by the other leases, the applicant contends that the Department must have determined that those leases were not “for profit.” If those leases that charge the same rent are not “for profit,” the applicant believes that the leases in the present case must also not be for profit.

With respect to the property leased to the Case Coordination Unit, the Department contends that the applicant did not present any persuasive evidence that supports the characterization of the Case Coordination Unit as a charitable organization. Even if it were a charitable organization, the Department maintains that the Police Department of the City of Quincy is the intended user of the property, not the Case Coordination Unit. The Department argues that the law does not allow an exemption for property owned by a charitable organization and used by a city for police purposes, citing Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983). The Department has raised similar arguments with respect to the property leased to the Quincy Library and the Community College.

The evidence in this case supports a finding that the property leased to the Case Coordination Unit should be exempt from taxes. Although the Department contends that there is no evidence that the Case Coordination Unit is a charitable organization, the Department indicated at the hearing that it granted an exemption for the portion of the property that is occupied by the Case Coordination Unit and used for their administrative offices. (Tr. p. 47) Because the Department allowed that exemption, it seems disingenuous for the Department to now argue that the Case Coordination Unit is not a charitable organization. The property at issue is being leased to the Case Coordination Unit; it is not being leased to the Quincy Police Department or any municipality. There is no evidence of a sublease to the Quincy Police Department. The use of the property by the police officer is consistent with the charitable nature of the Case Coordination Unit. Because the administrative offices of the Case Coordination Unit are exempt, this portion of the property should also be exempt.

The property that is leased to the Quincy Library and Community College should be exempt as well. The library portion serves to continue the exempt purposes of the library in that it provides books and services specifically for seniors. The portion that is leased to the Community College is used for the administrative offices of the Retired and Senior Volunteer Program, which coordinates volunteer opportunities for seniors. The applicant does not lease this property with a view to profit, and the lessees do not profit from their activities on the property. There is no profit motive relating to the use of this property. The services provided on the property are free to all seniors; the activities conducted on the property are charitable.

The facts in this case are distinguishable from those in Village of Oak Park because in that case the property was leased and used with a view to profit. In Village of Oak Park, the court stated that “the property in question was leased to the Village with a view to profit rather than to furthering some religious purpose of the church.” Village of Oak Park at 500. The Village of Oak Park used the property as a municipal parking lot, and then gave the church one-half of the gross receipts from this use. The Village of Oak Park was operating a business and profited from the use of the property; it gave the church a share of the profit. These facts are not similar to the present case. The use of the property in this case is to provide charitable services, and there is no profit motive related to the use. This evidence is sufficient to find that the leased property should be exempt.

Craft Store and Senior Corner

According to the applicant, the craft store and senior corner should be exempt because they are an integral part of the Senior Center and their primary purpose is to help

meet the needs of seniors visiting the Senior Center. The applicant refers to the following definitions in the Act on Aging:

“§ 3.09. ‘Multipurpose senior center’ means a community facility for the organization and provision of a broad spectrum of services, including but not limited to provision of health, social, nutritional and educational services and provision of facilities for recreational activities for senior citizens.”

“§ 3.06. ‘Services’ means those services designed to provide assistance to the aged such as nutritional programs, facilities improvement, transportation services, senior volunteer programs, senior companion programs, supplementary health services, programs for leisure-time activities, housing and employment counseling, benefits advocacy, and other informational, referral, and counseling programs to aid the aged in availing themselves of existing public or private services, or other similar social services intended to aid the senior citizen in attaining and maintaining self-sufficiency, personal well-being, and maximum participation in community life.” 20 ILCS 105/3.09, 3.06.

The applicant maintains that the craft store provides a program for leisure-time activities because it is a place for seniors to create, display, and sell crafts. The applicant alleges that the store allows seniors to maintain their personal well being and to participate in community life, which increases self-sufficiency and reduces the number of seniors dependent on the State.

The applicant argues that the senior corner meets the needs of seniors who visit the Senior Center because it is the only place where a drink and snack are available. Without this, seniors would be forced to leave the Senior Center to obtain a drink or snack, which would undermine the effectiveness of the Senior Center. The applicant contends that any profit or loss from the senior corner is incidental to the primary purpose of the property because the estimated proceeds do not even offset the estimated cost for the space¹. The applicant believes that the primary purpose of the snack stand is

¹ 527 square feet times \$6 equals \$3,162, which is greater than the estimated proceeds of \$2,000.

convenience, and any revenues generated are incidental to its primary purpose of serving seniors.

The Department argues that the beverages and snacks in the senior corner are not offered free or at a reduced cost based on the buyer's ability to pay, so this does not constitute charity. The Department contends that the primary use of the senior corner is to sell beverages and snacks, and this is not an exempt use. It is the primary use of the property that determines whether property qualifies for an exemption, not the use of the income. Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988). The Department contends that the applicant primarily uses the senior corner and craft store with a view to profit, and they do not qualify for the exemption.

The applicant's arguments are persuasive. The senior corner and craft store are operated on 527 square feet of a total of approximately 64,000 square feet of property. This is less than 1% of the property. Even if it is assumed that this portion of the property is used with a view to profit, this is still incidental to the primary use of the entire parcel of property. This case is similar to the case of Highland Park Women's Club v. Department of Revenue, 206 Ill.App.3d 447 (2nd Dist. 1990), where the court found that concession stands and a gift shop located at Ravinia Park were exempt. In that case, the court stated that the concession stands and gift shop were a "mere adjunct" to the Park's operation and to the enjoyment of the concerts held there. Id. at 465. They were simply provided as a convenience for the patrons of the Park. Id. Similarly, the senior corner provides snacks and drinks for the convenience of the seniors who are using the Center, and the proceeds are put into the Center's operating fund. The craft store provides recreational activities for the seniors and a place for them to sell their crafts.

These sales are incidental to the primary use of the entire parcel of property, which is to provide charitable services to senior citizens.

Recommendation:

For the fore-going reasons, it is recommended that the remaining 6,423 square feet of property that is at issue be exempt from property taxes.

Linda Olivero
Administrative Law Judge

Enter: January 12, 2004