

PT 05-13

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

FOX VALLEY FELLOWSHIP CENTER,

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**No. 03-PT-0091
(03-45-29)
(03-45-30)**

**P.I.N(S): 15-15-328-021
15-15-328-028**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Gary Stutland on behalf of the Illinois Department of Revenue; David J. Howard, Esq. on behalf of Fox Valley Fellowship Center, Inc.

Synopsis:

This proceeding raises the issue whether real estate identified by Kane County parcel index number 15-15-328-021, and Kane County parcel index number 15-15-328-028 (collectively and individually referred to herein as the “subject property”) met the requirements for exemption prescribed by 35 ILCS 200/15-65 (parcel number 15-15-328-028), and 35 ILCS 200/15-125 (parcel number 15-15-328-021), during the 2003 assessment year. The underlying controversy arises as follows. Applicant filed Applications for Non-homestead Property Tax Exemption with the Kane County Board

of Review (the “Board”) on April 7, 2003 (received April 17, 2003). Dept. Group Ex. 1. The Board reviewed the Applicant’s applications and recommended to the Department that the requested exemptions be granted *Id.* On October 9, 2003 (for parcel number 15-15-328-028), and November 6, 2003 (for parcel number 15-15-328-021), the Department issued its initial determinations in this matter, finding that the subject property was not in exempt ownership and was not in exempt use as required by the Property Tax Code at 35 ILCS 200/15-65 and 35 ILCS 200/15-125.

Applicant filed a timely appeal to the Department’s initial determination and later presented evidence at an evidentiary hearing, at which the Department also appeared. Following submission of evidence and a careful review of the record, I recommend that the Department’s initial determinations in this matter be affirmed.

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 Kane County parcel index number 15-15-328-028 and Kane County parcel index number 15-15-328-021 did not qualify for exemption for the 2003 assessment year, was established by the admission in evidence of the Department (“Dept.”) Group Exhibit (“Ex.”) 1.
2. On or about June 13, 2003, the Kane County Board of Review transmitted to the Department an Application for Property Tax Exemption to Board of Review concerning parcel index number 15-15-328-028 and an Application for Property Tax Exemption to Board of Review concerning parcel index number 15-15-328-021, the parcels here in issue, for the 2003 assessment year. Dept. Group Ex. 1 .

3. On October 9, 2003, the Department advised the Applicant that it was denying the exemption of parcel index number 15-15-328-028 because this parcel was not in exempt ownership and not in exempt use. Dept. Group Ex. 1.
4. On November 6, 2003, the Department advised the Applicant that it was denying the exemption of parcel index number 15-15-328-021 because this parcel also was not in exempt ownership and not in exempt use. Dept. Group Ex. 1.
5. The Applicant acquired an undivided 50% interest in the parcels here in issue and in the building on parcel index number 15-15-328-028 by a sheriff's deed filed with the Kane County Recorder of Deeds on June 7, 2002. Old Second National Bank Trust 8056, an Illinois Land Trust also acquired an undivided 50% interest in these parcels on that date. Benjamin Moe and his wife hold the beneficial interest in this trust. Tr. pp. 6, 7, 57, 58; Applicant Ex. 3.
6. Applicant was incorporated on June 27, 1979, pursuant to the General Not For Profit Act of Illinois. Pursuant to Articles of Amendment to its Articles of Incorporation, the Applicant is organized for the following purposes:

“The ... purposes for which the corporations (sic) is organized are:

 1. A social and fraternal club organized to promote the welfare of its members and the community.
 2. To assist alcoholics in their recovery from alcoholism.
 3. Render services in connection with the rehabilitation of individuals suffering from alcoholism.”

Applicant Ex. 1, 2.
7. The second floor of the building on Parcel Index No. 15-15-328-028 contains four efficiency apartments, which are leased. It also contains 3 billboard signs, which, during 2003, were leased for \$1,600 per annum. The Applicant is not seeking an exemption for the second floor of this building. Tr. pp. 6, 41; Dept. Group Ex. 1.

8. The aforementioned building, other than the basement and second floor, was, during 2003, used for Alcoholics Anonymous (“AA”) meetings and for fund raising events including dinners and dances. Tr. pp. 18, 19, 22, 33 – 35; Applicant Ex. 4, 5, 11, 12A – 12G; Dept. Group Ex. 1.
9. Alcoholics Anonymous is an organization that is separate from, and not affiliated with the Applicant. There are no dues or fees for AA membership. Tr. p. 46; Applicant Ex. 8B.
10. A schedule of activities that was attached as an exhibit to Applicant’s PTAX-300, Application for Non-homestead Property Tax Exemption indicates that, during 2003, Applicant scheduled two AA meetings on Sunday, one AA meeting on Monday, two AA meetings on Tuesday, one AA meeting on Wednesday, three AA meetings on Thursday, one AA meeting on Friday, and two AA meetings on Saturday, including an open AA speakers meeting. With the exception of the Saturday speaker’s meeting, all of these meetings were designated as “closed” meetings open only to self proclaimed alcoholics having a desire to stop drinking. Tr. p. 45; Applicant Ex. 4.
11. AA and meetings of other similar organizations held at the Applicant’s building last for one and a half to two hours. Tr. p. 46.
12. During a meeting the persons present pass a donation basket to help the Applicant defray the building costs as well as to provide refreshments for AA and other meetings. Tr. pp. 39, 50.
13. Applicant’s “cash flow” document for 2003 shows total funding in the amount of \$94,096.02. Of this amount, “Funding from Groups, Dues & Events” accounts

for \$25,480.50, “Apartment Rents” account for \$15,120 and “Funding from Interest” and “Funding from Loans” accounted for \$50,908.25. Applicant Ex. 13A.

14. Applicant’s expenses for 2003 as shown on the “cash flow” document were \$99,893.44 and, when compared to total funding, exceed funding by \$5,797.42. Applicant Ex. 13A.

15. Regular membership in the applicant is open to “any Alcoholic who is in good standing with any A.A. groups and has three (3) months sobriety ... [.]” Prospective members must apply for membership and must be recommended by a member of the club, in good standing who is acquainted with the prospective member. The prospective member’s membership dues must accompany the application for membership, and the application must be reviewed by the Chairman of the Membership Committee and approved by the Applicant’s Board of Directors. Applicant Ex. 8B.

16. Applicant assesses dues on its membership. Moreover, Article 7 of the by-laws requires payment of a membership fee as as prerequisite to becoming a member of the Applicant, and the Board is empowered to suspend any member that has not paid dues by the 10th of November of each year. There is no provision in the by-laws for the waiver of membership dues. Applicant Ex. 8B.

17. The dimensions of the ground floor of the Applicant’s building on parcel 15-15-328-028 are 6,696 square feet. During 2003, the Applicant leased the second floor of the building, which contains 2,231 square feet, or 25% of the total square feet in the building (excluding the basement). Applicant Ex. 14.

- 18.** The basement of the Applicant's building is used for storage. None of the Applicant's activities are conducted there. The basement is not accessible to or used by the building's tenants. Tr. pp. 22, 30, 31
- 19.** Parcel 15-15-328-021, which is adjacent to the aforementioned building, contains a paved parking area, which can be used by a total of no more than 10 cars. Only persons attending AA meetings and other Applicant events use the parking lot. Tenants renting apartments on the second floor of the Applicant's building do not use this parking lot. Tr. pp. 44, 56.
- 20.** Old Second National Bank Trust 8056, as owner of an undivided 50% interest in parcel 15-15-328-028, leased the subject property to the Applicant pursuant to the terms of a lease dated July 1, 2002. Applicant Ex. 14.
- 21.** The aforementioned lease contains the following relevant terms and conditions:
- a)** The lease shall run for a five year term that commences July 1, 2002 and ends June 30, 2007. At the end of the initial 5 year term, the lease may be renewed, at the sole option of the lessor, for up to three additional five year terms.
 - b)** The rent for the initial term is \$1,390 payable on or before the first day of each month. During the renewal periods the rent shall be increased by an amount equal to the lesser of the percentage increase in the United States Consumer Price Index during each of the three renewal periods or 10%.
 - c)** The Applicant shall pay lessor, as additional rent for the subject property, building insurance and all real estate taxes levied against the subject property, together with all water, gas, electric and power charges.

- d)** In the event the lessor pays for any capital improvements or repairs, the Applicant's rent shall be increased to cover such expenditures.
 - e)** The Applicant must keep the premises in good repair throughout the term of the lease and return the premises to the lessor in good condition and repair at the end of the lease term.
 - f)** The Applicant must not sublet, assign or otherwise transfer the premises "by operation of law" without first obtaining written consent from the lessor.
 - g)** Throughout the lease term, the Applicant must allow and not interfere with the lessor's free access to the property, which the lessor is to enjoy for the purpose of examining or exhibiting the property or making any repairs that the lessor deems necessary, or to allow the lessor to place "For Sale" or "For Rent" and similar notices on the property.
 - h)** If the Applicant should default on any covenants and agreements contained in the lease, lessor, or its legal representative, has the right, at its election and without notice to the Applicant, and "without prejudice to any other remedies" that are available to it, to declare the lease term ended and re-enter the premises for purposes of removing Applicant.
 - i)** Both lessor and lessee specifically agree that the covenants and agreements contained in the lease "shall be binding upon, apply and inure to, their respective successors, heirs, executors, administrators and assigns ... [.]"
- 22.** The lease specifically grants the Applicant, as lessee, an option to purchase the subject property throughout the lease term (including any extensions). The purchase price is an amount equal to the annual rent in effect at the time of the

purchase divided by 11% and, like the rent, is pegged to increases in the Consumer Price Index. Applicant Ex. 14.

Conclusions of Law:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows: “(T)he 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.” Pursuant to Constitutional authority, the General Assembly has enacted Section 15-65 of the Property Tax Code (“Code”), wherein all property owned by “institutions of public charity” is exempted from real estate taxation, provided that such property is “actually and exclusively used for charitable ... purposes, and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65; Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156, 157 (1968). Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex. Rel. Nordland v. 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). Therefore, any and all doubts that arise in an exemption proceeding, whether they are attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. Id.

Section 15-65 of the Code expressly bars exemption where the property is leased or otherwise “used with a view to profit.” 35 ILCS 200/15-65. Whether real estate is “leased with a view to profit” depends in the first instance on the intent of the owner in using the property. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944); Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919, 922 (1st Dist. 1994).

It is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, “with a view to profit,” the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose, the tax-exempt status of the property continues even though the use may involve an incidental production of income. Children’s Development Center, Inc. v. Olson, 52 Ill. 2d 332, 336 (1972); Victory Christian Church, *supra* at 922.

In order to apply this test, “one must look first to see if the owner of the real estate is entitled to exemption from property taxes.” Victory Christian Church, *supra* at 922. If the owner is so exempt, then “one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed.” *Id.* Hence, property owned by one or more non-exempt entities does not qualify for exemption even though the owner or owners lease the property to tax exempt entities that use the property for exempt purposes. *Id.* at 921-923 (real estate owned by one or more private individuals does not qualify for exemption even though the owner or owners lease the property to tax exempt entities that use the property for exempt purposes); Wheaton College v. Department of Revenue, 155 Ill. App. 3d 945, 947-948 (2nd Dist. 1987) (real estate owned by private

individuals who leased the property to the College held non-exempt even though the College used the property for student housing).

In the instant case, there is no dispute that the title owner of an undivided 50% of the subject property is Old Second National Bank Trust 8056. Applicant Ex. 3. Mr. and Mrs. Benjamin Moe are the sole beneficiaries of this Trust. Tr. p. 58. The Illinois Supreme Court has held that the beneficiaries of a land trust are the owners of the property for purposes of real estate taxation because they have control of the property and the right to its benefits. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 274 (1996) ; People v. Chicago Title & Trust Co., 75 Ill. 2d 479, 492 (1979) (“Indeed, there is not a single attribute of ownership, except title, which does not rest in the beneficiary [T]he rights of creation, modification, management, income and termination all belong to the beneficiary.”) Mr. and Mrs. Moe, the beneficiaries of Old Second National Bank Trust 8056, do not qualify for exempt status because they are private individuals.

In spite of the fact that 100% of the property at issue clearly is not owned by a charity, Applicant nonetheless seeks exemption of 100% of the property at issue. In support of this claim, Applicant correctly points out that “ ... the Court in addressing what exempt ownership is, does not always look to the bare titleholders ... [I]t looks to who has a right to use and otherwise enjoy the premises.” Tr. p. 87, citing Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983); Chicago Patrolmen's Association, *supra*; Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978); see also Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (5th District 1981); Chicago Title & Trust,

supra. As such, the “owner” of real estate for property tax purposes is not necessarily synonymous with the person or entity that holds legal title to the property. Booker, *supra*; Chicago Title and Trust, *supra*. Rather, the “owner” is the entity that in practical terms: (1) exercises rights of control over the property; and (2) derives benefits therefrom. *Id.*

Factors to be employed in determining “ownership” for property tax purposes include whether the written instrument or instruments that create and govern the respective property interests: (1) makes the purported “owner” liable to pay any property taxes assessed against the property (Wheaton College, *supra* at 946; Christian Action Ministry, *supra* at 61); (2) enables the “owner” to receive any tax benefits that the instrument provides (Wheaton College, *supra* at 947); (3) allows the “owner” to obtain “substantial monetary interest” in the property by making a sizeable down payment, followed by regular monthly payments, both of which are applied toward the price at which the “owner” will eventually purchase the property (Christian Action Ministry, *supra* at 54, 61); (4) permits the “owner” to, or prohibits the “owner” from, removing any existing structures on the property or constructing new ones thereon (Wheaton College, *supra* at 946; Cole Hospital, *supra* at 101); (5) authorizes the “owner” to fully and freely alienate, transfer or (in an appropriate case) sublease the property throughout the term of the instrument (Wheaton College, *supra* at 946 - 948); and, (6) provides that the “owner” will be able to either: (a) purchase the property for no additional consideration at the conclusion of a specified term (Wheaton College, *supra* at 947); or, (b) have title to the property transferred to the “owner” without further cost upon the

occurrence of a specific condition precedent, such as the retirement of the mortgage. Booker, *supra* at 1066.

The only document in the record that addresses the aforementioned criteria is the lease agreement between the Old Second National Bank Trust 8056 as lessor and the Applicant, as lessee, pursuant to which the Applicant is granted a possessory interest in the property. Applicant Ex. 14.¹ Therefore, one of the issues presented in this case is whether the Applicant qualifies as the “owner” of the subject property pursuant to the terms and conditions set forth in the aforementioned lease in light of the cases noted above. One ascertains the legal effect of those terms and conditions by making a fair reading of the lease document as a whole. Forest Preserve District of DuPage County v. Department of Revenue, 266 Ill. App. 3d 264, 270 (2nd Dist. 1994). Consequently, mere recitals as to the document’s purpose are not determinative. *Id.* Rather, it is the cumulative effect of all relevant provisions in establishing which party effectively exercises control over the property and deserves benefits from it that is decisive. Wheaton College, *supra*.

A fair reading of the lease document as a whole fails to demonstrate the requisite clear and convincing evidence (People Ex Rel. Nordland, *supra*; Gas Research Institute, *supra*) that the Applicant qualifies as “owner” of the subject property for present purposes. The lease terms expressly state that the Applicant cannot sublet, assign, or otherwise alienate its interest in the subject property “by operation of law” without first obtaining written consent from the lessor. See Findings of Fact 20(f); Applicant Ex. 14.

¹ Although it is the Sheriff’s Deed that vests separate undivided 50% ownership interests in the subject property in Old Second National Bank Trust 8056 and in the Applicant, this document does not spell out rights attendant each ownership interest.

Consequently, Applicant is not truly at liberty to alienate its interest in that property in a full and free manner that is demonstrative of “ownership.” Wheaton College, *supra* at 946 - 948.

In Wheaton College, *supra*, the court held that the appellant, Wheaton College, did not qualify as the “owner” for property tax purposes under the terms of a 30 year lease which provided, *inter alia*, that the College enjoyed certain incidents of ownership, including the right to remove existing structures from the property and the right to sublease it. Wheaton College, *supra*. The College did not, however, enjoy the right to freely alienate the property. *Id.* If a lessee that enjoys full subleasing and removal rights does not qualify as an “owner” for property tax purposes because it is not at liberty to alienate the property, then one cannot conclude that the Applicant, as lessee, which enjoys practically no encumbrance or alienation rights, can qualify as such “owner.”

More importantly, the remaining lease provisions are no different in substance than those contained in most standard commercial leases. For instance, the lease calls for the Applicant to pay a current value rental rate, as evidenced by the use of the Cost Price Index in determining rent increases. Applicant Ex. 14. It also requires Applicant to pay as additional rentals, all property taxes, building insurance, water charges and other levies imposed against the subject property. *Id.* Thus, the overall economic rental scheme created by the lease is one that violates the statutory prohibition against leases “for profit” because it intends that the trust and its beneficiaries, private individuals, who lease the subject property to the Applicant, recoup their operating expenses for that property.

Furthermore, the rights of possession Applicant enjoys under the lease are virtually identical to those of any commercial tenant in that Applicant can enjoy them

only throughout a finite lease term or terms (5 years plus any additional extensions through June 30, 2022 allowed by the lessor). *Id.* To the extent that the lease specifically provides that the lessor will regain possession of the subject property at the conclusion of this term, Applicant, like any other commercial tenant, must surrender possession when the lease term ends.

The lease also provides the trust with the right, conventionally vested in commercial landlords, to evict Applicant from the premises in the event that Applicant should default on any of its obligations under the lease. *Id.* Notably, the eviction rights created by this particular lease are quite stringent in that the trust (and, indirectly, the trust beneficiaries) can exercise them without giving prior notice to the Applicant. See Findings of Fact 20(h).

While the lease does provide the lessee with an option to purchase at the end of the lease term, the purchase price (\$151,636 during the initial lease term) is anything but nominal. This option neither affords the Applicant an opportunity to buy the subject property owned by the trust at the end of the lease term for no additional consideration, nor permits transfer of property to the Applicant based upon some contingency. Accordingly, the option to purchase in this agreement is not indicative of “ownership” under the criteria set forth in Wheaton College and Booker.

In sum, for the aforementioned reasons, I conclude that Old Second National Bank Trust 8056, and its beneficiaries, Mr. and Mrs. Moe, although holding only an undivided one half interest, are the actual “owners” of the subject property. Since no evidence has been presented to show that either this trust or its beneficiaries qualify as charities, I must conclude that 100% of the property does not qualify for exemption from

2003 real estate taxes under 35 ILCS 200/15-65 because the property was effectively owned by the trust and its beneficiaries throughout the relevant tax year.

The Applicant cites Chicago Patrolmen's Association, *supra*, as support for its exemption claim. In this case, the court held that, where property is owned by both charitable and non-charitable organizations, an exemption can be granted for the percentage of charitable ownership and use of the property. Since the Applicant owns an undivided 50% interest in the property at issue, this precedent arguably supports a claim to a partial (50%) exemption of this property.

The holding in Chicago Patrolmen's Association is applicable to the subject property only if it is at least partially owned by a charity. This case would clearly be distinguishable from the facts at issue if neither the trust, nor the Applicant, each of which owns an undivided 50% interest in the subject property, was found to be a charitable organization. As noted above, the trust has not even attempted to show that it is a charity, and record indicates that Mr. and Mrs. Moe, the trust beneficiaries, are private individuals. Accordingly, to assess the applicability of the Chicago Patrolmen's Association precedent, it must be determined whether the Applicant was, itself, an institution of public charity during 2003.

An "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise relieves the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter;

(3) dispenses charity for all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old Peoples Home, *supra*.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2nd Dist. 1995); Randolph Street Gallery v. Department of Revenue, 315 Ill. App. 3d 1060, 1065 (1st Dist. 2000). Rather, they are to be balanced with an overall focus on whether, and to what extent, Applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794 (3d Dist. 1987)), or, operates primarily in the public interest and lessens the State's burden. DuPage County Board of Review, *supra*; Randolph Street Gallery, *supra*.

In applying the Methodist Old Peoples Home factors, there is no evidence in the by-laws, financials or other documents contained in the record that Applicant has any capital stock or shareholders or that it provides gain or profit in a private sense to any person connected with it. However, for the reasons enumerated below, the presence or absence of other critical factors to be weighed that are demonstrative of the Applicant's status as a charity is very much in doubt.

As a threshold matter, Applicant's purposes, as stated in its charter, are: "[A] social and fraternal club organized to promote the welfare of its members and the community ... [T]o assist alcoholics in their recovery from alcoholism ... [and]

...[R]ender services in connection with the rehabilitation of individuals suffering from alcoholism.” Applicant Ex. 2. Not only is the word “charitable” non-existent in the Applicant’s purposes, the word is nowhere to be found in any of its organizational documents including its charter and by-laws. Rather, these documents suggest that the Applicant’s purposes are primarily social rather than charitable in nature. *Id.* The Illinois Supreme Court has held that the certificate of incorporation is the controlling evidence of the purpose for which an organization was created. Oak Park Club v. Lindheimer, 369 Ill. 462 (1938).

A review of the Applicant’s organizational documents further reveals that the Applicant is membership based and operates through its membership. Applicant Ex. 8A, 8B. Approval of a prospective member’s membership application by the Applicant’s Membership Committee and Board of Directors is required to confer membership. Only prospective members that are recommended by a member of the Applicant in good standing may be considered for membership. Applicant Ex. 8B. Qualification for membership requires a showing that the prospective member “is in good standing with any AA group and has three (3) months sobriety.” *Id.* Clearly, the Applicant is not open to all who might wish membership, since successful candidates for membership must be recommended by a member in good standing, must meet the necessary sobriety, A.A. group membership and other qualifications and be approved by the Applicant’s membership committee and governing board.

Furthermore, members are required to pay annual dues in the amount of \$50 per year (\$75 per year for married couples) to become and remain members. Tr. pp. 40, 41; Applicant Ex. 8B. According to Article 7, Section 3 of the Applicant’s by-laws, a

member is automatically dropped from the Applicant's membership rolls if he or she fails to pay dues "by the 10th of November of each year." Applicant Ex. 8B. While there was testimony that the by-law mandating payment of annual dues is not strictly adhered to (Tr. pp. 40, 41, 50, 53, 54), and the benefits of membership, including access to AA and other meetings and Applicant events is not contingent upon dues payment, there is no evidence in the record that this policy is written or publicized, and, of necessity it is effectuated on an *ad hoc* basis only when the Applicant becomes aware of a member's inability to pay. (If the availability of membership privileges without paying dues was widely publicized, there would be no incentive to pay dues to the Applicant, since membership would provide no benefits that are not otherwise available to non-members²). As a result, there is no standard for the waiver of the mandatory payment of annual dues, and the criteria for waiver are at best vague and subjective.

A review of the record also reveals that Applicant's operating funds, excluding proceeds from loans, are overwhelmingly generated by membership dues, and sales of tickets to the Applicant's dinners and fashion shows. Applicant's income from "GROUPS, DUES & EVENTS" during 2003, the tax year in controversy, were \$25,480.50. Applicant Ex. 13A. This represents 58% of Applicant's total income, excluding loan proceeds (which, as pointed out by the Department (Tr. p. 102), are not properly classified as income). The Applicant also receives income from building rentals (35% of total income in 2003). The remainder of Applicant's income is from interest and unidentified sources. None of these funds were shown by the Applicant to constitute

² While the record does not indicate membership in 2003, in 2004 the Applicant had a roster of over 70 members. Applicant Ex. 13B.

revenues from public and private charities as delineated under Methodist Old Peoples Home.³

In sum, based upon the foregoing, I conclude that the privileges and benefits of membership are restricted to those meeting Applicant's strict membership requirements who are recommended by existing members and have the ability to pay. There are clearly obstacles to many who need and might wish to take advantage of the Applicant's fellowship opportunities and programs. The Applicant's by-laws do not describe an organization that wishes to make benefits available to all who need and apply for them. Furthermore, the Applicant's income is generated almost exclusively from dues, fundraising events and rents, rather than from public and private charity. For these reasons, I conclude that the Applicant does not qualify as an institution of public charity whose property is exempt from the imposition of Illinois property tax under criteria to be applied in making this determination enumerated in Methodist Old Peoples Home.

The Applicant argues that it is almost identical to the applicant in Northwest Suburban Fellowship v. Department of Revenue, 298 Ill. App. 3d 880 (1st Dist. 1998), which was determined by the Illinois Appellate Court to be a charitable organization. A review of the record indicates that the Applicant and the organization at issue in Northwest Suburban Fellowship are indeed similar. Like the organization in Northwest

³ The record contains financial information from 2003 and 2004. However, the financial information from 2004 (Ex. 13B) is technically irrelevant to this case because each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill. App. 3d 1005, 1013 (4th Dist. 1980); Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987). Therefore, I have given no weight to the 2004 financial information.

Suburban Fellowship, the Applicant is a not for profit corporation having as its principal function the maintenance of space and facilities for meetings of Alcoholics Anonymous and other similar groups. However, unlike the Applicant, the by-laws of Northwest Suburban Fellowship provided: “[n]o dues or fees shall ever be assessed for membership ... [.]” *Id.* at 892. Moreover, Northwest Suburban Fellowship offered approximately 50 meetings per week and served approximately 4,000 people monthly. *Id.* There is insufficient documentary evidence in the record to show that the Applicant held any more than 12 AA meetings per week on its property during 2003. See Findings of Fact 9; Applicant Ex. 4. Although there is testimony that a substantial number of additional organizations now use the subject property, there has been no showing that this was true in 2003. Accordingly, the precedent in Northwest Suburban Fellowship does not address the facts at issue here.

For the reasons enumerated above, I conclude that the Applicant is not an institution of public charity under the criteria enumerated in Methodist Old Peoples Home. Accordingly, the Applicant cannot rely upon Chicago Patrolmen’s Association, *supra*, for the proposition that where property is owned by a charitable and a non-charitable organization, an exemption must be granted based upon the percentage of charitable ownership. While Old Second National Bank Trust 8056 and the Applicant each own an undivided 50% interest in the subject property, neither of these organizations is a charity, and the Chicago Patrolmen’s Association precedent is applicable only when at least one of the owners of property is indisputably charitable.

Section 15-65 of the Code (35 ILCS 200/15-65) requires that the property of an institution of public charity must be owned by a public charity and used exclusively for

charitable purposes. I conclude that neither Old Second National Bank Trust 8056 and its beneficiaries, nor the Applicant are institutions of public charity. Accordingly, the property they jointly own does not meet the threshold ownership qualification of section 15-65 of the Code and therefore does not qualify for tax exemption.

Applicant seeks to alter the above conclusions by relying on the holding in Cole Hospital, *supra*. There, the applicant-Hospital's troubled financial history rendered it unable to obtain State revenue bonds or other forms of conventional financing for construction of a new hospital facility. Cole Hospital, *supra* at 98, 100. Solely for this reason, the Hospital entered into a sale-leaseback arrangement with an independent third party, Safe Care, Inc. *Id.* at 98. The sale-leaseback arrangement provided, in substance, that Safe Care would provide the Hospital with necessary financing, in the amount of \$5.5 million, in exchange for an agreement that would enable Safe Care to acquire the subject property without resort to foreclosure proceedings in the event that the Hospital should default. *Id.* at 98, 100-101.

In analyzing whether this arrangement vested the incidents of ownership in the Hospital or Safe Care, the Cole Hospital court noted that, first and foremost, denying an exemption would, under the facts there presented, effectively penalize a charitable, and otherwise non-taxable institution, the Hospital, for its failure to obtain conventional financing. *Id.* at 100. The same cannot be said in this case, primarily because the Applicant in this matter is not a charity. Therefore, Applicant's reliance on the holding in Cole Hospital is misplaced.

The Applicant also seeks to rely on the holding in Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978). In this case, the Illinois

Supreme Court held that an installment-contractor purchaser of property was entitled to a charitable property tax exemption. Under the contract, the purchaser made a substantial down payment, assumed possession of the property, and continued making monthly payments toward the full purchase price. Although the contract stated that no title, legal or equitable, would pass to the purchaser until the full purchase price was paid, the court allowed the exemption. It reasoned that to deny the purchaser, a charitable institution, the benefit of an exemption because it relied on an alternative form of financing would run counter to the purposes and policies underlying the exemption. *Id.* at 62. Like Cole Hospital, this case is distinguishable from the matter at issue because, unlike the Applicant, Christian Action Ministry was a charitable organization. Moreover, Christian Action Ministry concerned a contract for deed purchase. There is no contract for deed at issue here.

In summary, the subject property under PIN number 15-15-328-028, including the building on this property, does not qualify for exemption from 2003 real estate taxes under 35 ILCS 200/15-65 because none of the principal indicia of its ownership, namely the right to control the property and derive benefits from it, are vested in the Applicant. Moreover, neither owner of the subject property is a charity. Therefore, the Department's initial determination in this matter should be affirmed.

Exemption Under Section 15-125 of the Property Tax Code

Section 15-125 of the Property Tax Code provides as follows:

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

35 ILCS 200/15-125

Pursuant to this statutory provision, parking areas, such as the one located on the parcel index number 15-15-328-021, are subject to exemption under section 15-125 of the Property Tax Code (35 ILCS 200/15-125) if they are: (1) owned by a school district, non-profit hospital, or religious or charitable institution which meets the qualifications for exemption set forth in the applicable sections of the Property Tax Code; (2) used as part of a use for which an exemption is provided in the Code and (3) not leased or otherwise used with a view to a profit. 35 ILCS 200/15-125; Northwestern Memorial Foundation v. Johnson, 141 Ill. App. 3d 309 (1st Dist. 1986). For the reasons set forth above, an analysis of the exempt ownership requirement is dispositive in this case. As the Applicant has acknowledged (Tr. p.8), because the owners of parcel index number 15-15-328-028 are also the owners of the parking lot, and as a consequence of section 16-125 of the Code, all aspects of the analysis pertaining to non-exempt ownership of parcel number 15-15-328-028 apply with equal force to the adjacent parking facility.

Section 15-125 of the Code clearly requires that an exempt organization own the parking lot and use it as part of a use for which exemption is provided. Faith Christian Fellowship of Chicago Illinois v. Department of Revenue, 226 Ill. App. 3d 322 (1st Dist. 1992), Mt. Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998). In the instant case, neither owner of the subject property is a charity or other exempt

organization. Therefore, the parking areas at issue cannot qualify for exemption, and the Department's initial determination with respect to this parking facility must also be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Kane County parcel index number 15-15-328-028 and the adjacent parking lot identified by Kane County parcel index number 15-15-328-021 not be exempt from 2003 real estate taxes.

Ted Sherrod
Administrative Law Judge

Date: January 27, 2005