

PT 18-03

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

NORTH SHORE EXCHANGE, NFP,

APPLICANT

v.

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

No. 16-PT-001

**Real Estate Tax Exemption
For 2014 Tax Year
P.I.N. 05-07-211-027-0000**

Cook County Parcel

**Kelly K. Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: David C. Dunkin, Arnstein & Lehr LLP, appeared for North Shore Exchange, NFP; Paula Hunter, Special Assistant Attorney General, appeared for The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Cook County Parcel, identified by property index number 05-07-211-027-0000 (“subject property”) qualifies for exemption from 2014 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and which is actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

On April 15, 2015, North Shore Exchange, NFP (“Applicant”) filed a Property Tax Exemption application with the Cook County Board of Review seeking exemption from 2014 real estate taxes for the subject property. The Board reviewed the application and on April 15,

2015 recommended a full year exemption for the subject property. In a determination dated October 7, 2015, the Department reversed the Board's recommendation, finding that the Applicant was not the owner of the property. Applicant filed a timely appeal of the Department's exemption denial. In lieu of an evidentiary hearing, the parties submitted a Stipulation of Facts ("Stip") along with seven Stipulated Exhibits ("Stip. Ex."). Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

STIPULATED FACTS:

- 1) The Applicant is North Shore Exchange, NFP, an Illinois not-for-profit corporation and 501(c)(3) organization. Stip. Ex. 1-2.
- 2) The Applicant is seeking a charitable exemption from property tax, pursuant to section 15-65 of the Property Tax Code, for the real property identified as P.I.N. 05-07-211-027-0000 and located at 372 Hazel Avenue, in Glencoe, Illinois. Stip. Ex. 3.
- 3) The property is owned by the Woman's Library Club of Glencoe, a 501(C)(4) tax exempt entity. Stip. Ex. 4-5.
- 4) The Woman's Library Club of Glencoe has leased the property to the Applicant at a base rent of \$XXX.XX per month. Stip. Ex. 6.
- 5) That the activity/usage of the property in 2014 was as follows:
 - a. North Shore Exchange, NFP, consists of one two-story commercial building containing a total of 3,615 square feet, which sits on 4,993 square feet of land.
 - b. North Shore Exchange, NFP, is a not-for-profit corporation that is exempt from income taxes under Section 501(C)(3) of the Internal Revenue Code.

- c. North Shore Exchange, NFP, consists of a donation and consignment resale shop for the sole purpose of raising funds for charitable objectives. The North Shore Exchange, NFP, donates 100% of its net proceeds from sales at the consignment shop strictly to charitable organizations.

Stip. Ex. 7.

- 6) The subject property was not used for any other purpose, commercial or otherwise, during the 2014 exemption year.
- 7) The issue presented in this case is whether the property at issue is exempt under Section 15-65(b) of the Property Tax Code. Section 15-65(b) provides an exemption from property tax for the property of:

Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

Section 15-65[c]¹ further provides that:

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

- 8) The Applicant has met all procedural requirements for these administrative proceedings by filing a PTAX-300 Application with necessary supporting documents and timely appealing the denial of property tax exemption to the Illinois Department of Revenue.

¹ The cited language the parties stated in the stipulated facts as Section 15-65(b) is actually under Subsection 15-65(c). This error was corrected in Applicant's Reply Brief, p. 2. Also, as there are two #4s in the Stipulated Facts, what was stipulation #6 is now stipulation #7. See Stip. 7; 35 ILCS 200/15-65(b) and (c).

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicant has not demonstrated, by presentation of stipulated facts, exhibits or argument, evidence sufficient to warrant exemption for the subject property from 2014 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65(b) should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Property may be exempt under this section if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. Chicago patrolmen's Association, v. Department of Revenue, 213 Ill.2d 273, 285 (2004). Whether the 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 149, 157 (1968) ("Korzen"). If the primary use of the property is charitable, then 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).

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant parts, the provisions state 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, including organizations whose owner, and no other person, uses the

property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

- (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 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, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws 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 may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

35 ILCS 200/15-65.

In Korzen, the Illinois Supreme Court outlined several factors to be considered in determining whether a property qualifies for a property tax exemption: (1) the organization has no capital, capital stock or shareholders; (2) funds are derived mainly from private and public charity and holds them in trust for the objects and purposes expressed in the charter; (3) charity is dispensed to 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) the organization 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; and (6) the primary use of the property is for charitable purposes. Korzen at 157.

These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessen the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2nd Dist. 1995).

At issue is whether the subject property is exempt under Subsection 15-65(b) of the Property Tax Code. 35 ILCS 200/15-65(b). Based on a presumption that both the property owner and Applicant are charitable organizations, Applicant claims that a property used as a resale shop, leased without a view to profit between two not-for-profit ("NFP") organizations is entitled to an exemption if actually and exclusively used for charitable purposes. App.'s Brief, p. 6. Applicant primarily relies upon the case law of Children's Development Center Inc. v. Olson, 52 Ill.2d 332,335 (1972) in which the court recognized that "it is the primary use of the property and not the ownership that determines its taxable status." The Department counters that the order of inquiry in determining whether a property is exempt if leased between two NFP organizations is to first examine if the property owner/lessor is a charitable organization under the Korzen criteria. "[B]efore one looks to the primary use to which the property is used after the leasing, one must look to see if the owner of the property is entitled to exemption from property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1994). Dept.'s Brief, p. 4.

As explained in footnote 1, because a portion of the statute cited as Subsection 15-65(b) in the Stipulated Facts #7 is actually Subsection 15-65(c) and some of the arguments are based on this conflated citation, I address this issue first. The plain language of Subsection 15-65(c) states that "If a not-for-profit organization leases property that is otherwise exempt *under this subsection...*" (emphasis added). As cited above in its entirety, the exemption in the subsection

refers to “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...” 35 ILCS 200/15-65(c). This subsection is separate and distinct from Subsection (b) and there is no overlapping provision between the two subsections. To be exempt under Subsection (c), in addition to meeting the condition of the opening paragraph of Section 15-65, Applicant had to present evidence that the lessor falls under the category of 501(c)(3) corporations “providing services or facilities related to the goals of educational, social and physical development” and offer affirmative evidence of exemption as outlined in the subsection. The most obvious disqualifying fact being that the property owner/lessor is a 501(c)(4) corporation,² not 501(c)(3), as required for exemption under this subsection. Stip. 3. Therefore, Subsection 15-65(c) does not apply here.

Applicant prefaces that the legislature amended Subsection 15-65(b) in Public Act 86-264 (eff. Jan. 1, 1990) in response to a Salvation Army property that had been denied exemption because the primary use was to generate income from the resale shop and no actual charity was dispensed on the premises. App.’ Brief, p. 5; Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988). Applicant contends that Public Act 86-264 insured the “owner of the property” generating income for a charitable purpose could still qualify for charitable exemption as long as it was still dispensing charity somewhere. App.’s Brief, p. 5. Initially, Applicant had argued that since the subsection does not speak to the issue of whether a “charitable thrift shop” which leases its space can still be exempt, the property is entitled to exemption as long as the opening paragraph of Section 15-65 is met. App.’s Brief, p. 5. Applicant has since shifted its position to argue that Applicant/lessee, in addition to the property

² Internal Revenue Code Section 501(c)(4) grants tax exempt status to not-for-profit civic organizations operating exclusively to promote social welfare or local associations of employees.

owner/lessor, also qualifies for exemption under Subsection 15-65(b). It is because the text of the subsection does not explicitly preclude exemption for organizations, other than the property owner, that operate a resale shop. Reply Brief, pp. 5-7. Applicant's core argument essential is that the property ownership is irrelevant to Subsection (b), only the primary use as a resale shop is.

While Applicant relies on the language of Subsection 15-65(b), the plain reading of the subsection does not lend support to its argument. When the plain language of the statute is clear and unambiguous, the legislative intent that is discernable from this language must prevail. Springfield School District No. 86 v. Department of Revenue of State, 384 Ill. App. 3d 715 (2008). Applicant argues that the phrase "owner, and no other person" in the subsection refers to "the owner of the organization," not "the owner of the property." Reply Brief, p. 5. In so arguing, Applicant stresses that in Salvation Army the exemption denial was unattributed to the property ownership but due to the primary use not being charitable. It is true that the property ownership was not at issue in Salvation Army, but such omission was precisely because Salvation Army, a charitable organization, owned and operated the resale shop on its own property, not because it was not a condition precedent to a property tax exemption. This is an important distinction from the case at hand and makes Applicant's argument in this regard is unpersuasive.

To conclude as Applicant proposes, I would need to ignore the opening paragraph of Section 15-65, which states that exemption applies to all property actually and exclusively used for charitable purposes *of* the following, referring to the property of organizations described in the subsections. Under Subsection (b), the property refers to the property of "[b]eneficent and charitable organizations... whose owner, and no other persons, uses the property... [as a] resale shop of donated goods..." 35 ILCS 200/15-65. In ascertaining the meaning of a statute, the

statute should be read as a whole with all relevant parts considered. Kraft v. Edgar, 138 Ill.2d 178 (1990). More graphically, the plain language of the opening paragraph of Section 15-65 and Subsection (b) when read together is as follows:

- the property must be actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit; **and**
- the property must be owned by a beneficent or charitable organization that is incorporated in any state of the United States; **and**
 - **if** the property is used exclusively for the distribution, sale, or resale of donated goods and related activities, **then**
 - the beneficent or charitable organization/property owner, and no other person, must be the one that uses the property for such purposes, **and**
 - all the income from those activities must be used to support the charitable, religious or beneficent activities of the owner, regardless whether such activities occur on the property.

35 ILCS 200/15-65; *see also* Eden, 213 Ill. 2d at 287.

The bullet point graphic reveals that property owned by a beneficent or charitable organization incorporated in any state of the United States does not have to be used as a resale shop to be exempt, so long as such property is actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit. *E.g.* Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 606 (3d Dist. 2003). If, however, the property is used exclusively for the distribution, sale, or resale of donated goods and related activities, the more specific conditions outlined in Subsection 15-65(b) must also be met, in addition to the conditions outlined in the opening paragraph of Section 15-65. *See* Eden, 213 Ill. 2d at 287. To summarize, the opening paragraph applies to all subsections in Section 15-65, and to qualify for exemption under Subsection (b), additional conditions of the subsection must also be met.

As reflected in the bullet point graphic above, Subsection 15-65(b) requires that property must be owned by a beneficent or charitable organization. Only after this condition is met, we need to further examine additional conditions relevant to Subsection (b). Applicant recognizes that the Korzen criteria is applicable in determining whether an entity seeking exemption is a

charitable organization, but fails to discuss each of the Korzen criteria as applied to the property owner/lessor. Applicant simply concludes in the Brief, without specifying whether Korzen applies to the property owner/lessor or Applicant/lessee, that it has met the Korzen criteria by the Stipulation of Facts. App's Brief, p. 6. In the Reply Brief, Applicant claims that the property ownership is immaterial under Subsection (b) but clarifies that the Stipulation of Facts and Subsection (b) language clearly establish Applicant/lessee as a charitable organization. Reply Brief, p. 3. The stipulated facts and exhibits do not establish what Applicant concludes. Applicant incorrectly equates a NFP organization as a charitable organization by concluding that "The only question is whether a thrift shop, which is leased with no view to profit by one NFP to another NFP, can be exempt under Section 16-65 and the principles outlined in Korzen and under established Illinois law. The clear answer is that it can." App.'s Brief, p. 6. Neither the plain language of the relevant statute nor the case law authority supports Applicant's position.

In Provena Covenant Medical Center v. Department of Revenue, 384 Ill.App.3d 734 (2008) ("Provena"), the court noted that it is insufficient that the property is "exclusively used for charitable or beneficent purposes," as the owner of the property must be a charitable organization under Section 15-65(a) as determined by the Korzen criteria. "Clearly, not-for-profit status alone does not confer an exemption under section 15-65(a)." *Id.* at 743. As in Subsection 15-65(a), the plain language of Subsection 15-65(b) conditions that the property owner be a beneficent or charitable organization. "Beneficent" is synonymous with "charitable." *Id.* Applicant did not present evidence here that the property owner/lessor, Woman's Library Club of Glencoe, qualifies as a charitable organization under Korzen. The evidence, instead, establishes that the lessor is not a charitable organization, not in the legal sense. The lessor's bylaws reflect that it is a membership organization where admission of members is at the sole discretion of its board; it requires annual membership dues without a provision of wavier or

reduction of dues to those who cannot afford to pay; and Applicant failed to present any of the lessor's finances, an examination of which is necessary in determining whether an organization is charitable under Korzen. See Stip. Ex. 5. As the evidence shows that the property owner/lessor is not a charitable organization nor uses the property as a resale shop, Applicant's exemption claim under Subsection 15-65(b) must be denied.³

Applicant most prominently cites a case law authority of Children's Development Center. However, the cited case law does not support Applicant's argument as it applies only to 1) the opening paragraph of Section 15-65, and not additionally to Subsection (b) when property is used as a resale shop; and 2) is based on misinterpretation of the case law. Applicant claims that as was the case in Children's Development Center both the lessor and lessee here "would qualify for a tax exemption standing alone." App's Brief, p. 8. I disagree. In Children's Development Center, the court assumed that if the lessor, a convent, were to conduct a similar charitable operation on the property instead of the lessee, the property would be tax exempt.

"It is not questioned that the activities conducted by Center are charitable and that if the property were owned by Center and these activities conducted thereon, it would be tax exempt. Also if Sisters were to conduct a similar operation on the property instead of Center, it appears that the property would be tax exempt."

Id. at 334-335.

The lessor's exempt status as a religious organization was not questioned by the court but assumed because there was no dispute the lessor was a bona fide religious organization, not merely a NFP organization, which may or may not satisfy the Korzen criteria. Similar to Salvation Army, the court's finding in Children's Development Center was not that an examination of a lessor's exempt status as a charitable, educational, or religious organization is

³ As Applicant is not entitled to an exemption for the reasons cited above, a discussion of whether Applicant's resale shop of donated and consigned goods, as opposed to a resale shop of only donated goods as was the case in Salvation Army, qualifies for exemption under Subsection 15-65(b) of the Property Tax Code is unnecessary.

immaterial to determining whether a leased property is entitled to exemption. Support for this conclusion is found in the fact that prior to leasing the property, the lessor in Children's Development Center had received a property tax exemption as a religious organization. Also, the court noting that "the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues" is quite instructive, if not conclusive. *Id.* at 336. From this very language, the court in Victory Christian Church determined that "before one looks to the primary use to which the property is used after the leasing, one must look to see if the owner of the property is entitled to exemption from property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." Victory Christian Church at 922. "Continues" obviously means that the property before the lease was tax exempt. In the instant case, there is no evidence that the property was ever exempt before the owner leased it to the Applicant. Consequently, this conclusion that the property owner/lessor must first qualify as a charitable organization to be exempt under Section 15-65, and specifically under Subsection (b), is not inconsistent with the court's language that "the primary use of the property and not the ownership that determines its taxable status." *Id.* at 335.

Lastly, there is no legal authority for Applicant's argument that a NFP entity can convert a non-exempt status of a property into an exempt status merely by leasing it without a view to profit to another NFP, even if it were to a charitable or religious organization. App.'s Brief, p. 6. In denying exemption to a private property leased to a religious organization, the court Victory Christian Church reasoned that "[T]o decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious or a school organization." *Id.* at 923. As there has been no showing here that the property owner/lessor is a charitable organization, its property is analogous to a private property. Stated differently, in the

context of property tax exemption granted to charitable organizations, if the property owner/lessor cannot first satisfy the Korzen criteria as a threshold matter, it is irrelevant whether the organization is for profit or not-for-profit, as its property is effectively treated as same. Accordingly, the court's reasoning above applies equally in the instant case, and the ruling supports affirming the denial of the exemption for the subject property for the 2014 assessment year.

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. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt in order to insure that "sound principles" are preserved, unwarranted exemptions from taxation are avoided and that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. Taxpayer bears the burden of proving "by clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2nd Dist. 1991). In resolving all debatable questions in favor of taxation, Applicant has failed to prove by clear and convincing evidence that it falls within the limited class of institutions meant to be exempt for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that the Department's denial of property tax exemption for the tax year 2014 be affirmed of Cook County parcel, identified by property index number 05-07-211-027-0000.

ENTERED: September 8, 2017

Kelly K. Yi

Administrative Law Judge