PT 18-07
Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use
Religious Ownership/Use

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **MACEDONIA DEVELOPMENT CORP., NFP d/b/a POTTER'S HOUSE ADULT DAYCARE, RESPITE AND REHABILITATION** **Applicant**	**Docket # 17-PT-006** **Tax Year 2016** **Dept. Docket # 16-82-51, 52**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Geraldine Scott, *pro se*, for Macedonia Development Corporation, NFP, d/b/a Potter's House Adult Daycare, Respite and Rehabilitation

Synopsis:

Macedonia Development Corporation, NFP, d/b/a Potter's House Adult Daycare, Respite and Rehabilitation ("applicant" or "MDC") filed applications for property tax exemptions for the year 2016 for 15 parcels of property located in St. Clair County. The St. Clair County Board of Review ("County") recommended that the exemptions be denied, and the Department of Revenue ("Department") agreed with that decision. The applicant timely protested the Department's decision. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts

and the attached exhibits. The applicant did not clearly specify the type of exemption that it is seeking, but the Department filed a brief in support of its position in which it addressed both the charitable purposes exemption under section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) and the religious purposes exemption under section 15-40 of the Property Tax Code. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on October 1, 2001. (Dept. Ex. #1, pp. 29-30, 35-36)
2. The applicant's purposes, according to its articles of incorporation, are the following:

> For the development of community and economic programs to improve the neighborhoods through educational programs, after school programs, day care, Sr. Citizen Care, while promoting the establishment, development and expansion of industries. (Dept. Ex. #1, pp. 29, 35)

3. According to the applicant's bylaws, the purposes of the corporation are as follows:

> To go into the East Saint Louis community and the Metropolitan areas to give assistance to those with special needs. By demonstrating that concern through actively supporting outreach programs. We will accomplish this by providing daycare services, after school tutoring, computer training, adult daycare/rehabilitation/respite services and other educational enhancement programs, recreational activities and counseling services for persons of all ages. Also by providing other programs that will serve to improve the quality of life among our families and in our community. In addition, this corporation is formed for the purposes of performing all things incidental to the achievement of the specific and primary purposes as outlined within the purpose statement. This corporation shall not, however engage in any

activities or exercise any powers that are not in furtherance of its specific and primary purposes. (Dept. Ex. #1, p. 23)

4. The property at issue consists of 15 parcels that were vacant during the year 2016. (Dept. Ex. #1, pp. 3-7, 18)

5. The applicant intends to use the property "for combined independent living and skilled nursing services, campus style." (Dept. Ex. #1, p. 9)

6. The property is located at 1300-1333 East Broadway in East St. Louis, Illinois. (Dept. Ex. #1, pp. 4, 7)

7. The applicant provided an un-audited income statement for the year 2016 that shows the following:

Revenues	MDC	Potter's House	Combined
XX Bank			
(Contrib XXX.XX)	$XXXX.XX	0	$X,XXX.XX
XXX XX Bank	XXX.XX	XXX.XX	X,XXX.XX
Revenue - Baseball	XXX.XX	0	XXX.XX
Total Revenue	$X,XXX.XX	$XXX.XX	$X,XXX.XX
Expenses			
Contract Labor	X,XXX.XX	0	X,XXX.XX
Cardinal Baseball Tkts	X,XXX.XX	0	X,XXX.XX
Total Expense	X,XXX.XX	0	X,XXX.XX
Balance	$ X,XXX.XX	$XXX.XX	$ X,XXX.XX

(Dept. Ex. #1, p. 22)

8. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (Dept. Ex. #1, pp. 31-32, 47)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d

273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto." *Id*. Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id*. at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. "The burden is a very heavy one." Provena Covenant Medical Center v. Department of Revenue, ("Provena I") 236 Ill. 2d 368, 388 (2010); Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957).

Charitable Exemption

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and 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…. 35 ILCS 200/15-65(a).

Property may be exempt under this subsection 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. *Id.*; Chicago Patrolmen's Association, *supra*. 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 149, 156-57 (1968). 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 Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden

Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as "a gift to be applied … for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government." *Id*.

The Department has conceded that the applicant meets the first and fourth guidelines, but the Department argues that the record is absent of any charitable activity. The Department states that all of the parcels are vacant, and there was no activity on the parcels during the year at issue, 2016. The Department also claims that the applicant has failed to provide any evidence of planning or converting the property for charitable use.

The Department contends that the applicant does not meet the second factor in Methodist Old Peoples Home, *supra*, because the applicant does not derive its funds mainly from public and private charity. The Department points out that the applicant does not have an expense for charity on its income statement. In addition, the

Department claims that because the record does not have any evidence of charitable activity, the applicant has not met the third, fifth, and sixth factors of Methodist Old Peoples Home, *supra*. The Department, therefore, argues that the property is not entitled to a charitable exemption.

The applicant stated that it was established in 1979 with the purpose of providing outreach programs: daycare/rehabilitation/respite and housing for the elderly, as well as educational, recreational, supportive and counseling services for special needs of all ages. (Dept. Ex. #1, p. 2) The applicant is a 501(c)(3) organization, and it indicated that it received the property from the East St. Louis Housing Authority. (Dept. Ex. #1, p. 9) The applicant claims that it partnered with East St. Louis Housing Authority to demolish the 6 buildings that were on the property, and the contaminated soil was excavated and cleaned for the purpose of building a Senior Campus. (Dept. Ex. #1, p. 2)

The applicant stated that "this property is slated for combined independent living and skilled nursing services, campus style." (Dept. Ex. #1, p. 9) In a letter dated April 9, 2017, the applicant's representative stated, "In the past, we have used the property for our Annual picnics that includes the community and Macedonia Church members. We have held workshops in our fellowship hall because of the need of a kitchen to serve our community attendees." (Dept. Ex. #1, p. 10) The representative further stated that as a result of her discussions with Department's counsel, "a tent will be used to pass out health literature, on the site, and conduct health screenings, book fairs, free income tax preparation for the elderly and for church members, which are members living in the community." *Id*. This is the only information in the record concerning any activity with respect to the property.

In order for the property to be exempt for 2016, the property must have been actually used for charitable purposes. In the case of Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose did not eliminate the need for proof of actual use for that purpose. "Intention to use is not the equivalent of use." Skil at 252. See also Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption).

In the present case, the applicant intends to use the property for an independent living and skilled nursing facility, but during 2016 the property was vacant and was not primarily used for charitable purposes. The applicant did not present any documents substantiating any activity on the property during the year at issue. According to the applicant's letter, the property was used for Annual picnics, but an annual picnic takes place only once a year. This appears to be the only event that the applicant claims took place on the property during 2016. The applicant indicated that it held workshops in its fellowship hall, but the fellowship hall is not on the property. The other activities referred to in the applicant's letter did not take place during 2016. If the annual picnic is the only event that took place on the property during 2016, then it is an isolated incident and does not constitute the primary use of the property.

In Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987), the court found that property may qualify for an exemption if the applicant shows that the property was in the process of being adapted and developed for an exempt use during the year at issue. In the present case, the applicant has not shown that the property

was being developed for an exempt use during 2016. The applicant indicated that 6 buildings on the property were demolished and the soil was excavated and cleaned, but it is unclear when these activities took place. It is also unclear whether the East St. Louis Housing Authority actually performed the demolition and excavation before giving the property to the applicant. Nevertheless, the record does not include sufficient evidence to show clearly and convincingly that the property was used for charitable activity during 2016.

Furthermore, the evidence fails to show clearly and convincingly that the applicant meets most of the guidelines in Methodist Old Peoples Home, *supra*. According to the applicant's income statement, apparently only $XXX.XX of the combined total revenue of $X,XXX.XX was a contribution. This is approximately 17% of the applicant's income. The applicant, therefore, does not meet the second guideline because the majority of the applicant's income is not derived mainly from public and private charity. In addition, as the Department has indicated, it is not clear from the income statement what type of charity the applicant provided during 2016, and the evidence does not clearly specify charitable activities during 2016. The applicant referred to workshops in its fellowship hall, but it is not clear what type of workshops those were. Without clear evidence of charitable activity, the applicant has not met the third, fifth, and sixth factors of Methodist Old Peoples Home, *supra*. The applicant's property, therefore, is not entitled to a charitable exemption.

Religious Exemption

Section 15-40 of the Property Tax Code allows exemptions for religious purposes and provides, in relevant part, as follows:

(a) Property used exclusively for:

(1) religious purposes, or
(2) school and religious purposes, or
(3) orphanages
qualifies for exemption as long as it is not used with a view to profit.

. . .

35 ILCS 200/15-40(a).

The term "exclusively" refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

The Department argues that the applicant does not use the property primarily for religious purposes. The Department has referred to two cases to support its contention. In Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (4th Dist. 2008), the court found that a daycare and preschool that were operated by Faith Builders Church did not qualify for an exemption because the property was used primarily as a daycare and was not used primarily for religious purposes. In Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4th Dist. 1987) the court found that the operation of a retirement home allowed the church to engage in evangelization, but operating a retirement home is not primarily religious and does not qualify for the religious purposes exemption. The Department argues that in the present case, there is minimal evidence of religious activity on the property during 2016, and the property, therefore, does not qualify for an exemption.

The property does not qualify for a religious purposes exemption for the same reasons why it does not qualify for the charitable purposes exemption. Property that remains vacant and is not actually used for an exempt purpose is not entitled to an exemption. See Skil Corporation, *supra*; Antioch Missionary Baptist Church, *supra*. The

only activity that allegedly took place on the property during 2016 was an annual picnic, which is not a religious activity. The fellowship hall is not on the property, so the workshops that were held in the fellowship hall do not qualify the property for an exemption.

As stated previously, exemption provisions are strictly construed, and all doubts and debatable questions must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. According to the evidence presented by the applicant, the property was vacant during the year 2016 and was not used primarily for charitable or religious purposes. Because the applicant has failed to clearly and convincingly show that the property meets the requirements for an exemption, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2016.

Linda Olivero
Administrative Law Judge

Enter: November 30, 2017