

PT 17-04
Tax Type: Property Tax
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**

v.

VINTAGE SUPPORT GROUP, INC.

Applicant

**Docket # 15-PT-006
Tax Year 2014
Dept. #14-82-60**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Elizabeth Sahuri, *pro se*, for Vintage Support Group, Inc.

Synopsis:

Vintage Support Group, Inc. (“applicant”) filed an application for a property tax exemption for the year 2014 for four parcels of property located in St. Clair County. The applicant contends the property is used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The St. Clair County Board of Review recommended that the property receive a partial year exemption from the date that the applicant owned the property, May 27, 2014. The Department of Revenue (“Department”) disagreed with that decision and denied the exemption on the

basis that the property was not used exclusively for charitable purposes. The Department does not dispute the fact that the property is owned by a charitable organization. The applicant timely protested the Department's decision, and an evidentiary hearing was held.¹ The issue presented is whether the property was used for charitable purposes during 2014, including whether it was adapted and developed for charitable use according to the standard set in Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). After reviewing the record, it is recommended that this matter be resolved partially in favor of the applicant.

FINDINGS OF FACT:

1. The applicant is a not-for-profit company that was organized in Missouri on June 10, 1992. The applicant received a Certificate of Authority to Conduct Affairs in Illinois on March 16, 1999. (Dept. Ex. #1, pp. 56-59)
2. The applicant was organized to provide residential and day program services for persons with developmental disabilities and/or mental illness. (Dept. Ex. #1, p. 60)
3. The applicant acquired the property at issue on May 27, 2014. (Dept. Ex. #1, p. 3)
4. The property is located at 9510 and 9420 St. Clair Avenue, Fairview Heights, Illinois. (Dept. Ex. #1, pp. 3, 10, 35)

¹ Administrative Law Judge John White presided over the hearing. The parties agreed to allow the undersigned, Linda Olivero, write the recommendation. It is not a requirement that the Administrative Law Judge who heard and took evidence be the one to make the recommendation. American Welding Supply Co. v. Department of Revenue, 106 Ill. App. 3d 93 (5th Dist. 1982). Credibility is not an issue.

5. The property has 3 buildings with a total of approximately 37,000 square feet. One building is an office building, and the other two buildings are warehouses. (Dept. Ex. #1, pp. 3, 6, 10)
6. The applicant received the property in question as a donation. Prior to the applicant acquiring ownership, the property had been vacant for over 7 years. (Dept. Ex. #1, p. 6; Tr. p. 10)
7. The applicant needed to address several issues when it acquired the property: immediate maintenance concerns, a zoning change, extensive rehabilitation, and environmental concerns.² (Dept. Ex. #1, p. 5; Tr. pp. 12-14)
8. The applicant intends to have a portion of the property used for day services for individuals with mental disabilities. An affiliated not-for-profit company, Phoenix Recycling & Shredding, will use the west warehouse for its operations and provide employment for individuals with developmental disabilities. The applicant will use the office building. On October 8, 2014, the applicant indicated that “For now, we do not intend to use the East Warehouse space.” (Dept. Ex. #1, pp. 3, 21; Tr. p. 12)
9. In the west warehouse, the primary focus for Phoenix Recycling & Shredding is expected to be paper shredding, baling and storage. Some recycling and storage of cardboard, plastic, aluminum, tin and glass may also be part of its operations. (Dept. Ex. #1, p. 21)
10. Throughout 2014, the operations for the applicant and Phoenix Recycling & Shredding were on property that they were leasing. (Tr. pp. 19-20)

² There was an old gas tank underneath one of the warehouses, so the applicant needed an environmental review. (Tr. p. 14)

11. From May through July of 2014, the applicant worked with the City of Fairview Heights to re-zone the property at issue, which had been zoned industrial. (Dept. Ex. #1, p. 6; Tr. p. 12)
12. In May and June, a maintenance contractor determined the repairs needed to the roof and gutter system. Other contractors evaluated the condition of the buildings, plumbing, HVAC, lighting, septic and electrical systems. (Dept. Ex. #1, p. 6)
13. In June, the City building department, the State fire marshal, and the French Village fire department made cursory inspections to discuss occupancy and safety issues. The applicant also received approval for a grant in the amount of \$2,000 for a lighting upgrade. (Dept. Ex. #1, pp. 7, 14)
14. From July 6 to July 12, 2014, a contractor cleaned the gutters, cleaned the first floor restrooms of the office building, removed ceiling tiles in the restrooms and removed floor tile in the women's restroom. The contractor also cleared vegetation from around the aeration unit. Also in July the exterior doors were secured. (Dept. Ex. #1, pp. 6, 10)
15. In July a contractor gave an estimate of \$200,000 to repair and renovate the buildings. (Dept. Ex. #1, p. 7)
16. In July and August, water was re-established to the building; the pipes throughout the buildings had been frozen and busted. A contractor was hired to determine the full extent of the damage and provide limited water to the building for renovation activities. (Dept. Ex. #1, p. 7)

17. On July 20, 2014, the applicant purchased roof coating in order to repair and prevent leaks. (Dept. Ex. #1, pp. 7, 19)
18. From July through September, the applicant applied for and was denied funding from a bank. (Dept. Ex. #1, pp. 7, 20; Tr. p. 15)
19. In September and October, the French Village fire department advised that a sprinkler system was required, but as an alternative, a fire separation wall was approved by the fire department. (Dept. Ex. #1, pp. 7, 23-26)
20. From November 9 to November 15, 2014, the contractor installed a drain valve and drain water lines. (Dept. Ex. #1, p. 11)
21. In November, the applicant retained an architect to design the fire wall. The applicant also selected a contractor and applied for permits with the City and the fire department. (Dept. Ex. #1, pp. 7-8, 31; Tr. p. 16)
22. The estimate for constructing the firewall was \$14,976.90. (Dept. Ex. #1, p. 31)
23. In November, some items were moved to the east warehouse for storage. (Dept. Ex. #1, p. 36)
24. In December, the City and the fire department approved the fire wall design and granted the permits. At this time, the cost of the total renovation was estimated to be \$215,000. (Dept. Ex. #1, p. 8)
25. On December 14 and 15, 2014, the contractor demolished material and electrical conduits to allow for the installation of the new “fire rated portion wall.” The contractor also re-routed electrical circuits to allow for the removal of electrical items in the way of the wall. The contractor completed the lower demolition work. (Dept. Ex. #1, p. 12)

26. During 2014, except for the limited storage in the east warehouse, the property remained vacant. (Dept. Ex. #1, p. 36)

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). 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).

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, 236 Ill. 2d 368, 388 (2010). 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. *Id.*; 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)).

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 (35 ILCS 200/1-1 *et seq.*), 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)).

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).

In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. “Intention to use is not the equivalent of use.” *Id.* at 252. See 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). An exception to the actual use

requirement exists, however, if the property is in the process of being adapted and developed for an exempt use; if so, then it will be treated as being devoted to that use. Weslin Properties, Inc., at 587. It must be determined whether the applicant's activities constitute development and adaptation for an exempt use, or whether the applicant merely intends to develop the property for an exempt use. *Id.* at 584. In Lutheran Church of Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000), the court held that "development and adaptation of the subject property must be judged in light of the ultimate intended use." *Id.* at 834.

The Department first argues that the applicant has not established that when the rehabilitation is completed the property will actually be used for a charitable purpose. In addition, the Department contends that, even if the ultimate use will be charitable, the applicant has not sufficiently established that the property has been adapted or developed for that exempt use. The Department, therefore, contends that the property is not entitled to an exemption.

As previously stated, the Department does not dispute the fact that the applicant is a charitable organization, and the only issue is whether the property is used for charitable purposes. The property has 3 buildings; one building is an office building, and the other two buildings are warehouses. An affiliated not-for-profit company, Phoenix Recycling & Shredding, is expected to use the west warehouse for its operations and provide employment for individuals with developmental disabilities. The applicant will use the office building. In October 2014, the applicant did not have any intention to use the east warehouse.

With respect to the east warehouse, the evidence is not sufficient to show clearly and convincingly that it qualifies for an exemption for the year 2014. During most of the year the property was vacant, and on October 8, 2014 the applicant indicated that it did not intend to use the east warehouse. (Dept. Ex. #1, p. 21) Vacant property that is not being adapted or developed for an intended charitable use is not entitled to the exemption. Antioch, *supra*. Although the applicant subsequently indicated that it was using a portion of the east warehouse for storage (which would be an exempt use because the applicant is a charitable organization), the record is not clear as to exactly how much space was used for storage. Without knowing the amount of space that was used for storage, the east warehouse is not entitled to an exemption.

With respect to the west warehouse, the evidence is not sufficient to show clearly and convincingly that the ultimate intended use is for charitable purposes. The applicant expects Phoenix Recycling & Shredding to operate in the west warehouse, but the record only includes a description its operations. Even though Phoenix Recycling & Shredding is a not-for-profit organization, this does not necessarily mean the property will be used for charitable purposes. See Provena Covenant Medical Center, at 389; People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 464 (1970). In order to determine whether Phoenix Recycling & Shredding will be using the property for charitable purposes, the applicant needs to establish that the use meets the guidelines in Methodist Old Peoples Home, *supra*.³ Evidence such as financial statements for Phoenix

³ The following guidelines are considered when determining charitable use: (1) whether the organization has no capital, capital stock or shareholders; (2) whether 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) whether the organization dispenses charity to all who need and apply for it; (4) whether the organization does not provide gain or profit in a private sense to any person connected with it; (5) whether 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) whether the primary

Recycling & Shredding would be helpful in making this determination. Without evidence supporting the guidelines in Methodist Old Peoples Home, *supra*, the exemption must be denied for the west warehouse.

With respect to the office building, the ultimate intended use is charitable because the applicant is a charitable organization that intends to use the property for its offices. The mere intention to convert the property for charitable use does not qualify for the exemption, but the distinction between the mere intention and the actual development of the property for charitable use is not always easy to discern. I believe that the actual development and adaptation of the property for charitable use began on December 14, 2014 when the contractor began demolishing material and electrical conduits to allow for the installation of the new firewall. In order for the renovation to take place, the applicant needed a firewall on the property. The permits that allowed the work to begin on the firewall were issued only shortly before that. The activities and the expenses that the applicant incurred prior to that date were preliminary steps, but significant work did not start until December 14, 2014. Planning, maintenance, and attempting to raise money are activities that show a clear intent to renovate the property, but those activities, alone, do not rise to the level necessary to show adaptation of property that requires extensive renovation. Considering all of the applicant's efforts, the applicant's activities meet the clear and convincing standard on December 14, 2014 when the applicant had the permits for the renovation and the actual development and adaptation began.

Recommendation:

purpose for which the property is used, and not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, at 156-57. See also Provena Covenant Medical Center *supra*.

For the foregoing reasons, it is recommended that the office building be exempt from property taxes for the year 2014 beginning on December 14, 2014. The two warehouses are not entitled to the exemption.

Enter: September 14, 2016

Linda Olivero
Administrative Law Judge