

PT 11-06
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

**FAMILY & FRIENDS ADULT
DAY CENTER, INC.,
APPLICANT**

No: 10-PT-0028 (09-99-101)
Real Estate Exemption

For 2009 Tax Year
P.I.N. 07-16-234-040
Will County Parcel

v.

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

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Catherine Beavers, on behalf of Family & Friends Adult Day Center, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Will County Parcel Index Number 07-16-234-040 (hereinafter the “subject property”) qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-65, in which all property of charitable institutions, actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxation.

The controversy arises as follows: On November 2, 2009, Family & Friends Adult Day Center, Inc., (hereinafter “Family”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Will County (hereinafter the

“Board”). Dept. Ex. No. 1. The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a full year exemption be granted.

The Department rejected the Board’s recommendation in a determination dated December 31, 2009, finding that the subject property was not in exempt ownership or use in 2009. Dept. Ex. No. 1. On February 23, 2010, the applicant filed a timely request for a hearing as to the denial. The requested evidentiary hearing was held on December 17, 2010, before Administrative Law Judge Julie-April Montgomery, with testimony from Ms. Catherine Beavers, President of Family, and Annette Pfeiffer, volunteer at Family.¹ Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination denying the exemption be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use in 2009. Dept. Ex. No. 1.

CONCLUSIONS OF LAW:

An examination of the record establishes that Family has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2009 real estate taxes. In support thereof, I make the following conclusions:

¹ ALJ Montgomery, currently on leave, was unable to write this Recommendation.

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.

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).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by "institutions of public charity," and (2) "actually and exclusively used for charitable or beneficent purposes and not leased or otherwise used with a view to profit." 35 ILCS 200/15-65. Charitable ownership and charitable use together entitle a parcel to exemption from taxation. Lena Community Trust Fund v. Department of Revenue, 322 Ill. App. 3d 884 (2d Dist. 2001).

I am unable to conclude, based on the testimony presented at the evidentiary hearing, that the subject property is owned by Family. Family's PTAX-300, "Application for Non-homestead Property Tax Exemption" states that the "Property Owner" is

“Lawrence & Catherine Beavers.” No deed showing ownership by Family was admitted into evidence. 35 ILCS 200/15-65 requires ownership by an institution of public charity. The lack of evidence in the record showing ownership of the subject property by Family is sufficient reason to deny its request for property tax exemption. Even if ownership of the subject property by Family had been proven, I would still recommend that this exemption be denied because I am unable to conclude that Family is a charitable institution.

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and 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. In addition to these factors which are used to assess whether an institution is charitable, an applicant, in this case Family, must also show that the exclusive and primary use of the subject property is for charitable purposes.

I am unable to conclude from the record that Family is a charitable institution. No documentary evidence was admitted on behalf of Family. In order to determine whether an organization meets the Methodist Old Peoples Home guidelines, reliable financial statements are required. Without financial statements, I am unable to conclude that

Family derives its funding from public and private charity or that Family does not provide gain or profit in a private sense to Ms. Beavers or that the subject property is not used with a view to profit.

Ms. Beavers testified that the only income she receives is funding from the Illinois Department of Human Services (“IDHS”). Family’s contract with IDHS was not admitted into evidence. I am unable to determine, from the record, the nature of IDHS’s funding of Family. Without IDHS’s contract in evidence, I am unable to determine whether Family reduces a burden on government.

Moreover, no charter or articles of incorporation were admitted into evidence on behalf of Family. No written statement of Family’s charitable purpose was offered into evidence. Without these documents, I am unable to conclude that the funds provided by IDHS are held in trust for charitable purposes. Two other factors to be considered in assessing whether Family is a charitable organization are whether charity is dispensed to all who need and apply for it and whether Family places obstacles in the way of those who would avail themselves of the charitable benefits it dispenses. The testimony presented at the hearing was not sufficient for me to conclude that Family has met these guidelines. No operating manuals or bylaws were admitted into evidence. I am unable to determine what criteria Family uses for assessing whether a person should be afforded charitable care on the subject property, how many people received charitable care and how many people applied for charitable care and were denied, if any.

Ms. Beavers testified that she housed clients “upstairs until we could get housing for them over with HUD with the housing authority there in Joliet, and probably housed ten of those clients...” Tr. pp. 11-12. But the income she receives is apparently for adult day care, not housing. “Now, this is not like I’m getting paid by their family due to

housing or any of that.” “The only income I receive is the income for the clients to attend the adult day care program through the Department of Human Services. That’s all they pay for.” Tr. p. 12. While Family may be responding to the needs of the community, it is unclear from the record whether the charitable use of the subject property consists of adult day care or “housing” clients.

In exemption cases, an applicant 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 (2d Dist.1991). To prove its case, an applicant must present more than its testimony denying the Department’s determination. The taxpayer must present sufficient documentary evidence to support its exemption. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). Without any documentary evidence in the record, I must conclude that Family has not proven, by clear and convincing evidence, that it is a charitable institution in accordance with the guidelines of Methodist Old Peoples Home or that it uses the subject property for charitable purposes.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not in exempt ownership and use should be affirmed and Will County Parcel identified by P.I.N. 07-16-234-040 should not be exempt from property taxes in 2009.

ENTER:

Kenneth J. Galvin

March 14, 2011