

PT 05-41
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

CHRIST APOSTOLIC CHURCH
APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket No: 04 PT 0025
Real Estate Tax Exemption

For 2002 Tax Year

P.I.N. 20-22-207-020

Cook County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Christopher Martin, Flamm & Teibloom, Ltd., on behalf of Christ Apostolic Church; Mr. David Dunkin, Arnstein & Lehr, LLP, on behalf of Intervenor, Andres S. Schcolnik; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of 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 20-22-207-020 (hereinafter the “subject property”) should be exempt from 2002 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property owned by a charitable organization and actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempt.

This controversy arose as follows: On December 11, 2002, Christ Apostolic Church (hereinafter “Christ Apostolic” or “applicant”) filed a Property Tax Exemption

Complaint with the Cook County Board of Review seeking exemption from 2002 real estate taxes for the subject property, which is owned by the applicant and occupied by The Woodlawn Organization (hereinafter “TWO”). The Board reviewed the applicant’s Complaint and recommended that the 2002 exemption be denied. After “repeated requests for additional information,” The Department of Revenue of the State of Illinois (hereinafter the “Department”) accepted the Board’s recommendation in a determination dated February 13, 2004. Dept. Ex. No. 1. On April 12, 2004, Christ Apostolic filed an appeal of the Department’s denial of exemption. On June 23, 2004, Mr. Andres Schcolnik, purchaser of real estate taxes on the subject property with a tax deed petition pending in Cook County Circuit Court, petitioned to intervene in this case. On July 25, 2005, a formal administrative hearing was held with Dr. Leon Finney, Pastor of Christ Apostolic and Chairman of the Board of TWO, and Victoria Snow, Vice-President of Human Resources of TWO, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial 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 during 2002. Tr. pp. 16-17; Dept. Ex. No. 1.
2. Christ Apostolic was incorporated in 1991 under the Illinois General Not For Profit Corporation Act. In 2002, Christ Apostolic had 300 members, 3 ministers and 19 deacons and was located at 1445 East 65th Street in Chicago. Tr. pp. 20-23, 27; App. Ex. Nos. 1 and 3.

3. Christ Apostolic Church acquired the subject property by “Trustee’s Resignation Deed” dated September 6, 2001. Tr. pp. 71-71, 87; App. Ex. No. 2.
4. TWO has been exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code since February 16, 1993. Tr. pp. 32-33; App. Ex. No. 14.
5. TWO was incorporated under the Illinois General Not For Profit Corporation Act on May 2, 1962. In 1969, Articles of Amendment were filed stating that “[T]he object of TWO is the building up of the community and the fighting of community deterioration through the fostering of sound and responsible housing, education, job training and employment, health, business and other economic and governmental institutions.” Tr. pp. 39-42; App. Ex. No. 16.
6. The Bylaws of TWO state that it is “an organization of civic, religious, business, and other community groups that have pledged themselves in a cooperative venture to work together for the improvement and enrichment of the life of our modern society.” Tr. pp. 33-36; App. Ex. No. 15.
7. TWO’s members are block clubs, churches, religious institutions, and social and civic organizations. Membership is open to any organization located in Woodlawn if a majority of its members reside in the area, and the organization is in accord with the general purposes of TWO. The 115 member organizations have the right to vote and to send delegates to the annual meeting. Member organizations are required to pay \$100/year as

membership dues. Individuals can become members by paying dues of \$12.50/year. Tr. pp. 44-45, 80; App. Ex. No. 6.

8.TWO operates the “Family Preservation Program” (the “Program”) on the subject property. The revenue for this program comes entirely from the Illinois Department of Children and Family Services (“DCFS”) which paid TWO \$1,829,704 under a contract in effect from July 1, 2001 through June 30, 2002. Six hundred families were served by the Program in 2002. Tr. pp. 46-48, 74, 117-118, 147; App. Ex. Nos. 6 and 7.

9.The Program is designed to prevent children who are at risk of being neglected or abused from becoming wards of the State in foster care or adopted homes separated from their parents. The Program also works to unify families that have been separated when their children were put into foster care. The Program concentrates on protecting the children and making sure the children are safe in the home. One of six case managers makes a diagnosis of the challenges that a child or family may be undergoing and suggests a service delivery plan. A medical doctor provides psychiatric diagnostic support if needed. “Dean Mothers” work with the case managers and with the families. Dean Mothers, who are paid, usually live near the at-risk children and are accessible to the family at all times. Tr. pp. 49-51, 75-76, 113-114, 118.

10. Approximately 90% of referrals to the Program are from DCFS. Other referrals are from city and religious organizations that make up TWO’s membership, social service agencies, Catholic Charities, courts, other agencies in the community and walk-ins. Tr. pp. 51-52, 114-115, 158.

11. The Program offers parenting classes, cooking classes, and computer classes and GED preparation. The Program has three vans that can carry Program participants to local prisons for visits and some people are picked up for medical visits to ensure that they keep their appointments. Tr. pp. 51, 125-126, 143.
12. Approximately 8,500 square feet of the first floor of the building on the subject property is rented to Rainbow Clothing Store and rent received from Rainbow is included as revenue on the financial statements of Christ Apostolic.¹ Approximately 1,600 square feet of the first floor is used for an after school tutorial program for at-risk children in the Program. The entire second floor, approximately 11,000 square feet, is used by the Program. Case managers, dean mothers, transporters, and administrators who work on behalf of the Program have offices on the second floor and intake and interviews are done there. During 2002, the third and fourth floors, about 5,000 square feet/floor, were empty. Tr. pp. 53-71, 89, 100-101; App. Ex. Nos. 5, 9, 10 and 11.
13. Consolidated financial statements for TWO and associated entities for year ended June 30, 2002, show \$11,462,396 in "Public support and revenues." Of this amount, 85% or \$9,761,630 was from the State of Illinois, including DCFS, Department of Mental Health, Department of Human Services and Department of Public Aid, 9%, or \$1,057,973 was from "Real estate management and development fees." Of the \$11,462,396 in "Public support and revenue," \$1,829,704, was provided

by DCFS for the Program on the subject property. TWO operates other state-funded programs at different locations. Tr. pp. 81-84; App. Ex. No. 6.

CONCLUSIONS OF LAW:

An examination of the record establishes that Christ Apostolic has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2002 real estate taxes. 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.

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).

¹ Counsel for TWO stated in his opening statement that TWO was not seeking an exemption for the retail

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” (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). It is clear from the evidence and testimony presented at the evidentiary hearing that TWO does not own the subject property. Christ Apostolic Church acquired the subject property by “Trustee’s Resignation Deed” dated September 6, 2001. Tr. pp. 71-71, 87; App. Ex. No. 2. Accordingly, the property is owned by the applicant, a religious institution, not “an institution of public charity” as 35 ILCS 200/15-65 requires.

Although the subject property is owned by a religious organization, no testimony was presented at the hearing that the applicant was seeking an exemption for religious purposes. Christ Apostolic plays no active role in managing the subject property or in the program operated on the subject property. Tr. pp. 78-79. Dr. Finney testified that the applicant could not enter into a contract with DCFS: “I think that the church would have difficulty establishing a track record in this particular area of service to be actively involved.” “Religious institutions are very hesitant to ... operate social service programs without creating or causing to be created another entity to do that, that they have a relationship with.” Tr. pp. 107-108. In his opening statement, counsel for TWO stated that “there are significant areas of the building that are used for a charitable purpose under 35 ILCS 200/15-65 ...”. Tr. p. 7. The exemption being sought in this case is a charitable exemption with TWO arguing that it is a charitable organization and that the Program operated on the subject property constitutes charitable use of the property.

space. Tr. p. 7.

In the case of Children’s Development Center v. Olson, 52 Ill. 2d 320 (1972), the property at issue was owned by the School Sisters of St. Francis, a religious corporation, and was leased to the Children’s Development Center, a not for profit corporation providing programs for educationally handicapped children. The Court stated that “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 Court noted that it is “the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues.” *Id.* at 336. As Children’s clearly indicates under circumstances similar to those at issue in the instant case, ownership by a religious organization of property used for charitable purposes does not preclude exemption under Section 15-65 of the Property Tax Code. (See also Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App. 3d 964 (1st Dist. 1991)).

The problem with the instant case and what distinguishes it from both Children’s Development and Resurrection Lutheran is that I am unable to conclude that TWO is a charitable organization or that TWO’s operation of The Family Preservation Program on the subject property constitutes charitable use of the property. In Korzen, the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (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; (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 exclusive (primary) use of the property is for charitable purposes. Korzen, *supra* at 157.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (1965). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

The Woodlawn Organization was incorporated under the Illinois General Not For Profit Corporation Act on May 2, 1962. Tr. pp. 39-42; App. Ex. No. 16. TWO’s Bylaws state that it is “an organization of civic, religious, business, and other community groups that have pledged themselves in a cooperative venture to work together for the improvement and enrichment of the life of our modern society.” Tr. pp. 33-36; App. Ex. No. 15.

TWO’s members are block clubs, churches, religious institutions, and social and civic organizations. Membership is open to any organization located in Woodlawn if a majority of its members reside in the area, and the organization is in accord with the general purposes of TWO. Member organizations have the right to vote and to send delegates to the annual meeting. Member organizations are required to pay \$100/year as membership dues. There are currently about 115 group members. Individuals can become members by paying dues of \$12.50/year. Tr. pp. 44-45, 80; App. Ex. No. 6. There was

no testimony at the hearing with regard to which account in the consolidated financial statements the dues are recorded. There is an account called “Contributions” of \$27,046 under the category “Public support and revenues” in the financial statements. If this account contains dues, it represents less than 1% of TWO’s total revenue.

The Woodlawn Organization operates “The Family Preservation Program” on the subject property. The revenue that funded this Program, \$1,829,704, comes entirely from the Illinois Department of Children and Family Services under the terms of a contract that was effective July 1, 2001 and expired on June 30, 2002.² The “Program Plan” as described in the contract states that “it is the purpose of this initiative to promote significantly reduced and/or prevented DCFS involvement in the Washington Park and Harold Ickes Housing Developments, as well as in the Woodlawn Community.” App. Ex. No. 7.

The Program is designed to prevent children who are at risk of being neglected or abused from becoming wards of the State in foster care or adopted homes separated from their parents. The Program also works to unify families that have been separated when their children were put into foster care. The Program concentrates on protecting the children and making sure the children are safe in the home. Case managers make a diagnosis of the challenges that a child or family may be undergoing and suggest a service delivery plan. “Dean Mothers,” work with the case managers and with the families. Dean Mothers, who are paid, usually live near the at-risk children and are accessible to the family at all times. A medical doctor provides psychiatric diagnostic

² The tax year at issue in the instant case is 2002. No DCFS contract was offered into evidence covering the period July 1, 2002 through June 30, 2003 although Ms. Snow testified that TWO had a contract with DCFS for this period. Tr. p. 151.

support for the families if requested by the case managers. Tr. pp. 49-51, 75-76, 113-114, 118.

Victoria Snow testified that 90% of the cases handled by The Family Preservation Program are referred to TWO by DCFS. Tr. p. 158. Ms. Snow was asked what the sources of funding were for the Program. She responded: “We have one source, Department of Children and Family Services.” Tr. p. 135. The Program is entirely dependent on DCFS for funding. The notes to TWO’s consolidated financial statements state that “TWO’s primary source of revenue is fees and grants from government agencies. The annual amount of such funding depends principally on the appropriations of the Illinois General Assembly to the various State of Illinois departments that provide support to TWO.” App. Ex. No. 6. When Ms. Snow was asked if the Program would have to cut back on its staff if DCFS cut back on its funding, she replied “[W]e would have to, otherwise TWO would have to carry us some other way, which they were constantly making us aware that they couldn’t do that.” Tr. pp. 153-154. Ms. Snow was then asked “[A]long those lines, does DCFS tell you how many families in the fiscal year at a minimum you are going to have to take in?” She testified that DCFS and TWO “come to the table and agree,” and that this agreement is reached “in advance.” Tr. p. 154.

Although 10% of the referrals to the Program are not made by DCFS, the funding of services for this 10% is apparently provided from the DCFS contract since the program has no other source of funding. It is clear that the Program on the subject property cannot serve an “indefinite number of persons,” one of the “distinctive characteristics” of a charity as detailed in Korzen, because DCFS provides a definite, limited amount of funding. The persons served by the Program are limited by the funding from DCFS. I

must conclude from this that in 2002, the subject property was used for a limited class of persons, namely those within the parameters of the DCFS contract, as funded by DCFS. It is also clear that the services offered on the subject property cannot be dispensed to all who need and apply for them because DCFS and TWO agree “in advance” on how many families the Program will assist during the fiscal year, with DCFS funding accordingly. Tr. p. 154. Ms. Snow testified that the Program has never turned a family away. Tr. p. 117. If this is so, it would appear to be because the number of families applying for assistance from the Program is within the range and funding of the DCFS contract.

Approximately 85% of TWO’s funding or \$9,761,630 was received from the State of Illinois, including DCFS, Department of Mental Health, Department of Human Services and Department of Public Aid. App. Ex. No. 6. According to Ms. Snow, the funds for the Program on the subject property are entirely provided by DCFS. Tr. p. 135. Although TWO collects dues from its membership organizations and individuals, there was no testimony that any of these funds were used in the Program. In fact, Ms. Snow testified that TWO was “constantly making us aware” that they would not “carry” the Program should DCFS funding be inadequate. Tr. pp. 153-154. Based on the evidence presented, I conclude that neither TWO’s funds nor the Program’s funds are derived mainly from public and private charity, another characteristic of a charitable organization recognized by Korzen.

Additionally, The Woodlawn Organization has failed to prove that the Program on the subject property reduces the burdens of government. Under the terms of the DCFS contract, the State identified the program and the payment it would make for the services rendered. The State of Illinois apparently is compelled to provide the services that it contracted for with TWO. Not only is the Program serving a limited number of persons

under the contract, but the funding for the programs was paid for by a governmental agency, pursuant to an arm's length business contract. In fact, the contract between DCFS and TWO states that "[T]he Contractor certifies that it is in good standing as a business entity and is able to do business with the State of Illinois because of this good standing." App. Ex. No. 7. The Program is in effect a business, with the State assuming substantial financial responsibility for it. The payment under the contract is not an act of voluntary donation by the State and the evidence does not manifest, in any way, a lessening of the burdens of government.

There was no testimony or documentary evidence offered at the hearing as to the salaries paid to case managers, dean mothers, transporters and others employed in the Program. The contract between DCFS and TWO requires TWO to "maintain time and attendance records for all staff whose salaries are funded in whole or in part pursuant to this contract." App. Ex. No. 7. No salary records were offered into evidence. Dr. Finney testified that case managers and dean mothers are paid from the DCFS funding. Tr. pp. 86-87. "All of the revenue is used to pay the staff and the people who serve the clients." Tr. p. 47. Ms. Snow testified that there was no surplus of funds from the DCFS contract. "We barely broke even." Tr. p. 135. Ms. Snow was asked: "What you take in you pay out essentially?" She responded: "That's pretty much the way it goes." Tr. p. 153. No documentary evidence was offered to show how the DCFS funds were spent. The testimony of Dr. Finney and Ms. Snow, without supporting documentary evidence, is insufficient for me to conclude that the Program does not provide gain or profit in a private sense to any person connected with it, another characteristic of a charitable organization, according to Korzen.

There was no testimony at the evidentiary hearing as to Dr. Finney's salary, Ms. Snow's salary or as to the salaries of the officers and directors of TWO. TWO's consolidated financial statements show an amount of \$3,335,517 under "Management and general" under the category "Expenses: Supporting services." The notes to the consolidated financial statements state that "[M]anagement and general expenses are those expenses that are not directly identifiable with any of the primary functions of the Organization but are indispensable to the direction and management of all their functions." App. Ex. No. 6. No testimony regarding this account was offered at the hearing. It must be noted that TWO's consolidated financial statements include the balances and accounts of both TWO and Woodlawn Community Development Corporation (WCDC), a real estate development and management organization, incorporated in 1972, to assist TWO in attracting long term investments into the Chicago metropolitan southeast side. "Other Revenue" for the consolidated entity includes \$1,057,973 in "Real estate management and development fees." App. Ex. No. 6. No explanation was offered for this figure. Because there was no testimony or evidence offered as to the salaries paid to TWO's employees and officers and no explanation as to the "Other Revenue" included in the financial statements, I am unable to conclude that TWO does not provide gain or profit in a private sense to any person connected with it.

There was no testimony at the hearing as to what services TWO actually does provide, if any, other than the Programs it operates that are funded by the State of Illinois. If TWO is not charging those who receive benefits under the Programs funded by the State, it is reasonable to assume that this is because the contracts with the State do not allow TWO to charge. In fact, Dr. Finney testified that TWO's Articles of Incorporation and its Bylaws do not contain a provision that no fees will be charged for

the services TWO provides. Tr. pp. 96-97. Similarly, Ms. Snow testified that the Program itself does not charge families for any of the services it renders pursuant to the contract funded by DCFS. “We had a contract. We couldn’t charge.” Tr. p. 117. If TWO and the Program are not placing obstacles in the way of those who would avail themselves of their services by not charging participants, I must conclude that they are doing it pursuant to contract rather than for any charitable reason.

In exemption cases, the 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). The evidence and testimony at the hearing with regard to TWO was insufficient for me to conclude that TWO is a charitable organization. Any and all doubts that arise in an exemption proceeding must be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). In balancing all of the characteristics of a charitable organization as discussed in Korzen, it is clear that TWO has failed to prove, by clear and convincing evidence, that the operation of the Program on the subject property constituted charitable use of the property in tax year 2002. There was no testimony as to any activity that occurred on the subject property that was not paid for by DCFS. Accordingly, based on the testimony and evidence admitted at the evidentiary hearing, I conclude that the subject property was not used for charitable purposes in 2002.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2002 real estate taxes should be

affirmed, and Cook County Parcel, Index Numbers 20-22-207-020 should not be exempt from 2002 real estate taxes.

Kenneth J. Galvin

November 1, 2005