

**PT 08-4**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**SOARING EAGLE COMMUNITY  
DEVELOPMENT CORPORATION,  
APPLICANT**

v.

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

**Docket No: 07 PT 0004  
Real Estate Tax Exemption**

**For 2006 Tax Year**

**P.I.N. 08-21-208-005**

**Lake County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Elroy Wood, Executive Director, appearing *pro se*, on behalf of Soaring Eagle Community Development Corporation; 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 Lake County Parcel, identified by P.I.N. 08-21-208-005 (hereinafter the “subject property”), should be exempt from 2006 property taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property 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 taxes.

This controversy arose as follows: On August 9, 2006, Soaring Eagle Community Development Corporation (hereinafter “Soaring Eagle”) filed a Property Tax Exemption Complaint with the Lake County Board of Review seeking exemption from 2006 real

estate taxes for the subject property. The Board reviewed Soaring Eagle's Complaint and recommended that a full-year exemption be granted. On December 14, 2006, the Department of Revenue of the State of Illinois (hereinafter the "Department") denied the exemption, finding that the subject property was not in exempt ownership or exempt use. Dept. Ex. No. 1. On January 10, 2007, Soaring Eagle filed an appeal of the Department's denial of exemption and requested a hearing in this matter.

On September 7, 2007, a formal administrative hearing was held with Elroy Reed, Executive Director of Soaring Eagle, testifying. Following a 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 Lake County P.I.N. 08-21-208-005 was not in exempt ownership or use during 2006. Tr. pp. 10-11; Dept. Ex. No. 1.
2. Soaring Eagle purchased the subject property, located at 503 N. Genesee Street in Waukegan, by warranty deed dated October 21, 2005. Tr. pp. 12-13; App. Ex. No. 1.
3. Soaring Eagle's "Program Agreement and Contract" states under "Program Fees" that a \$100 nonrefundable move in deposit is required. "If you are in a shared room, the program fee is \$100 per week. If you are in a single man room, the rent will vary depending on the size of the room. Single rooms vary in price but are either of the three charges: \$110, \$115, or \$125 per week." The "Program Agreement and Contract" does not state that fees may be waived based on the income of the participants. Tr. pp. 37-40; Dept. Ex. No. 2.

4. The “Program Agreement and Contract” states that Soaring Eagle provides all utilities, cable television, telephone, “stock food which may be prepared for general consumption,” “verbal recommendations to clients to help them obtain employment” and “mentorship services to coach individuals to help them achieve their individual goals.” The environment is alcohol free, profanity free and drug free. Tr. pp. 37-40; Dept. Ex. No. 2.
5. A United Way “Human Services Resource Guide” entitled “Find Help in Lake County,” lists “Soaring Eagle” under the category “Housing – Transitional Single Men or Women.” Tr. pp. 19-20; App. Ex. No. 4.
6. Soaring Eagle’s unaudited “Profit and Loss Statement 2006,” shows “Total Income” of \$71,740, of which 49% is from “Program Fees-Housing” and 51% is from “Charitable Contributions.” The Statement shows a “Net Loss” for the year of \$6,756. Tr. pp. 23-26; App. Ex. No. 9.
7. Soaring Eagle received the following charitable contributions in 2006: \$8,000 from “General Fundraising Activities,” \$6,000 from Allstate, \$4,000 from Kraft Foods, \$3,000 each from Altria, City of Waukegan, Consumers’ Credit Union, LaSalle Bank, Charter Funding, \$1,000 from Pactiv, \$800 from Veterans Assistance Program and \$500 from Baxter Health Care. Tr. pp. 25-26; App. Ex. Nos. 9 and 10.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Soaring Eagle has not demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant exempting the subject property for the 2006 assessment year. 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 (1<sup>st</sup> 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" (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968). The Department's December 14, 2006 determination found that the subject property was not in exempt ownership or use. Dept. Ex. No. 1. The subject property is, in fact, owned by Soaring Eagle which purchased the property, located at 503 N. Genesee Street in Waukegan, by warranty deed dated October 21, 2005. Tr. pp. 12-13; App. Ex. No. 1. Accordingly, the issues remaining to be decided

are whether Soaring Eagle is a charitable organization and whether Soaring Eagle actually and exclusively used the subject property for charitable purposes in 2006.

In Korzen, the Illinois Supreme Court set forth guidelines for determining whether an organization qualifies as 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, earns no profits or dividends; (3) funds are derived mainly from private and public charity, the funds are held in trust for the objects and purposes expressed in the charter, the organization does not provide gain or profit in a private sense to any person connected with it; (4) no obstacles appear to be placed in the way of those who need and would avail themselves of the charitable benefits it dispenses; (5) charity is dispensed to all who need and apply for it, and; (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

The above factors are guidelines for assessing whether property is exempt from taxation but are not definitive requirements. DuPage County Board of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 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 record in this case does not allow me to conclude that Soaring Eagle is a charitable organization or that the subject property is used for charitable purposes. The Department acknowledged at the evidentiary hearing that Soaring Eagle is a section 501(c)(3) organization, but no documentary evidence was admitted by Soaring Eagle to

support this. It is unclear from the record, including the Department's acknowledgment, whether Soaring Eagle had section 501(c)(3) status in 2006, the year at issue in this matter. Even if Soaring Eagle was exempt from federal income tax under section 501(c)(3) in 2006, this is in itself, not sufficient for me to conclude that it is a charitable institution under the guidelines set forth in Korzen. Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4<sup>th</sup> Dist. 1988).

Other evidence offered by Soaring Eagle at the hearing was relevant to tax year 2007, but not to 2006, the year at issue in this case. Soaring Eagle registered with the Illinois "Office of the Attorney General" under "The Charity Trust" and "The Solicitation for Charity Acts" on August 10, 2007. Tr. pp. 20-21; App. Ex. No. 5. There was no testimony or evidence as to whether Soaring Eagle was registered in 2006. Soaring Eagle received a "Registration/License" from the City of Waukegan "for permission to operate" dated July 27, 2007. Tr. pp. 21-22; App. Ex. No. 6. It is unclear from the record whether Soaring Eagle had "permission to operate" from the City of Waukegan in 2006.

Whether an institution has been organized and is operating exclusively for charitable purposes is to be determined from its charter and bylaws and actual facts relating to its method of operation. DuPage County Bd. Of Review, 274 Ill. App. 3d at 466. To determine the use of property eligible for charitable exemption from property taxes, it is appropriate to consider the bylaws and charter of the organization. Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603 (3d Dist. 2003).

No articles of incorporation, charter, bylaws or operating manual was admitted into evidence by Soaring Eagle. Without articles of incorporation, charter, bylaws or an operating manual, I am unable to determine whether Soaring Eagle has an established policy of providing benefits to an indefinite number of persons, whether Soaring Eagle

places obstacles in the way of those who need the benefits that Soaring Eagle dispenses and whether Soaring Eagle's benefits are dispensed to all who need and apply for them.

Soaring Eagle caused to be admitted into evidence an advertisement which appeared in "The People's Voice" newspaper stating that Soaring Eagle provides "transitional housing for men." The advertisement is from a newspaper dated "August, 2007," although the year at issue in this case is 2006. The advertisement does not state that fees will be waived or adjusted based on the income of the residents or that housing will be provided to anyone who requests it, regardless of their ability to pay. Tr. pp. 14-16; App. Ex. No. 2.

Soaring Eagle also caused to be admitted into evidence a flyer that states that its "mission" is "to provide a safe, quality, affordable place to live for low-income individuals who are in need of transitional housing, helping individuals to maintain and further develop self-sufficiency." This flyer states that program fees may be waived or adjusted based on the income of the participants. Tr. pp. 16-17, 34, 45-47; App. Ex. No. 3. However, the flyer is undated and I am unable to determine from the record whether the flyer was used to advertise Soaring Eagle's facilities in 2006. Mr. Reed testified that referring agencies tell potential clients that fees can be waived at Soaring Eagle. Tr. pp. 43-44. No corroborating evidence was admitted to support this statement. I am unable to conclude from the record that referring agencies advised potential residents in 2006 that fees could be waived at Soaring Eagle.

Soaring Eagle's "Program Agreement and Contract," which is signed by potential residents, states under "Program Fees" that a \$100 nonrefundable move-in deposit is required. "If you are in a shared room, the program fee is \$100 per week. If you are in a single man room, the rent will vary depending on the size of the room. Single rooms vary

in price but are either \$110, \$115, or \$125 per week.” Tr. pp. 37-40; Dept. Ex. No. 2. Soaring Eagle provides all utilities, cable television, telephone, “stock food which may be prepared for general consumption,” “verbal recommendations to clients to help them obtain employment” and “mentorship services to coach individuals to help them achieve their individual goals.” The environment is alcohol free, profanity free and drug free. Tr. pp. 37-40; Dept. Ex. No. 2. The “Program Agreement and Contract” does not state that fees will be waived based on the income of the resident. Without bylaws or an operating manual, I am unable to conclude that Soaring Eagle’s intake employees would be aware that fees may be waived based on the income of the residents. It is unclear from the record when a potential resident would be advised that fees may be waived based on income.

According to Mr. Reed, “ninety percent of our clients don’t pay the \$100 deposit because they don’t have it.” Clients referred by the jail “don’t have \$100 when they come out of jail.” Mr. Reed testified that “we admit them into the program with or without fees.” Tr. pp. 43, 48-49. No documentary evidence was admitted to support this testimony. No residents testified that their deposits or fees were waived by Soaring Eagle in 2006. Without articles, charter, bylaws or an operating manual, I am unable to determine what criteria were used by Soaring Eagle to determine which residents were in need of a fee waiver.

It is also unclear from the record whether residents were actually admitted “with or without fees” to Soaring Eagle’s program in 2006. Soaring Eagle caused to be admitted into evidence a schedule of “People Helped During 2006” listing 39 men helped in this period. Tr. pp. 22-23; App. Ex. No. 8. It is unclear from the record and from this document whether these men were “helped” by living in the residence and paying full

fees or whether fees were waived for them. Soaring Eagle is requesting a charitable exemption for the subject property for tax year 2006, yet failed to provide documentary evidence, in terms of dollars or residents, of any charity dispensed from that property in the tax year at issue.

In Highland Park Hospital v. Dept. of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652.

Without articles, charter, bylaws or an operating manual, I am unable to conclude that Soaring Eagle has an established policy of waiving fees based on the income of the residents, thereby providing benefits to an indefinite number of persons. Without an advertisement of Soaring Eagle’s program, specific to the year 2006 which is at issue in this case, I am unable to conclude that the general public was aware in 2006 that fees at Soaring Eagle could be waived based on their income and that Soaring Eagle has not placed obstacles in the way of those who need its benefits. Without documentary evidence as to either the dollar amount of charitable benefits dispensed or the number of residents provided with charitable care by Soaring Eagle in 2006, I am unable to

determine that the organization provided benefits to all who needed and applied for them in the year at issue.

Some of the Korzen guidelines are met by Soaring Eagle. Mr. Reed testified that Soaring Eagle has no capital, capital stock or shareholders. Tr. pp. 9, 53-54. Soaring Eagle's unaudited "Profit and Loss Statement 2006," shows "Total Income" of \$71,740, of which 51% is from "Charitable Contributions." Soaring Eagle derives the majority of its funding from public and private charities, one of the distinguishing characteristics of a charitable organization according to Korzen. The "Profit and Loss Statement 2006" shows an "Expense" entitled "Occupancy/Rents" of \$56,842. Tr. pp. 23-26; App. Ex. No. 9. No testimony or evidence was offered at the evidentiary hearing with regard to "Occupancy/Rents." There was no testimony or evidence as to whether Soaring Eagle had employees and/or how much these employees were paid in 2006. I am unable to determine from the record whether Mr. Reed is paid as an employee. Because of the lack of evidence on this issue, I am unable to conclude that Soaring Eagle does not provide gain or profit in a private sense to persons connected with it.

Property 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). Therefore, applicant bears the burden of showing, by a standard of clear and convincing evidence, that the property it is seeking to exempt falls within the provisions under which the exemption is sought. *Id.* Great caution must be exercised in determining whether property is exempt so 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.

Whereas it is recognized that Soaring Eagle provides an important service for its community, the record in this case is totally lacking in the necessary documentary evidence for the year 2006 which would show that Soaring Eagle is a charitable organization or that the subject property was used for charitable purposes in the year at issue.

WHEREFORE, for the reasons stated above, it is recommended that the subject property, identified by Lake County P.I.N. 08-21-208-005, not be exempt from property taxes for the 2006 assessment year.

ENTER:

Kenneth J. Galvin  
Administrative Law Judge

January 9, 2008