

PT 13-09

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

**GREATER STERLING
DEVELOPMENT CORPORATION,
APPLICANT**

v.

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

No: 12-PT-0005 (11-98-20)

**Real Estate Tax Exemption
For 2011 Tax Year
P.I.N. 11-17-351-002**

Whiteside County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Timothy B. Zollinger, Ward, Murray, Pace & Johnson, PC, on behalf of Greater Sterling 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 Whiteside County Parcel, identified by property index number 11-17-351-002 (hereinafter the “subject property”), qualifies for exemption from 2011 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.

This controversy arose as follows: On August 22, 2011, the Greater Sterling Development Corporation (hereinafter “GSDC”) filed an Application for Non-homestead Property Tax Exemption with the Whiteside County Board of Review (hereinafter the “Board”) seeking exemption from 2011 real estate taxes for the subject property. The Board reviewed the

Application and recommended that a full year exemption be granted. On December 8, 2011, the Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2011. GSDC filed an appeal of the Department’s exemption denial and requested a hearing.

On March 19, 2013, an evidentiary hearing was held in this matter with testimony from Ms. Heather Sotelo, Executive Director of GSDC. 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 2011. Tr. pp. 10-11; Dept. Ex. No. 1.
2. According to “Note 1” of GSDC’s “Consolidated Financial Statements” for April 30, 2011, GSDC was incorporated in Illinois on April 3, 1990. “Its principal objective is to coordinate various development activities to increase the economic base and thereby the well-being of citizens of the City of Sterling, Whiteside County and surrounding areas, and create employment and enrichment opportunities for all residents of said areas.” “The Organization’s revenues are predominantly earned from rental income, as well as contributions.” Dept. Ex. No. 2; App. Ex. No. 1(A).
3. GSDC’s Articles of Incorporation state that the corporation is organized “in order to foster and develop economic growth in the Sterling, Illinois area by actively seeking new industry and the retention of existing industry in the area and work closely with governmental agencies including the City of Sterling, Illinois to promote and encourage

economic growth and employment opportunities.” GSDC’s Bylaws state that its “principal objective” is “the coordination of various development activities to increase the economic base and thereby the well-being of citizens of the City of Sterling, Whiteside County and the surrounding area, and creating employment and enrichment opportunities for all residents of said areas.” “Particular emphasis will be given to the relief or avoidance of community stress resultant from pathological economic conditions.” App. Ex. No. 1(B).

4. GSDC has “two classes of members, voting members and contributing members.” The voting members are the acting Board of Directors of GSDC. The contributing members consist of individual persons, corporations and other persons or associations interested in the goals and purposes for which GSDC was established. “Contributing membership is determined by an annual donation of five hundred dollars (\$500) to the Corporation.” App. Ex. No. 1(B).
5. The “Dillon Foundation” erected the building on the subject property. GSDC did not have any role in building construction. The Dillon Foundation transferred the building to GSDC on October 26, 2004. GSDC did not pay or expend any money to acquire the subject property. Tr. pp. 18-19; App. Ex. No. 1(C) and (D).
6. GSDC is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Dept. Ex. No. 2.
7. Sterling Public Schools occupies 22.22% of the building on the subject property. Sterling Rock Falls Historical Society occupies 11.11%. Sauk Valley Food Bank occupies 33.33%. The Dillon Foundation occupies 22.22%. Sterling Public Library occupies 11.11%. Tr. p. 22; App. Ex. No. 1 (F), (G), (H), (I) and (J).

8. The leases between the above lessees and GSDC state that there shall be no formal rent charged other than the obligations undertaken by the tenants. These obligations include the payment of real estate taxes, expenses incurred for common area maintenance, such as bathroom cleaning and supplies, lawn mowing, snow removal and other recurring expenses such as electricity, gas and water, all in proportion to the percentage of occupation of the building. App. Ex. No. 1 (F), (G), (H), (I) and (J).
9. GSDC has revenues of \$510,273 as of April 30, 2011, of which 61% is “rental income,” 10% is from “management fees,” and 9% is from “unrestricted contributions,” Other sources of revenue are “fund development contributions,” “building contribution,” “Live in Sterling,” “investment income,” “insurance proceeds,” and “other income.” GSDC receives \$97,500/year from the City of Sterling. Tr. pp. 15-16, 33-34, 34-36; Dept. Ex. No. 2.
10. GSDC had one wholly owned subsidiary, Greater Sterling Development Realty (“GSDR”). “GSDR was formed to engage in any lawful business and activities for which limited liability companies may be organized.” “Currently, GSDR holds title to certain lands.” GSDR purchased 200 acres of Northwestern Steel and Wire’s property after it declared bankruptcy. GSDR has a mortgage on the property and receives rental income from some of the land that is farmed. Tr. pp. 32-33; Dept. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that the GSDC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant

exempting the subject property from 2011 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. 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).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical

Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

GSDC has failed to prove, by clear and convincing evidence, that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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.
- (e) All free public libraries.
- (f) Historical Societies.

35 ILCS 200/15-65. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code, absent appropriate evidence that 1) the subject property is owned by an entity that qualifies as an “institution of public charity,” as required by the “all property of” language used in the statute; and 2) that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law; and 3) that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (hereinafter 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; 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. Applicants for exemption must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

The Illinois Supreme Court articulated the criteria in Korzen “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria 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. DuPage County Board of Review v. Joint Com’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965).

GSDC, the owner of the subject property, was incorporated in Illinois on April 3, 1990. According to the Notes to GSDC’s Financial Statements, “its principal objective is to coordinate various development activities to increase the economic base and thereby the well-being of citizens of the City of Sterling, Whiteside County and surrounding areas, and create employment and enrichment opportunities for all residents of said areas.” GSDC is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, and apparently does not issue stock or pay dividends. Dept. Ex. No. 2; App. Ex. No. 1(A). Although GSDC does possess this characteristic of a charitable organization, it does not have a purpose which is primarily charitable.

In determining whether an organization is exclusively charitable in its purpose, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). GSDC’s Articles of Incorporation state that the corporation is organized “in order to foster and develop economic growth in the Sterling, Illinois area by actively seeking new industry and the retention of existing industry in the area and work closely with governmental agencies including the City of Sterling, Illinois to promote and encourage economic growth and

employment opportunities.” GSDC’s Bylaws state that its “principal objective” is “the coordination of various development activities to increase the economic base and thereby the well-being of citizens of the City of Sterling, Whiteside County and the surrounding area, and creating employment and enrichment opportunities for all residents of said areas.” “Particular emphasis will be given to the relief or avoidance of community stress resultant from pathological economic conditions.” App. Ex. No. 1(B).

Counsel for GSDC said in his opening statement that GSDC is an economic development corporation “whose purpose is to increase the economic climate and hopefully provide for more jobs for the unemployed and the poor in Whiteside County or specifically, Sterling.” Tr. p. 9. Ms. Sotelo testified that GSDC operated facilities “that help people grow businesses.” “We operate the small business incubator where we have 24 units of small start-up businesses. We also own a larger business incubator that has created many, many new businesses that have created jobs in our community.” Tr. p. 15.

It is impossible to conclude from the provisions in the Articles, Bylaws and the testimony that GSDC is an “institution of public charity,” as is required for a property tax exemption under 35 ILCS 200/15-65. Developing economic growth and employment opportunities, increasing the economic base and helping people “grow business,” while laudable, do not constitute charitable purposes and are not endeavors recognized by Illinois courts as “charitable.” In fact, the word “charity” or “charitable” does not appear in GSDC’s Articles or Bylaws other than its mention in conjunction with GSDC’s status under Section 501(c)(3) of the Internal Revenue Code. The purpose of GSDC clearly is to promote the economic development of the Sterling/Whiteside County area, and in this regard, it is comparable to a chamber of commerce. Illinois Department of Revenue Regulations concerned with sales tax exemptions for “chambers of commerce” and

other “professional, trade or business associations” state that these organizations, “which draw their funds largely from their own members,” and “as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work.” 86 Ill. Adm. Code § 130.2005(g).

The record in this case forces me to conclude that the main purpose of GSDC is to “advance the interests” of the Sterling/Whiteside County area through economic development. Ms. Sotelo testified that the community had been hit with “unemployment or economic difficulties prior to the recession.” Sterling was home to Northwestern Steel and Wire, which closed in May of 2001, “and that was the first of many manufacturers that have left since that time.” Northwestern employed 1,500 people. Tr. pp. 14-15.

GSDC may focus on the economic development of the community but there is nothing inherently charitable about improving the economy. The benefits derived from GSDC are not for an indefinite number of persons. Local businesses, rather than an indefinite number of persons, benefit from this economic development. If GSDC does help improve the economy, the benefits to the public are indirect and incidental. The businesses that are “growing” are reaping the direct and primary benefits from GSDC.

This is further evidenced by the fact that GSDC is a membership organization. According to its Bylaws, GSDC has “two classes of members, voting members and contributing members.” The voting members are the acting Board of Directors of GSDC. The contributing members consist of individual persons, corporations and other persons or associations interested in the goals and purposes for which GSDC was established. “Contributing membership is determined by an annual donation of five hundred dollars (\$500) to the Corporation.” App. Ex. No. 1(B).

The membership provisions force me to conclude that this is a private club and not a headquarters for the dispensation of charitable relief. There is no provision in the Bylaws for waiver of the \$500 membership fee. If GSDC were dispensing charity by growing business for its members, it has certainly created an obstacle in the way of those who wish to join but do not have the \$500 to do so.

If the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). In Albion Ruritan Club v. Dep't. of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991), the court found that a community service organization's property did not warrant a tax exemption. Albion's constitution listed its objectives, *inter alia*, as "[T]o promote fellowship and good will among its members and the citizens in the community, and to inspire each other to higher efforts." In denying a property tax exemption to Albion, the court noted that it must be shown that the benefits accrue to mankind directly. *Id.* at 918. In the instant case, it is not reasonable to conclude that GSDC's benefits accrue to mankind directly or that the benefits are for an indefinite number of persons, when participation in GSDC's endeavors requires a \$500 membership fee.

GSDC also does not possess the distinctive characteristic of a charitable organization that its funds be derived mainly from public and private charity and that the funds be held in trust for the object and purposes expressed in its charter. It appears that the reasoning behind this characteristic is that an "exclusively" charitable organization will meet its needs by soliciting and receiving donations from individuals and others with charitable impulses. The "exclusively" charitable organization then holds the donations in trust and exercises its expertise and experience to apply the donations to an identifiable charitable need.

GSDC has revenues of \$510,273 as of April 30, 2011, of which 61% is “rental income,” 10% is from “management fees,” and 9% is from “unrestricted contributions,” Other sources of revenue are “fund development contributions,” “building contribution,” “Live in Sterling,” “investment income,” “insurance proceeds,” and “other income.” GSDC receives \$97,500/year from the City of Sterling. Tr. pp. 15-16, 33-34, 34-36; Dept. Ex. No. 2. There is no evidence in the record as to how the required annual membership “donations” are accounted for in the Financial Statements, and it seems likely that the “contributions” in the Financial Statements are the membership donations. It would be unreasonable to conclude that these “contributions” are the result of a charitable impulse or that charitable funding dominates the revenue pool. According to the Notes to the Financial Statements, “[t]he Organization’s revenues are predominantly earned from rental income, as well as contributions.” Dept. Ex. No. 2; App. Ex. No. 1(A). I cannot conclude that GSDC gets the majority of its funding from public and private charity. Furthermore, the revenue collected by GSDC may be held in trust for the purposes expressed in GSDC’s Bylaws, but as discussed above, these purposes are not charitable. “There is nothing in its [purposes] which requires plaintiff to devote its funds or income to purposes deemed charitable in law.” Rotary International v. Paschen, 14 Ill. 2d 480, 488 (1958).

Based on the testimony and evidence presented at the hearing, I am also unable to conclude that the subject property lessens a burden on government, which according to Korzen, is also a “distinctive characteristic” of a charitable organization. It may be advantageous for a city or county to promote economic development and improve the business climate, but I am unable to conclude that a city or county has a “burden” to do so. Ms. Sotelo did not delineate any legal mandate which requires Sterling or Whiteside County to operate a development corporation

or a chamber of commerce. Counsel for GSDC did not refer me to, and my own research does not indicate, any Illinois statute requiring a city or county to promote economic development.

If there were such a requirement, it would be unreasonable to conclude that GSDC is relieving Sterling of the “burden” when Sterling pays GSDC \$97,500 annually. Tr. p. 15. Services extended for value received do not relieve the State of a burden. Provena Covenant Medical Center v. Dept. of Revenue, 236 Ill. 2d 368, 397 (2010). Sterling and Whiteside County may have an interest in improving economic conditions, but this interest does not rise to the level of a “burden.” I contrast this with the government’s levy of taxes to support education. Education is a governmental “burden” according to the Illinois Constitution because the State “has the primary responsibility for financing the system of public education.” Ill. Const., art. X, § 1. There is no similar provision indicating a burden to operate a development center or chamber of commerce or to promote economic activity.

GSDC has also failed to prove that the subject property is not leased or used with a view to profit, a use proscribed by 35 ILCS 200/15-65. The “Dillon Foundation” erected the building on the subject property and transferred the building to GSDC on October 26, 2004. GSDC did not pay or expend any money to acquire the subject property. Tr. pp. 18-19; App. Ex. No. 1(C) and (D). The leases between the lessees on the property and GSDC state that there shall be no formal rent charged other than the obligations undertaken by the tenants. These obligations include the payment of real estate taxes, expenses incurred for common area maintenance, such as bathroom cleaning and supplies, lawn mowing, snow removal and other recurring expenses such as electricity, gas and water, all in proportion to their percentage of occupation of the building. App. Ex. No. 1 (F),(G),(H),(I),(J). GSDC acquired the subject property at no cost, but collects property taxes and maintenance expenses from the lessees.

In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that “former decisions of this court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” GSDC is leasing the subject property for other forms of consideration, namely maintenance expenses and property taxes. Ms. Sotelo testified that GSDC has had no “net revenue” from the building and has had to “subsidize the operation of the building.” Tr. p. 19. No documentary evidence was offered to support this testimony. In Turnverein “Lincoln” v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Court noted, with regard to the argument that income from the rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” The building on the subject property is “let for a return,” and accordingly, must be liable for the burden of taxation.

In his closing statement, Counsel for GSDC argued that even if I concluded that GSDC was not a charitable institution, I should “exempt those portions [of the building] that still fall within the relevant statutes” because of the use of the property by the lessees. Tr. p. 44. Sauk Valley Food Bank and the Dillon Foundation may truly be charitable organizations and may represent charitable use of the subject property but 35 ILCS 200/15-65 requires ownership of the subject property by a charitable organization, which is lacking here. 35 ILCS 200/15-65(e) and (f) allow exemptions for “all free public libraries” and “historical societies,” respectively. Again, the statute requires ownership by a charitable organization, whether that ownership is by a library or historical society. 35 ILCS 200/15-66 also exempts certain library property but the

record does not show that the Sterling Public Library was “established under the Illinois Library System Act” or the “Public Library District Act of 1991,” as required by that statute.

Counsel for GSDC argued that the property used for school storage by the Sterling Public Schools should be exempt under 35 ILCS 200/15-35 “whether it’s owned by the school or not.” Tr. p. 44. 35 ILCS 200/15-35(c) exempts property used for public school or other educational purposes and ownership is not a requirement. Ms. Sotelo testified that “we have an amazing auditorium which just opened the door for community theater and things like that in our community.” “Well, with this amazing auditorium comes great gifts, and people have – all the sets of plays and costumes and things that most communities and schools would love to have are stored [on the subject property].” The Sterling Public Schools “were having to turn away sets and that type of thing from other playhouses that were giving donations to small schools such as ours.” Tr. pp. 24-25. This is all the testimony in the record regarding the use of the subject property for public school or educational purposes. The record does not show clearly the connection between the auditorium, community theater and the public schools. Furthermore, my research indicates no case where the storing of sets and costumes for a community theater was considered an educational purpose under 35 ILCS 200/15-35.¹

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

¹ 35 ILCS 200/15-35, similar to 35 ILCS 200/15-65, proscribes the exemption of property “leased or otherwise used with a view to profit.” In Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2d Dist., 2003), the court stated explicitly that it “declined to extend tax exemption under section 15-35 to properties held for profit, even if they are used for educational purposes.” As discussed above, GSDC has failed to prove that the building on the subject property is not used with a view to profit.

favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). 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. In this case, GSDC has failed to prove that the subject property falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2011 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Whiteside County Parcel, Property Index Numbers 11-17-351-002, should not be exempt from 2011 real estate taxes.²

Kenneth J. Galvin

September 23, 2013

² GSDC's PTAX-300 stated that there was a cell tower constructed by U.S. Cellular on the subject property. The Board of Review noted that "the cell tower located on the subject property will be assigned its own parcel and be taxed" and "not asking for cell tower to be exempt." At the evidentiary hearing, Counsel for GSDC advised that he was not sure if the cell tower had been assigned a separate P.I.N. number but that he was not seeking exemption for the cell tower. Tr. pp. 10, 44. My recommendation that P.I.N. 11-17-351-002 not be exempt for the 2011 assessment year includes both the building and the cell tower located on the subject property in 2011.