

**PT 98-85**

**Tax: PROPERTY TAX**  
**Issue: Charitable Ownership/Use**

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

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**HEALTHCOR,  
INC,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 95-101-0235**

**Real Estate Tax Exemption for  
1995 Assessment Year**

**P.I.N.S: 153B-004B  
153B-210A**

**Winnebago County Parcels**

**Alan I. Marcus,  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Michael D. Kramer of Barmann, Kramer & Bohlen appeared on behalf of HealthCor, Inc.

**SYNOPSIS:** This proceeding raises the following issues: (1) did HealthCor, Inc. (hereinafter "HealthCor" or the "applicant") own real estate identified by Winnebago County Parcel Index Number 153B-004B and part of real estate identified by Winnebago County Parcel Index Number 153B-210A (hereinafter collectively referred to as the "subject property")<sup>1</sup> during

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1. The subject property is also identified by the legal description that is attached to this Recommendation for Disposition as "Exhibit A." This description may tend to create confusion if I were to include it in the body of this Recommendation. Therefore, I have elected to attach a true and correct copy of the legal description to this Recommendation and incorporate same by reference herein.

any part of the 1995 assessment year; (2) does applicant qualify as an "institution of public charity" within the meaning of Section 200/15-65 of the Property Tax Code, 35 ILCS 200\1-1 *et seq.*<sup>2</sup> (3) was the subject property "actually and exclusively used for charitable or beneficent purposes" as required by Section 200/15-65, during any part of the 1995 assessment year; and (4) does the subject property qualify for exemption from 1995 real estate taxes under Section 200/15-65(c) of the Property Tax Code, which exempts the following from real estate taxation:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

The controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Winnebago County Board of Review (hereinafter the "Board") on April 16, 1996. (Dept. Ex. No. 1). The Board reviewed the application and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the subject property be granted an exemption from real estate taxes for that part of the 1995 assessment year that began June 1, 1995 and ended December 31, 1995. *Id.*

The Department rejected this recommendation via a determination dated June 12, 1997. Said determination found that the subject property was neither in exempt ownership nor in

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2. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq.*).

exempt use. Dept. Ex. No. 2. Applicant thereafter filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

**FINDINGS OF FACT:**

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was neither in exempt ownership nor in exempt use, are established by the admission into evidence of Dept. Ex. No. 2.
2. The subject property is located at 3330 Maria Linden Drive, Rockford, IL 61114 and improved with a 106,877 square foot building, formerly known as the Maria Linden Center, that was used as a retirement home for 33 nuns throughout the 1995 assessment year. Dept Group Ex. No. 1; Applicant Ex. Nos. 7, 8; Tr. p. 18.
3. The building is divided into four stories and a basement. The third (or top) floor contains,<sup>3</sup> *inter alia*, a chapel, a dining lounge, a nurses' station and rooms for 30 skilled-care residents. Applicant Ex. No. 9.
4. The second floor contains, *inter alia*, a dining lounge, a medical preparation room, an office for the religious coordinator and rooms for 35 self-care residents. *Id.*
5. The first floor contains, *inter alia*, a visitors' room, entry and reception areas, a small gift shop, an office for the facility administrator and rooms for 43 skilled-care residents. *Id.*
6. The ground floor contains, *inter alia*, various offices, a reading room, a central supply room, a receiving area, a loading dock, a lounge room and a group programs area. *Id.*

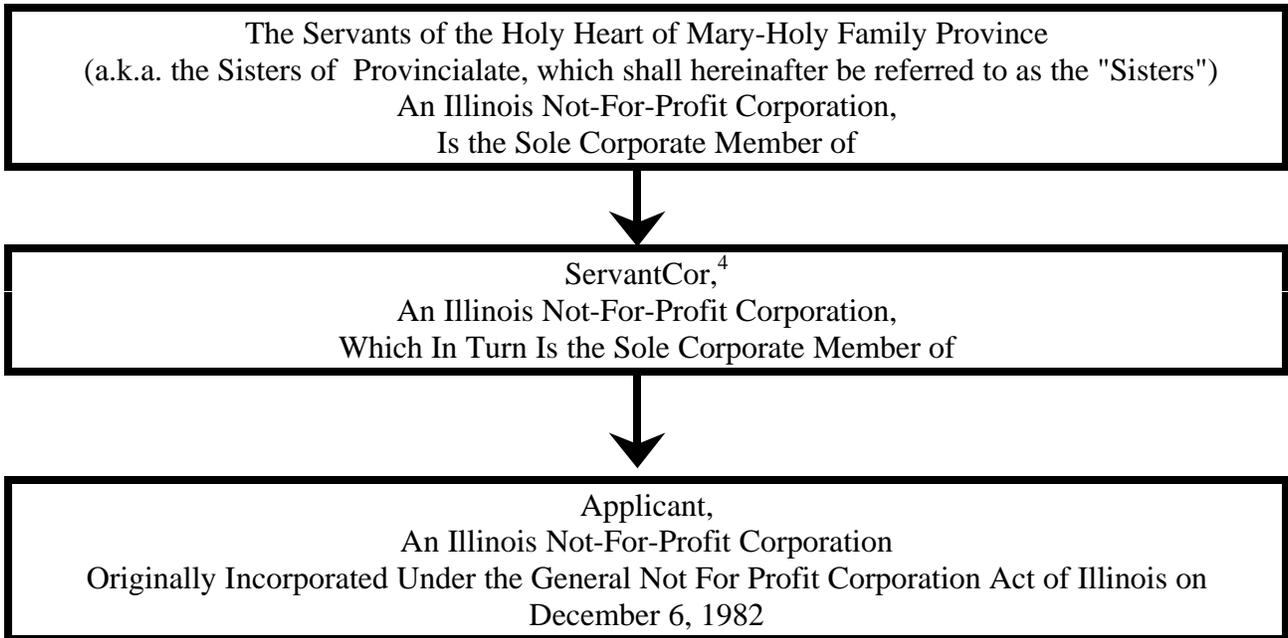
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3. For a complete description of each floor, *see*, floor plans submitted as Applicant Ex. No. 9.

7. The basement contains, *inter alia*, a large general storage area, a laundry room, a maintenance room, a space for physical therapy, a recreational area and two activity rooms. *Id.*

B. Applicant's Organizational and Financial Structure

8. Applicant is part of the following three-tiered organizational structure:



Applicant Ex. Nos. 2, 6.

9. The Sisters are an order of nuns within the Roman Catholic Church. Their convent, located in Kankakee, Illinois, is not at issue herein. Applicant Ex. No. 4, Doc. B.

10. The Sisters, as sole corporate member of ServantCor, are responsible for appointing the Board of Directors that controls ServantCor's daily business affairs. Applicant Ex. No. 6.

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4. Applicant did not submit organizational or financial documents for the Sisters or ServantCor.

11. ServantCor, as sole corporate member of applicant is, in turn, responsible for appointing the Board of Directors that controls applicant's daily business affairs.  
*Id.*
12. Applicant's Articles of Incorporation indicate, *inter alia*, that ServantCor is also responsible for: (1) approving expressly all amendments to applicant's Articles of Incorporation and by-laws before they may become effective; (2) approving the acquisition or creation of all wholly owned or controlled corporations and all mergers to which the applicant may be a party; (3) approving all of applicant's indebtedness in accordance with the requirements of canon law of the Roman Catholic Church in the United States as from time to time in effect and in accordance with requirements established from time to time by ServantCor; (4) approving applicant's annual operating and capital budgets and all material departures therefrom; and (5) approving all contracts involving the purchase or sale of real estate by the applicant and all other contracts as required for compliance with the canon law of the Roman Catholic Church in the United States as from time to time may be in effect. Applicant Ex. No. 2.
13. Applicant's corporate name was changed to "Cor Unum" via an Amendment to its Articles of Incorporation dated April 18, 1996. Applicant Ex. No. 5, Document B.
14. Applicant's successor corporation, Cor Unum, and two other Illinois Not-For-Profit Corporations, Our Lady of Victory Nursing Home (hereinafter "OLOV")<sup>5</sup>

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5. OLOV operated a nursing home, identified by Kanakee County Parcel Index Number 09-19-300-005, which the Department determined to be exempt from real estate taxation in Departmental Docket No. 82-46-9. Applicant Ex. No. 5.

and St. Anne Center (hereinafter "SAC") filed Articles of Merger with the Illinois Secretary of State on July 31, 1996. Said Articles and the Agreement attached thereto, provided *inter alia*, that: (1) Cor Unum, OLOV and SAC were to be merged into a single Not-For-Profit Corporation; and (2) the surviving corporation was to be known as "Cor Unum." Applicant Ex. No. 5, Document C.

15. The by-laws which applicant operated under during the 1995 assessment year provided that it adopted the ServantCor System Philosophy Statement, which basically provided that ServantCor was a human service corporation established to develop and coordinate those apostolic works specified by the Holy Heart of Mary in the United States.<sup>6</sup> Applicant Ex. No. 3.
16. Applicant's by-laws further indicated that its specific organizational purposes were to: (1) provide a viable presence of the healing ministry of the Catholic Church to people of Illinois; (2) operate healthcare facilities that include resident beds and services for the promotion, maintenance and restoration of health by providing those served with high quality long-term care in response to identified community need; (3) carry on educational activities related to the promotion of health and the highest level of independence and of residence that may be justified by the facilities, personnel, funds and other requirements that are, or can be, made available; and (4) own, lease, or otherwise deal with all property, real and personal, to be used in furtherance of the aforestated purposes, except that

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6. For further details about the Philosophy Statement, which includes references to G-D the Creator, faith in Jesus Christ and His Gospel, *see*, Applicant Ex. No. 3.

applicant may not create or acquire subsidiary corporations without the express approval of its sole corporate member, ServantCor. *Id.*

17. Said bylaws further stated, *inter alia*, that:

Notwithstanding any other provision of these Bylaws (including but not limited to [the ServantCor Philosophy Statement contained in] Article I hereof), HealthCor shall (a) admit and treat individuals without regard to race, sex, national origin, religious belief or ability to pay; and (b) respect, permit and not interfere with the religious beliefs of persons admitted or treated, nor be engaged in sectarian instruction (except for pastoral services of the kind permitted or provided by nursing homes generally.

*Id.*

18. Applicant is exempt from federal income tax pursuant to the terms of a Group Letter Ruling originally issued to the United States Catholic Conference (hereinafter the "Conference") on March 25, 1946. Said Letter Ruling, and its subsequent updates, find that the Conference and its constituent organizations to be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. Nos. 4, 5.
19. Applicant's fiscal year runs from January 1 of each calendar year until December 31 thereof. Its sources of operational revenue for the fiscal year ended December 31, 1995 were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL<sup>7</sup></b>
Net Patient Services Revenue	\$633,002.00	98%

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7. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. For example,  $\$633,002.00/\$649,078.00=.9752$  (rounded four places past the decimal) or 98%.

Unspecified Other Revenue	\$16,076.00	2%
<b>TOTAL OPERATING REVENUES</b>	<b>\$649,078.00</b>	

Applicant Ex. Nos. 3, 6.

20. Applicant's operational expenses for the same period were as follows:

<b>EXPENSE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Salaries and Wages	\$498,805.00	51%
Employee Benefits	\$ 81,349.00	8%
Supplies	\$ 38,659.00	4%
Utilities	\$ 77,974.00	8%
Food	\$ 45,675.00	5%
Physician Fees	\$ 2,800.00	<1%
Insurance	\$ 22,803.00	2%
Other Unspecified Expenses	\$ 60,591.00	6%
<b>EXPENSE (CONT'D)</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Provision for Depreciation	\$ 41,033.00	4%
Amortization of Goodwill	\$ 2,602.00	<1%
Interest and Amortized Bond Issuance Expenses	\$ 97,185.00	10%
<b>TOTAL OPERATING EXPENSES</b>	<b>\$969,476.00</b>	
<b>RECONCILIATION:</b>		
<b>TOTAL OPERATING</b>		

<b>REVENUES</b>	<b>\$649,078.00</b>	N/A
<b>LESS TOTAL OPERATING EXPENSES</b>	<b>-\$969,476.00</b>	N/A
<b>EQUALS DEFICIT FROM OPERATIONS FOR 1995 ASSESSMENT YEAR</b>	<b><u>(\$320,398.00)</u></b>	N/A

*Id.*

C. Ownership and Use Issues

21. Applicant acquired ownership of the subject property via a corporate deed dated May 31, 1995. This sale was part of a larger transaction, finalized on June 1, 1995, wherein applicant also purchased the related assets of the Maria Linden Center, a not-for profit nursing home located on the subject property. Applicant Ex. Nos. 1, 6.
22. 33 nuns affiliated with the School Sisters<sup>8</sup> were the only residents of the Maria Linden Center on the date of purchase. They continued as the only residents throughout the remainder of the 1995 assessment year. Tr. pp. 18-19.
23. All of the nuns resided in the Maria Linden Center pursuant to contracts with HealthCor. Applicant did not submit these contracts into evidence. Tr. 19.

**CONCLUSIONS OF LAW:**

An examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the

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8. The record indicates, (via the deed submitted as Applicant Ex. No. 1), that the School Sisters are a separate religious order from the Sisters of Provincialate, the religious order which controls applicant via ServantCor. See, Finding of Fact 8, *infra*, at p. 4.

requirements for exemption set forth in 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional Considerations, Relevant Statutory Provisions and the Burden of Proof

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, 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).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 **ILCS** 200/1-3 *et seq*). The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that 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.

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(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65.

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. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); 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).

Here, the relevant statutory exemption pertains generally to "institutions of public charity" (Section 200/15-65(a)) and specifically to "old peoples homes" (Section 200/15-65(c)). Our courts have long refused to grant relief under the general charitable provisions absent appropriate evidence that the property in question is owned by an entity that qualifies as an "institution of public charity[;]" and, said property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). Moreover, exemption under the specific

provisions of Section 200/15-65(c) requires both ownership by "qualified entity" and appropriate use. Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987).

B. Exemption Under Section 200/15-65(a)

1. Ownership and Other Related Considerations

Analysis of the ownership requirement contained in Section 200/15-65(a) begins with recognition of the fact that applicant did not acquire ownership of the subject property until May 31, 1995. As such, its exemption claim is limited to 59% of the 1995 assessment year under 35 **ILCS** 200/9-185.<sup>9</sup>

This limitation is of no consequence unless applicant qualifies as an "institution of public charity" within the meaning of Section 200/15-65(a). Applicant can not qualify as such an institution absent suitable proof that it complies with the appropriate criteria for exempt status. These standards, best enunciated in Korzen, *supra*, begin with the following definition of "charity," which the court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

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9. The relevant portion of that provision states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 **ILCS** 200/9-185.

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court supplemented this definition by noting that all "institutions of public charity":

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it;  
and,
- 5) do 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.

Korzen, *supra*, at 157.

The above characteristics are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2<sup>nd</sup> Dist. 1995). In applying them, however, one must remember that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

This applicant's Articles of Incorporation and by-laws indicate that its primary organizational objective is operating long-term health care facilities. Such an objective can certainly qualify as "charitable" within the meaning of Section 200/15-65.<sup>10</sup> However, this record lacks appropriate evidence to support the conclusion that applicant's operations are truly as beneficent in actual practice as they are in written word.

For instance, applicant's by-laws provide that it will admit and treat individuals without regard for their ability to pay. Such a provision is an indispensable element of "charitable" status, because it suggests that applicant does not violate the fifth prong of Korzen by placing "obstacles of any character" in the way of those who seek the benefits it dispenses. Nevertheless, this record establishes (via the audited financial statements admitted as Applicant Ex. No. 6) that 98% of applicant's operating revenues for the 1995 assessment year were attributable to payments for patient services. The record does not contain a scintilla of evidence proving that applicant actually ever admitted or provided care to anyone who was unable to pay the fees associated with such services and/or waived or reduced any of these fees in cases of financial need.

The record is also devoid of any contracts governing occupancy and other conditions for those who received care at the subject property. Ms. Stout testified that such contracts existed and were in effect during relevant portions of the 1995 assessment year. Tr. p. 19. Despite this, their absence from the record raises doubts as to whether applicant in fact accommodated those who were unable to pay.

The aforementioned rules governing applicant's burden of proof require that these doubts, and all other debatable questions, be resolved in favor of taxation. Accordingly, applicant has failed to prove that it actually made such accommodations during the period presently under review.

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10 . See, Korzen, *supra*, and discussion of Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987), *infra* at pp. 16-20.

This conclusion also draws support from the analysis of applicant's operating expenses set forth in Finding of Fact 20, *infra* at pp. 8-9. Said analysis fails to disclose the presence of any operational expenses attributable to writedowns, free care costs or other accommodations for those in financial need. *See, Chicago Osteopathic Properties Corporation v. Department of Revenue*, 88 L 51164 (Circuit Court of Cook County, August 6, 1992). Absent such expenditures, I must conclude that the present case parallels a line of decisions wherein exemptions were denied because the respective records either lacked evidence of any charitable disbursements or supported a conclusion that such expenditures were non-existent or *de minimus*. *Rogers Park Post No. 108 v. Brenza*, 8 Ill.2d 286, 291 (1956); *Morton Temple Association v. Department of Revenue*, 158 Ill. App.3d 794 (3rd Dist. 1987); *Albion Ruritan Club v. Department of Revenue*, 209 Ill. App.3d 914, 919 (5th Dist. 1991). Consequently, for all the aforesaid reasons, applicant has failed to prove that it qualifies as an "institution of public charity" within the meaning of Section 200/15-65. Therefore, that portion of the Department's determination which denied exemption based on lack of exempt ownership should be affirmed.

## 2. Lack of Exempt Use

### a. The Relevant Law

In analyzing the exempt use requirement, one must remember that the word "exclusively," when used in Section 200/15-65 and other exemption statutes, means "the primary use for which property is used and not any secondary or incidental purpose." *Gas Research Institute v. Department of Revenue*, 145 Ill. App.3d 430 (1987); *Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue*, 243 Ill. App.3d 186 (1993). Thus, it is the primary use of real estate, rather than its incidental use or uses, that determines tax exempt status. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971).

Our courts have also rendered an extensive line of decisions setting forth specific criteria for determining whether a nursing home, such as applicant, complies with the exempt use requirement. *Korzen, supra*; *People Ex Rel. Nordland v. the Association of the Winnebago*

Home for the Aged, 40 Ill.2d 91 (1968); Small v. Pangle, 60 Ill.2d 510, 515, 519 (1975); Friendship Manor of the Branch of King's Daughters and Sons, Inc. v. Department of Revenue, 91 Ill. App.3d 91, 94, 95 (3rd Dist. 1980).

The case which most closely parallels the present matter is Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987), (hereinafter "Fairview Haven"). There, the Department appealed a Circuit Court decision which granted appellee Fairview Haven what amounted to a perpetual exemption<sup>11</sup> for the entirety of a parcel that appellee used for two separate purposes.

One portion was used as an intermediate care facility, the other for a series of independent living units. Appellee, a not-for-profit corporation organized and supported by four separate congregations of the Apostolic Christian Church in America (hereinafter the "Church"), argued that both parts should be exempt under the then-existing version of Section 200/15-65, and in the alternative, that denying its exemption application amounted to an unconstitutional infringement on its First Amendment rights. The Department countered that the entire property was not in exempt use because appellee had policies of not admitting public aid recipients into the independent living units and requiring full payment in advance from those seeking entry into the independent living units.

The Department further argued that the facility was not in exempt use because appellee's service-care contracts provided that residents of the intermediate care facility would face discharge in the event of non-payment. These contracts also required, *inter alia*, that those seeking admission to the intermediate care facility must obtain a guarantor, and further, pay a \$300.00 application fee.

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11. The "perpetual exemption" took the form of a ruling by the Circuit Court that the subject property was exempt from real estate taxes for all years that fell subsequent to the one at issue. The appellate court in Fairview Haven reversed this aspect of the Circuit Court's ruling on grounds that "[a]n adjudication of tax status in one year has no res judicata effect in a subsequent year." Fairview Haven, *supra*, at 775.

The court rejected the Department's position as it related to the intermediate care facility. In doing so, the court relied on testimony which established that the guarantor and discharge clauses had never been utilized. It also noted the presence of evidence establishing that Medicaid recipients had resided in the intermediate care and that the application fee was eliminated, partially refunded and waived when necessary. The court further observed that room assignments did not depend on ability to pay and that some residents who became unable to pay monthly fees had in fact received financial assistance from various sources, including the appellee and the church. *Id.* at 771.

The court then considered the independent living units, which it held non-exempt on grounds that residence therein was restricted to "members of the faith and friends." *Id.* at 772. It also found that the no-interest loan, which was one of two fees<sup>12</sup> that applicant charged to residents of the independent living units, constituted an obstacle in the way of those who would seek benefits dispensed at these units. *Id.*

Appellee argued that such fees should not be considered objectionable because members of its founding congregations had, in two cases, partially funded people who applied for residence at the independent living units but did not have sufficient funds for the prepayment. The court rejected this argument on grounds that there was "no guarantee that such funding would be available." *Id.* It also expressly negated the notion that the church or its members could remove this obstacle, for "the fact that a separate corporate entity or person may voluntarily help an applicant [does not] alleviate the fact that applicants [were] expected to have sufficient funds." *Id.*

The court also discarded appellee's First Amendment and religious-use exemption claims,<sup>13</sup> which were grounded in its organizational structure and supported by the following

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12. The other fee was a life-lease, which the court did not find objectionable because it was prorated. Fairview Haven, *supra* 772.

13. The then-applicable version of the religious-use exemption statute was found in Ill. Rev. Stat. 1981, ch. 120, ¶ 19.2. The presently applicable version is found in Section 200/15-40 of the Property Tax Code, which, in relevant part, states that:

facts: (1) 60% of those who resided in the subject facility, and 40% of those employed there, were members of the Church; (2) Nonmembers of the church could work at the subject facility, but were required to abide by the Church's doctrines of faith; (3) Church elders were available to counsel residents and their families; (4) the maintenance man was a lay minister; (5) prayers were conducted before meals; (6) Bible study was available; (7) paychecks contained religious messages; (8) the church required its members to engage in Christian service works; (9) numerous church members fulfilled that obligation at the subject facilities; (10) religious conversion services for residents, family members and employees had taken place at the subject facilities; (11) religious services were piped into residents' rooms; and (12) the background music consisted of religious themes. *Id.* at 768-769.

Despite this evidence, the Fairview Haven court declined to hold the entire subject facility exempt on first amendment grounds. In doing so, the court affirmed the Department's

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All property used exclusively for religious purposes ... and not leased or otherwise used with a view to a profit is exempt, including all such property owned by churches and religious institutions and used in conjunction therewith as housing facilities for ministers ... performing the duties of their vocations as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above listed persons who perform religious activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

This provision is relevant to the present case because of the Sisters' religious affiliation. However, their convent is not at issue herein. Furthermore, the record contains no evidence proving that any or all of the 33 nuns who resided at the subject property throughout 1995 did so "as a condition of their ... association" with the School Sisters. *See also, infra* at p. 21.

finding that the subject facility was used primarily for commercial, rather than religious purposes. Thus:

Inquiry into the primary use to which property is in fact put under the facts presented in this case does not necessarily violate a party's first amendment rights, as it neither assesses the inherent validity of the belief structure nor determines whether the particular conduct conforms to the standards or purposes of a religious group. [citations omitted].

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Here, it is not contested that the operation of Fairview provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization. However, operation of the nursing home was not necessary for these religious purposes which could also have been accomplished through other means. (See generally *Yakima First Baptist Homes, Inc. v. Gray*, 82 Wash.2d 295, 510 P.2d 243 (1973); *Christian Retirement Homes, Inc. v. Board of Equalization*, 186 Neb. 11, 180 N.W.2d 136 (1970). In *Yakima* the taxpayer argued that care of the aged was a religious purpose. The court noted that the practice of charity, kindness and all virtues are encouraged by religious organizations; however, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.

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It is not contested that Fairview operated as a not-for-profit business with a contract, requirements for residency, provisions for payment, and provisions for discharge. The corporate purpose included the care and keeping of the elderly. Fairview's method of operation was businesslike. The Department's determination based upon the actual method of operation that Fairview was not exempt for religious purposes was supported by the evidence. [citations omitted].

Fairview Haven, *supra* at 773-775.

- b. Lack of Actual, Exclusive Charitable Use

This case is analogous to Fairview Haven, primarily because the Sisters, who control applicant's operations via ServantCor, are an order of nuns within the Roman Catholic Church, and therefore, similar to the Church that organized and supported the appellee in Fairview Haven. Moreover, both subject properties are used for the same basic purpose, that being providing geriatric care primarily (and in this case, solely) to members of a given religious order. Therefore, it is necessary to compare this case to Fairview Haven in order to determine whether the factors which that court identified as indicative of exempt (or, as the case may be, non-exempt) use are present herein.

That analysis begins with recognition of an important similarity between this case and Fairview Haven. There, the court held that the independent living units did not qualify for exemption because, among other reasons, admission thereto was limited to "members of the faith and their friends." *Id.* at 772. Here, there were only 33 nuns, all of whom belonged to one specific religious order, the School Sisters, residing at the subject property throughout the 1995 assessment year. Such a limited number of residents clearly fails to satisfy the requirements, originally articulated in Korzen and subsequently reaffirmed in Fairview Haven, *supra*, that applicant's operations in fact benefit an "indefinite number of persons" and "dispense charity to all who need and apply for it."

More importantly, this record lacks evidence that applicant ever waived any of the fees it charged or engaged in any of the other practices which the Fairview Haven court found to be indicative of exempt use. Without this evidence, and in light of the very limited number of persons that actually benefited from applicant's operations throughout the 1995 assessment year, I conclude that during said year, the subject property was not "actually and exclusively used for

charitable or beneficent purposes," as required by the omnibus provisions contained in Section 200/15-65.

c. Lack of Actual, Exclusive Religious Use

With respect to the religious use exemption, I find that this record is totally devoid of any evidence proving what, if any, specific religious activities the resident nuns (or for that matter the Sisters) performed at the subject property. Absent such information, (which was abundant yet unpersuasive in the Fairview Haven record), I am unable to discern whether the subject property was in fact "exclusively used for religious purposes" pursuant to Section 200/15-40 of the Property Tax Code. Therefore, for all the aforesaid reasons, those portions of the Department's determination which denied exemption based on lack of exempt use should be affirmed.

C. Exemption Under Section 200/15-65(c)

Proper interpretation of Section 200/15-65(c) is dependent on application of the omnibus provisions contained at the very beginning of Section 200/15-65. Read together, these provisions state that:

*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:*

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(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65. [Emphasis added].

This record proves that applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. It also establishes that applicant's by-laws contain appropriate fee waiver language. However, applicant's Section 200/15-65(c) argument fails to recognize that the first paragraph of Section 200/15-65, which contains the emphasized use language, applies to *all* subsections contained therein. Thus, in order to effectuate the rules mandating strict statutory construction, and thereby maintain the Constitutional limitations which prohibit the General Assembly from enlarging the class of exempt property beyond that set forth in Article IX, Section 6, I conclude that the subject property is not subject to exemption under

Section 200/15-65 unless applicant augments the 501(c)(3) and fee waiver/reduction evidence with appropriate proof of exempt use. *See, Korzen, supra; People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged*, 40 Ill.2d 91 (1968), *Small v. Pangle*, 60 Ill.2d 510, 515, 519 (1975); *Friendship Manor of the Branch of King's Daughters and Sons, Inc. v. Department of Revenue*, 91 Ill. App.3d 91, 94, 95 (3rd Dist. 1980).

The preceding analysis sets forth several evidentiary and other deficiencies which demonstrate that the subject property was not in exempt use during that portion of the 1995 assessment year currently at issue. Therefore, said property is not subject to exemption from 1995 real estate taxes under Section 200/15-65(c).

#### D. Final Considerations

Applicant seeks to alter the above conclusions by relying on its affiliation with other entities. It also attempts to prove that the subject property was exempt before the date of purchase, and further, arguing that its exemption from federal income tax demonstrates conformity with the "rigorous" requirements imposed by the Internal Revenue Code. (Applicant's brief, p. 8).

The first argument is erroneous, primarily because applicant, ServantCor and the Sisters are all separate legal entities. Furthermore, neither ServantCor nor the Sisters are the applicant herein. Even if these facts were not true, the record establishes that applicant *itself* actually oversees, governs and controls the daily operations of the long-term health care facility located on the subject property. As such, applicant is both the legal title holder and the "owner" of the subject property for property tax purposes.<sup>14</sup> Therefore, the fact that applicant's corporate affairs are ultimately overseen by a legally distinct religious order that does *not* exercise such direct

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14. *See, People v. Chicago Title and Trust*, 75 Ill.2d 479 (1979), wherein that court held that: (1) the "realities of ownership" determine whether a given entity is the "owner" of real estate for property tax purposes; and (2) the key elements of such ownership are control of the property and the right to enjoy any benefits resulting from such control.

control over the subject property is of no consequence to the present inquiry, which is whether applicant *itself* qualifies for exempt status.

Applicant's affiliation with OLOV, the entity that controlled a separate, tax-exempt nursing facility, is likewise of no avail, for the merger which created that affiliation did not become effective until July 31, 1996. Consequently, applicant did not hold any ownership interest in the OLOV facility during the presently-relevant assessment year, 1995. Even if applicant did hold such an interest, the OLOV facility is not the subject of these proceedings. Therefore, applicant can not obtain exempt status because it subsequently merged with another legally distinct entity that owned separate, exempt property during tax years other than the one currently at issue.<sup>15</sup>

Cheryl Ann Stout, who is the subject property's administrator, testified that the property was exempt before the date of purchase. Tr. pp. 19-20.<sup>16</sup> This testimony does not, however, establish that this exemption transferred when applicant acquired ownership of the subject property because applicant and the previous owner were legally distinct entities on the date of purchase. In addition, these entities continued to be legally distinct throughout the remainder of the 1995 assessment year. Moreover, Section 200/15-65, as interpreted by Korzen, *supra*, and other relevant cases require appropriate proof of exempt ownership.

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15. In connection with this conclusion, *see*, People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980), (a cause of action for one year is not the same or identical with a cause of action for subsequent years); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987), (a determination of exempt or taxable status for one year is not *res judicata* for any other tax year even where ownership and use remain the same).

16. Ms. Stout's testimony was not supported by an appropriate Departmental Exemption Certificate. Therefore, this testimony, standing alone, is not technically sufficient to establish that the Department in fact granted a suitable exemption. It will, however, suffice for purposes of the general point being made, which is that exemptions issued to entities other than the applicant *itself* are not dispositive of whether this applicant satisfies the statutorily-mandated ownership requirement.

The aforementioned rules governing applicant's burden of proof squarely place the burden of establishing exempt ownership *solely* on the applicant itself. Analysis found *supra*, at pp. 14-16 demonstrates that applicant has not sustained its burden of proof with respect to the exempt ownership requirement. Therefore, the fact that the subject property may have been exempt from real estate taxation prior to the date of purchase is of no consequence herein.

With respect to applicant's exemption from federal income tax, I note that Section 501(c)(3) and other potentially relevant sections of the Internal Revenue Code do not determine whether applicant satisfies whatever ownership and use requirements are necessary to sustain the present exemption complaint. Therefore, those standards, set forth in Sections 200/15-40 and 200/15-65 of the Property Tax Code, are not preempted by any exemption provisions contained in the Internal Revenue Code.

Moreover, compliance with the federal standards does not, *ipso facto*, establish that the subject property was actually used for exempt purposes during the relevant tax year. In re Application of Clark v. Marion Park, Inc., 80 Ill. App.3d 1010, 1012-13 (2<sup>nd</sup> Dist. 1980) (citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970)). My comments *supra*, at pp. 20-21 prove that this property was not used for such purposes during pertinent portions of the 1995 tax year. Therefore, applicant's reliance on its exemption from federal income tax is misplaced.

#### E. Summary

In summary, the subject property is not subject to exemption under Section 200/15-65(a) because the present record is fraught with a series of evidentiary and other deficiencies establishing that: (1) the applicant fails to satisfy the exempt ownership requirement articulated therein; and (2) the subject property was not "actually and exclusively used for charitable or beneficent purposes" throughout the tax year in question, 1995. Furthermore, applicant's failure to establish exempt use demonstrates that said property does not qualify for exemption under Section 200/15-65(c). For these reasons, and because applicant has also failed to prove that the subject property was "exclusively used for religious purposes" within the meaning of Section

200/15-40 during the 1995 assessment year, I recommend that the Department's determination denying the subject property exemption from 1995 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Winnebago County Parcel Index Numbers 153B-004B and part of 153B-210A, as described in the legal description attached hereto as "Exhibit A", not be exempt from 1995 real estate taxes.

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Date

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Alan I. Marcus  
Administrative Law Judge