

PT 07-2

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

COMMUNITY RESIDENTIAL CENTERS, INC.	No.	04-PT-0064
v.	County Docket #	04-48-04
THE DEPARTMENT OF REVENUE	P.I. #	99-152-33-008
OF THE STATE OF ILLINOIS		99-152-33-009
		99-152-33-010
	Barbara S. Rowe	
	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue; Mr. Matthew S. Crain, Esq., for Community Residential Center, Inc.

Synopsis:

This matter arose from a protest filed by Community Residential Centers, Inc., (hereinafter referred to as the "Applicant" or "CRC") to a notice of denial of a property tax exemption issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") for Knox County Parcel Index Numbers (hereinafter referred to as "PINs" or "PIN") 99-152-33-008, 99-152-33-009 and 99-152-33-010. The issue in this matter is whether the subject parcels qualified for exemption during the 2004 assessment year. The parties filed a stipulation of facts, waived their rights to a formal hearing and, instead, filed legal briefs. After a thorough review of the facts and law presented, it is my recommendation that Department's denial of exemption be upheld. In support thereof, I make the following findings of fact and

conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. In April 2004, CRC sought exemptions from real estate taxation under 35 ILCS 200/15-65 for three parcels of real estate identified by Knox County PINs 99-152-33-008, 99-152-33-009, and 99-152-33-010, stating that the parcels were used as a residential facility for developmentally disabled adults. (Stip. No. 1)

2. The exemption application lists CRC as the property owner and CRC as the Applicant. (Joint Ex. #1)¹ (exemption application)

3. CRC Cherry Street Facility, LLC, acquired PINs 99-152-33-008 and 99-152-33-010 by a trustee's deed dated September 17, 2003. (Joint Ex. #1) (trustee's deed)

4. CRC Cherry Street Facility, LLC, acquired PIN 99-152-33-009 by a warranty deed dated January 2, 2004.² (Joint Ex. #1)³ (warranty deed)

5. "The parcels are owned by CRC Cherry Street Facility, an LLC whose only member is the Applicant. (Joint Exhibit #2 [**Articles of Incorporation, By-laws, Articles of Organization, Operating Agreement, Trust Deed**])" (bold in the original) (Stip. No. 2))

6. "On July 26, 2004, the Knox County Board of Review recommended to the Department that the exemptions be granted for the full Assessment Year 2004." (Stip. No. 3)

7. On August 12, 2004, the Department denied the exemptions, stating that the parcels were neither in exempt ownership nor in exempt use. (Stip. No. 3; Joint Ex. #3) (denial letter from the Department)

¹ The exemption application does not have the recommendation of the Board of Review section completed, nor does it contain the signatures of the representative of the Applicant or of a notary public. It is not dated.

² Nothing in the record identifies what is on PIN 99-152-33-009.

³ I take administrative notice that PIN 99-15-233-009 was granted an exemption from property taxation in 1991 for

8. “On October 8, 2004, CRC filed a protest of the Department’s denial and petitioned for a hearing before the Administrative Hearings Division.⁴ (Joint Ex. #4)” (Stip. No. 4)

9. CRC is an Illinois not-for-profit corporation organized on November 13, 1987. On September 7, 1988 it obtained an Internal Revenue Code Section 501(c)(3) exemption designation. On January 10, 2003 it was granted a Sales Tax Exemption Identification Number by the Department. (Stip No. 5; Joint Ex. #5) (“501(c)(3) & Sales Tax ID letter”)

10. The Articles of Amendment to CRC’s Articles of Incorporation dated September 4, 1997 state that the purposes for which the corporation is organized are:

The Corporation is organized exclusively for charitable purposes as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. In furtherance of those charitable purposes, the corporation shall be empowered to build, lease, acquire and otherwise own and operate residential facilities, nursing facilities and other related facilities and services for the elderly, mentally retarded, mentally ill, developmentally disabled and other conditions without regard to race, religion, color, sex, creed or national origin of said persons. The corporation will not engage in the practice of medicine nor render any licensed professional services. . . . (Joint Ex. #s 2, 4) (Articles of Amendment)

11. “The Applicant and its wholly owned subsidiary, CSLLC,⁵ are operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, including the provision of housing, nursing facilities, continuing care retirement communities, and other related facilities and services for the elderly, mentally

97% of the assessment year pursuant to Docket No. 91-48-18. The property at that time was owned by St. Mary’s Living Center, Inc. (Joint Ex. # 1) (exemption letter from the Department)

⁴ The protest only lists PINs 99-152-33-008 and 99-152-33-010. (Joint Ex. #4) However, the parties have stipulated that the Applicant filed a protest to the denial of all the parcels. The Department never raised the issue of whether PIN 99-152-33-009 was at issue.

⁵ CSLLC is identified in the protest as CRC Cherry Street Facility, LLC. The acronym will be used when the parties refer to it that way.

retarded, mentally ill, developmentally disabled and other like conditions without regard to race, religion, color, sex, creed or national origin of said persons.”⁶ (Stip. No. 6)

12. The Secretary of State of Illinois approved CRC Cherry Street Facility, LLC on February 14, 2003, as a limited liability company. According to the Articles of Organization, the purpose of the corporation is for “[T]he transaction of any or all lawful business for which limited liability companies may be organized under this Act and in furtherance thereof the company shall be operated exclusively for charitable purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding sections of any future tax code.” (Joint Ex. #s 2, 4) (Articles of Organization)

13. Management of CRC Cherry Street Facility, LLC is vested in CRC, its sole member. (Joint Ex. #s 2, 4) (“Limited Liability Company Agreement for CRC Cherry Street Facility, LLC”)

14. “Pursuant to CSLLC’s Operating Agreement, the Applicant has exclusive and full authority and discretion to direct, manage and control CSLLC’s business affairs and assets; to make all decisions regarding those matters; to perform any act customary or incident thereto; and, without limitation, to enter into agreements; to execute all instruments and documents; to employ accountants, lawyers, and other agents or service providers; and to take any other action the Applicant deems advisable or appropriate to effectuate the purposes of CSLLC’s business.” (Stip. No. 8)

15. “Upon dissolution of CSLLC, the assets of CSLLC are to be distributed to the Applicant at its discretion for one or more exempt purposes within the meaning of IRC Section 501(c)(3), and any assets no [sic] so disposed of shall be disposed of exclusively for such

⁶ Stip. No. 6 also states: “The Applicant and CRC file consolidated tax returns and are audited jointly.” No consolidated tax returns or audited financial statements are in the record.

purposes or to such organizations which are organized or operated exclusively for such purposes.” (Stip. No. 9)

16. Located on the subject properties are three buildings. The first is a four story residential structure covering 24,311.2 square feet of ground area. The second is a maintenance garage covering 902.2 square feet of ground area and the third is a gymnasium covering 7,254.09 square feet of ground area. (Joint Ex. #1) (the application)

17. “The main building on the parcels contains 120,682 square feet of floor space. There are seventeen one-bed rooms and ninety-nine two-bed rooms. In addition, there is a one-story laundry room and garage containing 7,096 square feet.” (Stip. No. 10)

18. The residential “facility is licensed as a 255-bed intermediate care facility dedicated to care for developmentally disabled residents (ICF/DD). A developmentally disabled person possesses physical or mental impairments that begin before age twenty-two and alter or substantially inhibit a person’s capacity to perform normal daily personal tasks; to speak to be understood clearly; to learn; to walk; to make decisions; to live independently; or to earn and manage an income.” (Stip. No. 18)

19. “The facility is licensed to provide, either directly or through arrangements with outside resources, as needed by each individual resident, all resident living services, training and guidance necessary in the activities of daily living and in the development of self-help skills for maximum independence. The services provided by the facility include, but are not limited to, psychological, social, speech pathology, audiology, organized recreational activities, training and habilitation.” (Stip. No. 19)

20. “The facility is [sic] also creates a long-term living environment, provides meals, supervision and counseling.” (Stip. No. 20)

21. The facility serves over 200 residents. (Stip. No. 11)
22. “The residential facility is currently operated by the Applicant pursuant to a Lease Agreement between it and CSLLC.” (Stip. No. 7)
23. The lease executed October 1, 2003 between CRC, lessee, and CRC Cherry Street Facility, LLC, lessor, is for St Mary’s Square Living Center⁷ located on PINs 99-152-33-010 and 99-152-33-008. The lease is for ten years commencing on October 1, 2003. CRC may extend the lease for one consecutive term of five years upon the same conditions of the lease. (Joint Ex. #6)
24. The monthly rentals are: (1) years one through five for \$42,500; (2) years six through ten for \$42,500 plus, if applicable, 50% of the rise in the cost of the CPI-U⁸ index between the month representing the first month of the lease and the first month five years thereafter; and (3) years eleven through fifteen for \$42,500 plus, if applicable, 50% of the rise in the cost of the CPI-U index between the month representing the first month of the lease and the first month ten years thereafter. (Joint Ex. #6)
25. The lease obligates CRC to pay a monthly deposit for real estate taxes, replacement reserve and property insurance, and states that at such time as the property becomes exempt from property taxes the monthly escrow may be reduced upon written request to the lessor showing evidence of the exemption. (Joint Ex. #6)
26. A delinquency in the due and punctual payment or additional rent payable under the lease is considered a default. If a default occurs, the lease is terminated and lessee must peacefully surrender the leased premises to the lessor. The termination of the lease does not relieve the lessee of its liabilities and obligations under the lease. (Joint Ex. #6)

⁷ See footnote 3, *supra*.

⁸ Consumer Price Index-Urban

27. CRC has the right of first refusal to purchase the leased premises if CRC Cherry Street Facility, LLC, determines to sell it. (Joint Ex. #6)

28. “Sections 221(d)(3), 231, 232 and 235 of the National Housing Act, as amended, Section 106(b) of the Housing and Urban Development Act of 1968 provide mortgage insurance of financing for non-profit mortgagors.” (Stip. No. 14)

29. “In accordance with the principles outlined in prior decisions of the Department regarding facilities dedicated to the housing and care of developmentally disabled persons, the parcels identified above would obtain the exemptions from real property taxation sought if the Applicant, not a separate person, were the owner of the real estate.” (Stip. No. 21)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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.

- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (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 Code⁹ 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, as amended.¹⁰

An applicant that has been granted an exemption under this subsection on the basis that its bylaws 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 may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. . . .

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held (i) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property, (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986,¹¹ or (iii) for any assessment year including and subsequent to January 1, 1996 for which an application for exemption has been filed and a decision on which has not become final and nonappealable, by a limited liability company

⁹ 26 U.S.C.A. § 501

¹⁰ 12 U.S.C.A. § 1701 q.

¹¹ 26 U.S.C.A. § 42 entitled Low-income housing credit.

organized under the Limited Liability Company Act¹² provided that (A) the limited liability company receives a notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501(c) of the Internal Revenue Code; (B) the limited liability company's sole members, as that term is used in Section 1-5 of the Limited Liability Company Act,¹³ are the institutions of public charity that actually and exclusively use the property for charitable and beneficent purposes; and (C) the limited liability company does not lease the property or otherwise use it with a view to profit.

This subsection of the statute can be broken down into three different parts. Part one provides that property otherwise qualifying for an exemption under this section shall not lose its exemption because the legal title is held (i) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property.

There is nothing in this record to show that legal title is held by an organization structured solely to hold title to the property. In fact, CRC Cherry Street Facility, LLC's Articles of Organization state that the limited liability company's purpose is to transact any or all lawful business for which limited liability companies may be organized, and shall be operated exclusively for charitable purposes within the meaning of 501(c)(3) of the Internal Revenue Code. Section 501(c)(2)¹⁴ of the Internal Revenue Code deals with "Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section." As CRC Cherry Street Facility, LLC does not have a 501(c)(2) designation from the Internal Revenue Service and is not organized solely to hold legal title to the property, this section cannot apply.

¹² 805 ILCS 180/1-1 *et seq.*

¹³ 805 ILCS 180/1-5.

¹⁴ 26 U.S.C.A. § 501(c)(2)

Part two of the statutory subsection provides that property otherwise qualifying for an exemption under the section which shall not lose its exemption because the legal title is held (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986.¹⁵

There is nothing in the record to show that CRC Cherry Street Facility, LLC is organized as a partnership with CRC as its general partner for the purposes of owning and operating residential rental property for low income housing under Section 42 of the Internal Revenue Code. Therefore this section, also, cannot apply.

Part three of the statutory subsection provides that property otherwise qualifying for an exemption under the section which shall not lose its exemption because the legal title is held for any assessment year including and subsequent to January 1, 1996 for which an application for exemption has been filed and a decision on which has not become final and nonappealable, by a limited liability company organized under the Limited Liability Company Act¹⁶ provided that (A) the limited liability company receives a notification from the Internal Revenue Service that it qualifies under paragraph (2) or (3) of Section 501(c) of the Internal Revenue Code; (B) the limited liability company's sole members, as that term is used in Section 1-5 of the Limited Liability Company Act,¹⁷ are the institutions of public charity that actually and exclusively use the property for charitable and beneficent purposes; and (C) the limited liability company does not lease the property or otherwise use it with a view to profit.

¹⁵ 26 U.S.C.A. § 42. This section of the Code deals with low income housing credits. Title 26 deals with the Internal Revenue Code.

¹⁶ 805 ILCS 180/1-1 *et seq.*

¹⁷ 805 ILCS 180/1-5.

This is the section of the statute that most closely resembles the relationship between CRC Cherry Street Facility, LLC and CRC. CRC Cherry Street Facility, LLC is a limited liability company. The sole member of CRC Cherry Street Facility, LLC is CRC, an organization that would qualify for a property tax exemption if it owned the subject property. (Stip. No. 21) However, exemption under this provision also fails for this Applicant because the evidence shows that the lease between the two parties is unmistakably done as an arms length transaction. The monthly rentals are a minimum of \$42,500, which equals a minimum of \$510,000 per year that CRC Cherry Street Facility, LLC gets during the terms of the lease. It has not been established that CRC Cherry Street Facility, LLC does not lease the property or otherwise use it with a view to profit. Also, as the Applicant is CRC, it cannot qualify for exemption under this section because it is not a limited liability company organized under the Limited Liability Company Act.

CRC Cherry Street Facility, LLC, the owner of the property, is receiving large monthly rentals. There are no monetary obligations of the lessor in the lease for the use of the monthly rentals. There is nothing in the lease that shows that the rental money is obligated to be used by the lessor for maintenance purposes. In Coles-Cumberland Professional Development Corp. v. Department of Revenue of the State of Ill., 284 Ill. App. 3d 351 (4th Dist. 1996) (*leave to appeal denied*, 171 Ill. 2d 563), the court found that the ownership of the property remained with the non-exempt lessor, rather than the exempt lessee, and therefore the property did not qualify for a real property tax exemption. The lessor, Coles-Cumberland, rented the property to the lessee, Lincolnland, for \$45,000. The lessee was obligated to pay Coles-Cumberland a monthly maintenance fee \$375 for the upkeep of the common areas. After two years that maintenance fee could be adjusted by Coles-Cumberland as required on a pro rata basis with the other tenants

occupying the premises within the development. The lessee was required to maintain the rented area in good repair, purchase casualty and liability insurance, and pay the property taxes.

Just as with the lease provisions between CRC Cherry Street Facility, LLC and CRC, the lessee, Lincolnland, an undisputed charitable organization, could not assign the lease without Coles-Cumberland's consent. Coles-Cumberland could sell the property at any time, subject to the lease. The lessee had the right of first refusal to purchase the property, if Coles-Cumberland decided to sell. Coles-Cumberland retained the right to encumber the fee simple interest. If the lessee defaulted on the monthly payments, or in performing its other duties under the lease, or filed for bankruptcy, Coles-Cumberland could terminate the lease. These factors are very similar to the ones at issue in the lease between CRC Cherry Street Facility, LLC and CRC. As the property at issue in Coles-Cumberland Professional Development Corp. v. Department of Revenue of the State of Ill., *supra*, did not qualify for a property tax exemption under the charitable ownership and use provision of the statute, I find that similarly this property cannot qualify under the statutory provision either.

Ownership of the properties

The parties agree that the only issue in this matter is whether the Applicant has sufficient indicia of ownership to be considered the equitable owner of the property for a property tax exemption. (Applicant's Brief p. 5; Dept. Brief p. 1) Applicant's attorney, in its brief, continues that statement with: "It is not required that property be owned by a an applicant for property tax exemption. (See Southern Illinois University Foundation v. Booker, 98 Ill. App. 3[sic] 1062, 1068 (5th Dist. 1981), where the fifth district held that Olmsted v. University of Illinois, 328 Ill. 377 (1928) did not hold 'that in order for property exempt from taxation as belonging to the State, title to it must be in an agent of the State.'" While I agree with the Applicant that the

equitable owner of property may qualify for exemption from property taxation, I do not think that Southern Illinois University Foundation v. Booker, *supra*, or Olmsted v. University of Illinois, *supra*, are the most relevant cases to apply to the facts at issue. Both cases involve property owned by the State of Illinois and the exemption for schools, which are not the exemption statutes at issue or the case herein. The property tax exemption statute in this matter is for a charitable organization using property for charitable purposes.

Nor do I find the Department's reliance on City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992) which impliedly overruled Carr v. City of Chicago, 323 Ill. 68 (1926),¹⁸ to be determinative. In City of Chicago v. Illinois Department of Revenue, *supra*, there was a specific exemption for the buildings owned by the City, which qualified for exemption in the case. The land owned by Chicago Dock, leased to Kraft, and sublet to the City did not qualify for exemption, as a private lessor owned the land and there was no evidence that the sublease was entered into so that the City could advantageously finance the purchase of the property.¹⁹ The court found that the lessor held title sufficient to disqualify the real estate for a property tax exemption, because the lessor enjoyed the benefit of the property in the form of accelerating annual rental payments. As the Department, in its brief correctly points out, the realities of ownership include the key elements of control and the right to enjoy the benefits of the property. (Dept. Brief p. 2) However, this matter does not involve a sublease or a specific city exemption as was the situation in City of Chicago v. Illinois Department of Revenue, *supra*.

What this matter does involve is a lease between CRC Cherry Street Facility, LLC and the Applicant and the question of ownership of the subject properties. The Applicant pays CRC

¹⁸ Cited in the Department's brief for the correct proposition that "A simple leasehold for a fixed period is certainly not sufficient to confer ownership for purposes of an exemption." Dept. Brief p. 3

¹⁹ A situation that qualified for exemption in Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983)

Cherry Street Facility, LLC a minimum of \$510,000 per year for the right to operate a developmentally disabled intermediate care facility on the properties at issue. The statute is clear that property may qualify for a property tax exemption only if the proper standards are met and if the property is not leased or otherwise used with a view to profit.

In Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983),²⁰ the appellate court found that a sale and lease back arrangement, when used as a financing device, and which did not divest Cole Hospital of ownership of the property, could qualify the land for a property tax exemption. The hospital, an acknowledged not-for-profit entity using the property for charitable purposes, had sought the issuance of State revenue bonds to finance the construction of a new facility. Because of its financial situation, Cole Hospital was unable to obtain the bonds or financing from numerous other financial sources. It entered into an arrangement with Safe Care, Inc. in which Cole Hospital conveyed the property and leased it back. The ostensible purpose of the arrangement was to permit Safe Care, Inc. to acquire the property without foreclosure proceedings if Cole Hospital defaulted on the agreement. The court, discussing the concept of ownership, declared that control and the right to benefits of the property are of far greater importance than title. (*Id.* at 99) Relying upon Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978),²¹ the court found that sufficient indicia of ownership were retained by Cole Hospital to qualify for the exemption.

The court found it important that Cole Hospital had made extensive efforts to obtain conventional financing, to no avail. In addition, the lease contained no provision for a conventional security deposit, something the court found lent credence to the assertion that the

²⁰ Relied upon by both parties in their briefs.

²¹ A case in which the property of a charitable organization qualified for exemption even though it was being

agreement was, in fact, a financing device. On certain anniversary dates, Cole Hospital had the absolute option to purchase the property at 10 times the annual rent. If Safe Care, Inc. received a bona fide offer for purchase of the property, Cole Hospital had the right of first refusal. In the event of a sale to a third party, all of the terms of the lease remained in full force and effect. The court found these factors sufficient to determine that for purposes of the tax exemption, Cole Hospital owned the property.

There are no such indications that the lease at issue was done because CRC could not obtain financing for the property. Nor does CRC have the indicia of ownership retained by the hospital as evidenced in Cole Hospital, Inc. v. Champaign County Board of Review, *supra*. Rather, as the Department points out in its brief (Dept. Brief p. 3), Illinois courts have not generally conferred ownership solely on the basis of a lease, even when some repurchase rights are included. Wheaton College v. Department of Revenue, 155 Ill. App. 3d 945 (2nd Dist. 1987) A simple leasehold for a fixed period certainly is not sufficient to confer ownership for the purposes of a property tax exemption. City of Chicago v. Illinois Department of Revenue, *supra* While it may be true that CSLLC was formed for no other reason than to hold title to the property (Stip. No. 11), the reality, as supported by other evidence of record, is that it holds title to the property as a lessor through an arms-length lease for profit. As discussed, *infra*, it retains rights not dissimilar to those of commercial lessors including, *inter alia*, rights of approval for all significant acts by the lessee.

Realities of Ownership and the Lease

The lease also contains the provision that the monthly rentals are contingent upon, if applicable, 50% of the rise in the cost of the Consumer Price Index-Urban (CPI-U) between the

purchased by a contract for deed. (See also Mason v. Rosewell, 107 Ill. App. 3d 943, (1st Dist. 1982))

month representing the first month of the lease and the first month five years thereafter; and then for years eleven through fifteen for \$42,500 plus, if applicable, 50% of the rise in the cost of the CPI-U index between the month representing the first month of the lease and the first month ten years thereafter. Therefore, the monthly escalation clauses are tied to the Consumer Price Index, another indication that this lease is with a view to profit for the lessor. According to the lease, the amount of the monthly payments has nothing to do with an increase regarding the cost of operating this property, but rather with a correlation to inflation.

In Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263 (1996) the court discusses the realistic approach of ownership that has been applied in prior cases of the Illinois courts. The realities of ownership include the key elements of control and the right to enjoy the benefits of the property. (*Id.* at 268) The court stated that the rights of creation, modification, management, income and termination are all part of that realistic approach to ownership. (*Id.* at 269)

According to the lease between CRC and CRC Cherry Street Facility, LLC, the lease term is for 10 years, which CRC may extend for an additional consecutive term of five years, under the same terms and conditions set forth in the lease. The minimum rent for the property is \$42,500 per month. CRC pays a monthly escrow deposit for real estate taxes, replacement reserve and property insurance.

If CRC Cherry Street Facility, LLC decides to sell the property, it must notify CRC in writing. CRC has the right of first refusal to purchase the leased property. If CRC chooses not to exercise this option, CRC Cherry Street Facility, LLC may sell to a third party on the same terms offered CRC, as long as the sale occurs within 365 days. Any further transactions, after that year, are deemed a new determination by CRC Cherry Street Facility, LLC to sell the

properties, and the sales provisions of the lease do not apply.

Upon CRC's written agreement to purchase the property, each party must hire an appraiser who is a member of the Appraisal Institute (MAI) and has at least 10 years experience of full time commercial real-estate experience. The lease describes how the fair market value of the real estate is to be determined based upon appraisals.

The property at issue is to be used by CRC for operating a nursing home for persons with geriatric and developmental disabilities. The duties and responsibilities portion of the lease require CRC to maintain and repair the existing structure, pay for utilities and indemnify CRC Cherry Street Facility, LLC against liabilities. CRC can improve, alter and decorate the interior as reasonably necessary for the operation of its business, as long as it notifies CRC Cherry Street Facility, LLC in writing, of its intent. At the termination of the lease, CRC Cherry Street Facility, LLC has the right to require CRC to remove any such change at CRC's expense.

CRC is obligated by the lease to pay all taxes and assessments on the properties and on the building and improvements. If CRC fails to do so, CRC Cherry Street Facility, LLC may pay the taxes and add that amount to the lease payments.

CRC Cherry Street Facility, LLC has an immediate right of re-entry to the property in case of a default,²² of any form, that places the continuing operation of the nursing home in jeopardy. All records and licenses must be kept on the premises and in case of a default, those become the property of CRC Cherry Street Facility, LLC. CRC Cherry Street Facility, LLC has the specific right, within five days of default, to enforce the right of re-entry in civil court.

CRC must maintain insurance in amounts required by CRC Cherry Street Facility, LLC. The policies must name both parties as the insured. If CRC Cherry Street Facility, LLC requires,

²² Events of default according to the lease are: 1) 10 day delinquency in rent; 2) 30 day delinquency in the performance or compliance with any other terms of the lease; 3) 5 day delinquency in correcting anything which

the insurance policy may also be made payable to any mortgagor of the property. No policies may be cancelled without 90-day written notice to the mortgagor and CRC Cherry Street Facility, LLC.

Fire or damage to the property does not entitle CRC to terminate the lease; CRC is to restore, replace or build as nearly possible to the original, anything damaged. CRC cannot permit any liens to be placed on the properties. CRC must show the lack of liens by affidavit. If there is total destruction, CRC Cherry Street Facility, LLC has no obligation to rebuild.

CRC may sublet with the approval of CRC Cherry Street Facility, LLC. The subletting does not relieve CRC of primary liability for rent or performance of other lease obligations.

CRC Cherry Street Facility, LLC, with a timely reasonable request, has free access to the premises and has the right to examine CRC's financial records and audits. CRC is responsible for all operating expenses of the premises not covered by the lease.

CRC, upon payment of the rent and compliance with the terms of the lease, has the right to quiet enjoyment of the premises.

Based upon these lease provisions, it is clear that CRC Cherry Street Facility, LLC has all the rights to control of the property as determined by the Illinois courts. Chicago Patrolmen's Association v. Department of Revenue, *supra*. The rights of creation, modification, management, income and termination of the lease all also reside with CRC Cherry Street Facility, LLC because it must approve anything CRC does with regard the property. People v. Chicago Title & Trust Co., 75 Ill. 2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, *supra*; City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992). CRC Cherry Street Facility, LLC also receives a minimum of \$510,000 each year for rent. Even the termination of the lease does not relieve CRC from the obligations it has agreed to, including the

jeopardizes the continuing operation of the facility; 4) CRC filing bankruptcy, insolvency or reorganization.

rent.

In addition, Stip. No. 9 states that: “Upon dissolution of CSLLC, the assets of CSLLC are to be distributed to the Applicant **at its discretion** for one or more exempt purposes within the meaning of IRC Section 501(c)(3),” (emphasis added). The only asset of CRC Cherry Street Facility, LLC is the property at issue. If there is a dissolution of CRC Cherry Street Facility, LLC, the property can be distributed to another entity or the Applicant, at its discretion, as long as it is used for one or more exempt purpose within Section 501(c)(3) of the Internal Revenue Code. Therefore, not even upon dissolution does CRC Cherry Street Facility, LLC lose control over the property.

Discrepancies and Omissions

There are a number of discrepancies and omissions in this record. The parties stipulated that: “CSLLC acquired title to the facility on or about September 17, 2003.” (Stip No. 11) The trustee’s deed executed on September 17, 2003 conveyed only PINs 99-152-33-008 and 99-152-33-010. The warranty deed dated January 2, 2004 conveyed PIN 99-152-33-009 to CRC Cherry Street Facility, LLC. It is not clear in the record what is on each PIN, which causes confusion with the stipulations.

Also, the letters sent to the taxing districts pursuant to 35 **ILCS** 200/16-70, a statutory provision for notification to taxing districts for properties valued in excess of \$100,000 when requesting a property tax exemption, had PINs 99 15 233 008 and 99 15 233 010 rather than PINs 99-152-33-008 and 99-152-33-010. PIN 99-15-233-009 was not included. (Joint Ex. #1)

National Housing Act²³

Applicant and the Department also failed to explain the relevance of Stip. No. 14 that states: “Sections 221(d)(3), 231, 232 and 235 of the National Housing Act, as amended, Section

106(b) of the Housing and Urban Development Act of 1968 provide mortgage insurance of financing for non-profit mortgagors.” Why this stipulation is important or how the enumerated sections of the National Housing Act and Housing and Urban Development Act of 1968, regarding the provision of mortgage insurance of financing for non-profit mortgagors relates to this property tax exemption application, also was not explained. Neither party provided documentation or law to show the relevance of the stipulation and therefore there is a failure of proof that the National Housing Act and Housing and Urban Development Act of 1968 are relevant in this matter.

In addition, Applicant in its brief refers to a “previously submitted Multi-Family Accelerated Processing [MAP] Guide, Rev. March 15, 2002, Sec. 3.2b” (Applicant’s Brief p. 7), to support its assertion that “CSLLC is considered by CRC and the Internal Revenue Service to be a ‘disregarded entity’, which means any and all tax reporting of CSLLC shall be consolidated both for federal and state purposes and the use of a disregarded entity is a further requirement of HUD/FHA insurance programs, which process requires that the mortgaged property must be the sole asset of the mortgagor.” Not only is the MAP Guide not in evidence, but no consolidated tax filings, or any financial records of any sort are in this record. There is nothing in the record to establish who is the mortgagor of the properties at issue.

What is evident in this matter is that CRC Cherry Street Facility, LLC holds title to this property and that Applicant is its sole member. It is also evident that CRC Cherry Street Facility, LLC leases the property to the Applicant for substantial sums of money over and above what is necessary for CRC to operate the property. It is reasonable to assume, based upon the statement in the brief of the Applicant,²⁴ that this arrangement was done so that the real estate

²³ 12 U. S. C. A. §1701 *et seq.*

²⁴ “No. 25. The realities of the type of services provided by CRC include significant risks of liability. HUD

could not be reached should the Applicant incur legal liability as a result of the significant risks of its care giving activities on the property. I must agree, therefore, with the Department's statement that: "The Applicant thereby makes the startling admission that what it embraces here today, effective ownership, it would aggressively cast out should the parent of a negligently injured patient seek recovery of damages by going after Cherry Street's real estate, its only real asset. This deserves emphasis. Applicant has put ownership of the real estate in the hands of a separately incorporated person in order to protect the real estate from attachment for Applicant's legal negligence, yet claims effective ownership for exemption purposes. This duality cannot fly." (Dept. Brief p. 3)

Department of Housing and Urban Development²⁵

A portion of Stip. No. 11 states that: "CSLLC was organized by the Applicant to hold title to the facility pursuant to United States Housing and Urban Development (HUD) requirements." The Articles of Organization state that purposes for which the CRC Cherry Street Facility, LLC was organized are charitable within the meaning of 501(c)(3) of the Internal Revenue Code. There is no mention of HUD.

The parties may have needed HUD financing or approval for mortgages on the properties. They may have needed separate corporations to comply with HUD regulations. However that is Federal law, not Illinois law. There is no Illinois real property tax exemption for not-for-profit organizations based solely on the fact that there was some HUD funding involvement. In order for an applicant to qualify for an Illinois property tax exemption, it must fall within the language of that exemption.

financing requires separate ownership of the real estate it finances in order to protect the assets securing the HUD financing. To hold that the Applicant is not entitled to a real estate tax exemption merely because it is abiding by HUD financing requirements defeats the purposes of such financing and could place at risk real estate in the State used to secure similar HUD financing." (Applicant's Brief p. 8)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967) What is clear in this matter is that CRC leases the St. Mary's Square Living Center from CRC Cherry Street Facility, LLC for at least \$510,000 per year. The lease obligates CRC to pay a monthly deposit for real estate taxes, replacement and property insurance. Nothing in the record indicates that this is not a lease, negotiated at arm's length, for a profit.

In order to preserve the constitutional and statutory limitations that protect the property tax base, statutes conferring property tax exemptions are to be strictly construed with all doubts and evidentiary deficiencies resolved in favor of taxation. The applicant bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565, 569 (1st Dist. 1991); Evangelical Hospitals Corporation v. Department of Revenue et al, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992). "Clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question." In re Israel, 278 Ill. App. 3d 24, 35 (2nd Dist. 1996); In re Weaver's Estate, 75 Ill. App. 2d 227, 229 (4th Dist. 1966); Matter of Jones, 285 Ill. App. 3d 8, 13 (3rd Dist. 1996).

²⁵ 42 U. S. C. A. §3531 *et seq.*

Due to failures of proof and the lack of probative evidence in this matter, Applicant has failed to establish that CRC owns the subject property for property tax exemption purposes or that Knox County PINs 99-152-33-008, 99-152-33-009 and 99-152-33-010 qualify for exemption for the 2004 assessment year. Therefore, for the aforementioned reasons, it is recommended that Knox County PINs 99-152-33-008, 99-152-33-009 and 99-152-33-010 remain on the tax rolls for 2004.

Barbara S. Rowe
Administrative Law Judge
December 29, 2006