

**PT 08-15**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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

v.

**UNITED CEREBRAL PALSY OF  
LAND OF LINCOLN**

**Applicant**

**Docket # 07-PT-0025**

**Tax Year 2007**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Brenda Yarnell and Char Fanning, *pro se*, for United Cerebral Palsy of Land of Lincoln

Synopsis:

United Cerebral Palsy of Land of Lincoln (“applicant” or “UCP”) filed an application for a property tax exemption for the year 2007 for a parcel of property that was received as a donation on January 5, 2007 and is located in Sangamon County. The County Board of Review recommended that the applicant receive a partial exemption beginning January 5, 2007, and the Department of Revenue (“Department”) disagreed with the Board’s determination. The applicant timely protested the Department’s decision to deny the exemption, and an evidentiary hearing was held. The applicant

alleges that it is entitled to a charitable purposes exemption pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that the property is owned by a charitable organization and used exclusively for charitable purposes. The Department agrees that the property is owned by a charitable organization but contends it is not used for charitable purposes. The sole issue in this matter is whether the applicant's activities on the property during 2007 constituted development and adaptation for charitable use. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on April 3, 1968; it has no capital, capital stock, or shareholders. (Dept. Ex. #1)
2. The applicant is exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code and is exempt from Illinois retailers' occupation taxes and use taxes pursuant to the Retailer's Occupation Tax Act and Use Tax Act. (Dept. Ex. #1; App. Ex. B)
3. The applicant's mission is "to maximize independence and opportunities for full participation in the community for individuals with cerebral palsy or other disabilities, and their families, by raising the standard for quality programs, services and advocacy." (Dept. Ex. #1, p. 14)
4. The bylaws state the applicant's purposes as follows:

The purposes for which the Corporation is formed are: (a) to promote training, education, habilitation and rehabilitation of persons with cerebral palsy and other disabilities and their families; (b) to promote better and more adequate techniques and facilities for the diagnosis and treatment of persons with cerebral palsy and other disabilities; (c) to promote the employment of

persons with cerebral and other disabilities; (d) to further public education/information concerning all aspects of cerebral palsy and other disabilities; (e) to coordinate the programs for persons with cerebral palsy and other disabilities; (f) to cooperate with other affiliates in directing the mission and services of United Cerebral Palsy Association, Inc. in providing services for persons with cerebral palsy and other disabilities; (g) to solicit, collect and otherwise raise funds and means for the above purposes. (Dept. Ex. #1, p. 14)

5. On January 5, 2007, the applicant received property located at 1307 N. Sixth Street in Springfield as a donation. (Dept. Ex. #1, pp. 6-8)
6. At the time the applicant acquired the property, a small two-story apartment building was located on the parcel. The building was in deteriorated condition. (Dept. Ex. #1; App. Ex. C)
7. The applicant acquired the property for the purpose of providing housing for people with disabilities. (Dept. Ex. #1, p. 10)
8. On December 10, 2007, Tyson and Billy Architects, P. C. provided the applicant with plans for a proposed three story, eight unit apartment building to be built on the property. (App. Ex. D)

#### CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and 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. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part 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....

(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 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.

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....35 ILCS 200/15-65(a), (c).

Property may be exempt under subsection (a) if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes.

*Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home, at 156-57.

In Methodist Old Peoples Home, *supra*, the Supreme Court provided guidelines for determining whether property meets the constitutional standards for charitable use. The guidelines are as follows: (1) whether the organization's gift benefits an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders and earns no profits or dividends; (3) whether the organization's funds are derived mainly from public and private charity; (4) whether charity is dispensed to all who need and apply for it and without obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; (5) whether the organization does not provide gain or profit in a private sense to any person connected with it; and (6) whether the primary purpose for which the property is used and not any secondary or incidental purpose is charitable. *Id.* at 156-57. In Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273 (2004), the Supreme Court indicated that these guidelines must be considered in addition to determining whether the applicant meets the requirements under subsection (c) of section 15-65. *Id.* at 290-291. The guidelines are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2<sup>nd</sup> Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by

clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

UCP argues that during 2007 the property was being prepared for the charitable use of providing housing for people with disabilities. UCP indicated it has a property tax exemption for a group home that it operates on a different parcel (Tr. p. 20), and on the parcel at issue UCP intends to provide section 811 housing that complies with the requirements of the U.S. Department of Housing and Urban Development (“HUD”).

In Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2<sup>nd</sup> Dist. 1987), the court addressed the issue of whether the applicant’s activities on the property in question constituted development and adaptation for charitable use. The court stated that the applicant in that case began to carry out its intentions to use the property for exempt purposes as soon as it purchased the property. The court found that the applicant proceeded quickly through the planning and design stages, began physical adaptation of the property through construction and landscaping, and expended large sums of money in the process. The court concluded that the facts in that case constituted actual adaptation and development for an exempt use. *Id.* at 586.

In the present case, UCP contends that after it received the donated property, it had contractors look at it to determine whether it could be rehabilitated to make it accessible for people with disabilities. (Tr. p. 7) Around the same time that the contractors were reviewing the property, UCP indicated it received a letter from the City of Springfield listing numerous code violations that needed to be remedied immediately.

*Id.* After UCP received bids regarding the cost of renovating the property, the housing board determined that it was not feasible to renovate it. *Id.*

UCP then contracted with a company to demolish the building, which it claims was done in July 2007 at a cost of \$14,000. (Tr. p. 8) UCP contends that it applied to have the house torn down in February, but because of a storm that had taken down power lines and occupied the power company, UCP had to wait for the utilities to be disconnected, which was done in June. (Tr. p. 14) The property was not used while the house remained on it. (Tr. p. 15)

UCP contends that through the demolition process, UCP had to ensure that the property complied with HUD requirements for disabled housing. For example, the basement had to be completely pulled out and an environmental site assessment was necessary. (Tr. pp. 8-9) HUD receives applications for section 811 funds in May of each year, and UCP contends that it could not submit the HUD application until the building was torn down and the property was in compliance with HUD guidelines. (Tr. pp. 12, 15) Therefore, UCP could not apply for the HUD grant in May 2007 and expected to apply in May 2008. UCP asserts that the architect measured the lot sometime in the summer and then made several drawings. (Tr. pp. 16-17) The architect's completed site plan will be submitted with the HUD application. UCP also claims it had meetings with the City of Springfield to make sure it met the city's requirements. (Tr. pp. 13, 17)

In addition, UCP contends that after the house was torn down in July, UCP hired a maintenance contractor to fill in the basement, grade the lot, and seed it. Another company maintained the property by keeping it clean (i.e., picking up trash and limbs). (Tr. pp. 15-16)

As previously mentioned, the party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption. See City of Chicago, supra. Unfortunately, the testimony alone in this case is not sufficient to meet the clear and convincing standard. The only documentary evidence that UCP provided to substantiate what actually took place in connection with the property after January 5, 2007 was the architect's plans dated December 10, 2007. The financial statements that were provided do not indicate exactly what expenses were incurred during 2007 regarding this property. UCP did not provide documents such as invoices, receipts, letters, permits, applications, minutes, or contracts to verify things such as the bids to rehabilitate the property, the board's resolution to demolish the property, the demolition expense, when the demolition took place, the requirements of the city, the maintenance expenses, what was done to maintain the property, or the amount of work done by the architect. Although documents are not necessary to verify every single activity that took place, some substantiation is necessary to verify the activity that took place between the date the property was received, January 5, 2007, and the date of the architect's report, December 10, 2007. Because UCP did not substantiate its oral evidence, it failed to meet its legal burden in this cause. Therefore, the Department's determination must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the exemption for the year 2007 be denied.

Linda Olivero  
Administrative Law Judge

Enter: July 3, 2008

