

PT 09-9
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

MACON RESOURCES, INC.

Applicant

Docket # 07-PT-0020
PIN 07-07-36-351-008
Tax Year 2006

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Todd R. Wilkinson of McCarthy, Rowden & Baker for Macon Resources, Inc.

Synopsis:

Macon Resources, Inc. (“applicant” or “MRI”) filed an application for a property tax exemption for the year 2006 for a parcel of property located in Macon County. MRI uses the property as a pet shelter and employs developmentally disabled people to work there. MRI contends that the property is owned by a charitable organization and used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Macon County Board of Review (“County”) recommended that the parcel receive a partial exemption from July 6, 2006 through

December 31, 2006, which is the time period that the applicant owned the property. The Department of Revenue (“Department”) disagreed with the County’s decision and found that the property is neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. MRI is an Illinois not-for-profit corporation. (Dept. Ex. #1, p. 16)
2. MRI’s mission statement, according to its bylaws, provides as follows:

Macon Resources, Inc. (MRI) provides comprehensive habilitative and rehabilitative training programs and support services to individuals (and the family of individuals) who have a developmental disability, mental illness, or other disabling condition. It is the goal of Macon Resources, Inc. to empower the individuals it serves by maximizing their ability to live, work, and attend school in the least restrictive and most normalized, integrated environment possible. Further, Macon Resources, Inc. seeks to enhance each individual’s independence and quality of life. (Dept. Ex. #1, p. 16)
3. MRI’s mission statement, according to its website, is to provide comprehensive services and support, which promote growth, independence and self-worth for children and adults with disabilities. (Dept. Ex. #5C, p. 1; Tr. p. 52)
4. The services for children include an early intervention program and an after school and summer program for children with severe disabilities. For adults, the services include work opportunities and developmental training programs. MRI also has a residential program that provides 24-hour support in homes. (Dept. Ex. #5; Tr. pp. 51-52)

5. In addition to its programs for children and adults, MRI offers “Commercial/Business Services” in order to provide work training opportunities for people with disabilities and to offer products and services for businesses. (Dept. Ex. #5E, p. 1)
6. One of MRI’s services is known as Jan Pro, which provides professional janitorial and lawn care services for businesses and government agencies. It also provides job training for developmentally disabled adults. Other services that MRI provides include packaging, parts assembly, document shredding and recycling. (Dept. Ex. #5C, #5E, pp. 1-2; Tr. pp. 107, 117-118)
7. MRI has a contract with the State of Illinois to manufacture motor vehicle license plates. MRI employs people with disabilities to help with the manufacturing. (Dept. Ex. #5D; App. Ex. #1, p. 13; Tr. p. 53)
8. MRI operates Macon Ice Cream, which is a retail enterprise that sells homemade ice cream and sandwiches. It is also used for job training for people with disabilities. (Dept. Ex. #5B; Tr. pp. 71, 101-103)
9. Blue Tower Training Center is program within MRI that provides training, keynote speakers, and consultations throughout the country. MRI receives fees for these services. (Dept. Ex. #5F; Tr. pp. 111-114)
10. On July 1, 2005, MRI acquired another program known as the Homeward Bound Pet Shelter (“Homeward Bound” or “HBPS”). The cost of acquiring Homeward Bound was \$27,509, which was the amount of the liabilities that MRI assumed. (Dept. Ex. #1, pp. 4; App. Ex. #1, p. 14)

11. Homeward Bound is located at 1720 Huston Drive in Decatur, Illinois, which is the property at issue in this case. MRI paid rent for the use of this property until it purchased the property on July 6, 2006. (Dept. Ex. #1, pp. 4, 7-8; App. Ex. #1, pp. 14, 20)
12. Prior to its acquisition, Homeward Bound was experiencing financial difficulties; MRI acquired the shelter in order to continue the animal rescue services and provide job training for people with disabilities. (App. Ex. #5, p. 6; Tr. pp. 9-10, 54)
13. Homeward Bound's mission statement provides as follows:

The mission of Homeward Bound Pet Shelter is to shelter and rehabilitate relinquished cats, kittens, dogs, and puppies until they can be permanently adopted into loving homes. Homeward Bound has operated as a no-kill, not-for-profit organization since April 2002. (Dept. Ex. #5A, p. 2)
14. The Homeward Bound shelter accepts animals from individuals who can no longer care for them, and it also accepts animals from animal control facilities in other counties if it has space for them. (Dept. Ex. #5A, p. 2; Tr. pp. 9, 13-14)
15. The Homeward Bound shelter works with local veterinarians to bring the animals current on all of their required veterinary care such as vaccinations. The animals are spayed or neutered and micro-chipped in order to track them if they get away from their adoptive owner. (Dept. Ex. #5A, p. 3; Tr. pp. 9, 14, 22)
16. Anyone who wants to adopt a pet must complete an Adoption Application Form, which includes providing three personal references and a veterinary reference. (Dept. Ex. #5A, p. 6; App. Ex. #6, p. 2; Tr. pp. 16-17)

17. If the potential adoptive owner rents his or her home, Homeward Bound requires permission from the landlord before the adoption will be allowed. (App. Ex. #6, p. 3; Tr. p. 17)
18. The Adoption Application Form requires the person to answer yes or no to the following question: “Do you understand that HBPS has the right to **approve or deny** this adoption application for **any reason** as our number one concern is the welfare of the animal.” (emphasis in original) (App. Ex. #6, p. 2)
19. During 2006, the fee for adopting a cat was \$100. The fee for adopting a mix-breed dog was \$125; for pure breed dogs, the fee was \$150. (Dept. Ex. #2, p. 1; Tr. p. 15)
20. During 2006, if a person adopted a senior animal or if a senior citizen wanted to adopt an animal, the fee was \$75. (Dept. Ex. #1, p. 15; Tr. pp. 15-16, 27)
21. During 2006, there were a total of 155 cat adoptions. Each adopter paid \$100 for a total of \$15,500 in fees collected for cats. (App. Ex. #4)
22. During 2006, there were a total of 224 dog adoptions. Three adopters paid \$75, and the remaining adopters paid either \$125 or \$150 for a total of \$29,700 in fees collected for dogs. (App. Ex. #4)
23. The Homeward Bound shelter does not waive or reduce the adoption fees for those who are unable to pay. (Dept. Ex. #2, p. 1; Tr. pp. 27, 141)
24. At the time that the Adoption Application Form is completed, the potential adopter must pay a \$50 “hold fee” to hold the pet while the application is approved. The \$50 hold fee is applied toward the adoption fee if the application is approved. It is refunded if the application is denied. (App. Ex. #6, p. 2)

25. Once an application is approved, the adopter must sign an Adoption Contract wherein the adopter agrees to have the pet examined by a licensed veterinarian within 5 days of placement at the adopter's own expense. The following provisions are also included in the contract:

If, during this initial exam, it is determined the pet has a disease requiring treatment, the adopter may elect to treat the condition (at their own expense) or return the pet (with the veterinarian's statement) immediately to HBPS. If the pet is returned, the adopter will be granted 30 days to adopt another pet. If no other pet is chosen within the allotted timeframe **the adoption fee is forfeited. In no case will the fee be refunded.**

* * *

The adopter agrees that the HBPS may repossess the animal upon evidence of neglect and/or abuse, or any breach of any part of this agreement, **at no expense to HBPS, and with no refund of any monies to the adopter.**

* * *

If the adopted pet is returned to HBPS for any reason, **the adoption fee will not be refunded and a relinquishment fee of \$25 will be charged.**

* * *

Should Homeward Bound Pet Shelter need to seek legal action against the Adopter for any violations of this Adoption Contract, the Adopter hereby agrees that **they will assume any and all attorney costs, court fees, and any other legal fees** incurred in the process of enforcing this contract, or repossessing the pet. (emphasis added) (App. Ex. #6, p. 4; Tr. pp. 20-21)

26. The contract also includes the following provision:

Animals need time to adjust to new environments. For that reason, the adopter agrees to keep said animal for a minimum of 30 days. Should the adopter wish to return the animal to HBPS at any time after 30 days, HBPS agrees to accept the animal only if space is available and only after the animal has completed a positive temperament evaluation and a veterinarian statement showing

proof that the animal is healthy and current on all vaccinations and preventative treatments is [sic] provided. HBPS reserves the right to refuse any animal for any reason. (App. Ex. #6, p. 4)

27. MRI employs eight adults with disabilities to work at the shelter. Each day two of them work there with a job coach, and they rotate the days that they work. The work they do includes janitorial work, cleaning the kennels, and grooming the animals. (Dept. Ex. #1, p. 14; Tr. pp. 10-11, 22, 59-60)

28. MRI's audited financial statements for the fiscal years ending June 30, 2006 and 2007, which includes Homeward Bound, show the following as revenue and expenses:

Revenue, Gains, and Other Support	<u>2006</u>	<u>2007</u>
Contributions	\$ 107,549	98,100
Grants ¹	959,980	918,466
Fees	4,929,812	4,938,671
Contract Income	3,765,034	6,290,565
Investment Return	202,774	502,726
Other	<u>84,250</u>	<u>48,405</u>
Total revenue, gains, and other support	<u>10,049,399</u>	<u>12,796,933</u>
Expenses		
Staff salaries	4,591,469	4,694,608
Staff benefits and payroll taxes	1,725,880	1,728,315
Client payroll ²	362,442	508,439
Production materials	1,400,542	2,358,650
Other direct supplies	204,340	289,232
Consumable supplies	280,526	292,135
Occupancy	608,178	738,568
Transportation	279,430	271,890
Rent	153,432	125,442
Depreciation	365,020	369,297
Interest	233	-
Professional fees	147,914	120,688

¹ MRI did not provide evidence substantiating or explaining this income.

² Clients are individuals with disabilities. (Tr. pp. 70-71)

Service Consultants	217,156	194,323
Miscellaneous	<u>266,862</u>	<u>235,624</u>
Total Expenses	<u>10,603,424</u>	<u>11,927,211</u>
Change in Unrestricted Net Assets	(554,025)	869,722

(App. Ex. #2, p. 5)

29. The revenue that MRI received from the contract with the State of Illinois to manufacture license plates was \$3,162,755 and \$5,638,259 for the years ending June 30, 2006 and 2007, respectively. (App. Ex. #2, p. 12)

30. The unaudited income and expense statements specifically for Homeward Bound for the fiscal years ending June 30, 2006 and 2007 show the following:

Revenue	<u>2006</u>	<u>2007</u>
Adoption fees	\$ 43,816	36,814
Fundraising	81,208	55,158
Miscellaneous	<u>397</u>	<u>7,312</u>
Total revenue	<u>125,421</u>	<u>99,284</u>
Expenses		
Administrative services	31,104	17,509
Staff salaries	22,343	31,928
Benefits	19,245	16,605
Client wages	12,209	14,576
Program supplies	9,348	7,014
Medical services/Vaccines	2,943	6,216
Occupancy ³	19,654	18,995
Transportation	2,495	2,548
Lease/Rent	21,718	-
Depreciation	10,570	17,744
Telephone	2,522	2,748
Liability insurance	1,497	480
Printing and artwork	398	471
Membership dues/fees ⁴	-	121
Interoffice contracts ⁵	2,582	1,085

³ The applicant was unable to explain the expense for occupancy. (Tr. pp. 127-128, 131-133)

⁴ This expense was for dues for the American Humane Association. (App. Ex. #1, p. 17)

Interoffice services	81	397
Advertising	-	185
Service consultants (Veterinarian charges)	19,382	15,814
Audit, legal & other	9,702	17,253
Staff training and recruiting	2,364	2,148
Fundraising	10,492	5,106
Management and general	<u>12,858</u>	<u>15,627</u>
Total Expenses	<u>213,507</u>	<u>194,570</u>
Net revenue over expenses	(88,086)	(95,286)

(App. Ex. #1, pp. 16-21)

31. The applicant has no capital, capital stock, or shareholders and is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS.⁶ (Dept. Ex. #1, pp. 31-33)

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:

⁵ This expense was for janitorial work performed by Jan Pro. (App. Ex. #1, p. 17)

⁶ The record includes a document indicating the applicant is exempt from retailers' occupation taxes and use taxes pursuant to a determination made by the Department on May 17, 1996. (Dept. Ex. #1, p. 27) This document indicates this exemption expired on June 1, 2001 unless an application was made for renewal. *Id.* The record does not indicate whether this exemption was renewed.

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; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *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. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill. App. 3d 658, 661 (1st Dist. 1982). Whether an institution has been

organized and is operating exclusively for an exempt purpose is determined from its charter, bylaws and the actual facts relating to its method of operation. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

In Methodist Old Peoples Home, *supra*, the Supreme Court provided the following guidelines for determining charitable ownership and use: (1) whether the benefits derived are for 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, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 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 15-65.⁷ *Id.* at 290-291. The guidelines are to be balanced with an overall focus on whether and how the organization and use of the

⁷ The property at issue in this case would not be exempt under subsection (c) because MRI's bylaws do not provide for a waiver or reduction, based on an individual's ability to pay, of any of its fees.

property serve the public interest and lessen the State's burden. See Du Page County Board of Review, at 468-469.

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 heavy 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 (2nd Dist. 1992).

MRI argues that its property meets the requirements for the exemption. MRI contends that it is unlike a typical business because it generates money in order to invest in its charitable services. MRI asserts that the services it provides to disabled adults are not part of a normal business and are not a normal business expense. MRI claims that its policy of not waiving adoption fees is necessary because if a person is able to pay the fee, then he or she is more likely to be able to afford the cost to care for the animal after it is adopted.

The Department argues that MRI and the use of the property do not meet the requirements for charitable ownership and use. The Department contends that the majority of MRI's income is from fees for services, and the primary use of the property is to generate revenue. The Department claims that any benefit to disabled workers is secondary to the primary use. The Department notes that in Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336 (2nd Dist. 1988), the court found that the fact that a thrift store was used to generate revenue for charitable purposes did not

remove the fact that the property was primarily used with a view to profit. In addition, the Department states that MRI does not waive any of its fees, it charges fees for returning animals, and it does not refund any of the fees. Furthermore, MRI did not show that its fees are less than a retail pet store, and MRI can deny anyone a pet for any reason. The Department also asserts that MRI's legal documents do not show that its mission includes charity.

The Department's arguments are persuasive. As the owner of the property, MRI does not derive its funds mainly from public or private charity; the majority of its income is derived from fees or contract income.⁸ MRI operates several programs that it refers to as "Commercial/Business Services" in order to generate income to fund its operations. Although MRI provides work opportunities for people with disabilities, its primary source of funding is from fees that it collects for either its adoptions, items that it sells, or the various services that it renders.

Even though MRI generates income in order to reinvest in programs that help the developmentally disabled, this does not warrant a finding that the organization is charitable. In Salvation Army, *supra*, the applicant operated a thrift store on the property for the primary purpose of generating income to fund its charitable operations. The court stated that the fact that the income is ultimately used for charitable purposes does not entitle the property to a charitable use exemption; the decisive factor is the use to which the property is devoted, not the use to which the income is devoted. *Id.* at 344.

⁸ As mentioned previously, MRI did not provide evidence substantiating or explaining the income referred to as "Grants." Grant income may be public charity; to determine whether it is, a distinction is made between government contributions (grants) and government fees received pursuant to contracts for services (see e.g., IRS Form 990, Return of Organization Exempt From Income Tax, lines 1(d) and 2). If the income is a government contribution rather than payment for services, it is considered to be public charity.

The use to which the property in the present case is devoted is not primarily for charitable purposes. MRI charges adoption fees, and although the charging of fees does not automatically disqualify the use as charitable, MRI must furnish its services to those who are unable to pay. See Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). MRI does not waive its adoption fees for those who are unable to pay them. Not only does MRI fail to waive fees, its unwritten policy is to not waive fees because it believes that if the adopter cannot afford the adoption fee, then he or she cannot afford the on-going care associated with having a pet. (Tr. pp. 27-28) Notwithstanding MRI's reasons for charging the fees, charity is a gift (Methodist Old Peoples Home, *supra*), and the record does not include an act of charity that was provided on this property during the year in question.

Without evidence of an act of charity, it cannot be found that charity was given to all who needed and applied for it, and the fees that it charges are obstacles in the way of those who need and would avail themselves of any charitable benefits that MRI could offer. MRI admitted that the fees it charges are comparable to those charged by other animal shelters in order for its rates to be competitive and affordable. (Tr. p. 78) MRI did not refund any of the fees that it charged, and it charged an additional fee of \$25 for returning an animal. MRI maintains the right to deny an adoption application for any reason, and it may refuse to take an animal for any reason. These facts do not support a finding that the property is primarily used for charitable purposes.

MRI contends that its primary function is to serve disabled people, and it would not continue to operate the shelter if it was not used as a job training program for adults with disabilities. (Tr. p. 94) Providing job training for disabled adults is a noble cause,

but that does not necessarily entitle the property to an exemption. See Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956). The primary use of the property in this case is to operate an animal shelter, and the evidence falls short of showing clearly and convincingly that the use is primarily for charitable purposes. Exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. Chicago Patrolmen's Association, *supra*. Because the evidence raises doubts that MRI and the use of the property meet most of the criteria of Methodist Old Peoples Home, *supra*, the exemption must be denied.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: June 10, 2009