PT 05-11
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

WEST SIDE PLANNING & DEVELOPMENT CORP. Applicant v. **THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS**	Docket No. 03-PT-0035 Rev. Doc. No. 01-16-3112 PIN: 16-09-427-030, et al. Charles E. McClellan Administrative Law Judge

RECOMMENDATION FOR DECISION

Appearances: Christopher M. Martin, of Flamm & Teibloom, Ltd. for Westside Planning Development Corp.("Applicant"); Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue ("Department").

Synopsis:

This matter involves two issues: First, whether applicant qualifies as an "institution of public charity within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-3 *et seq.* ("Code"); and second, whether certain real estate parcels ("subject property") was "exclusively used for charitable or beneficent purposes …," as required by Section 15-65(a), during any part of the 2001 assessment year. The parcels at issue are located in the Austin/Garfield Park area on the west side of Chicago, Cook County Illinois, at 4920 West Madison Street. The parcels are identified by the following property index ("PIN") numbers:

16-09-427-030
16-09-427-025
16-09-427-026
16-09-427-029
16-09-427-035

Applicant filed a Real Estate Tax Exemption Complaint for the 2001 tax year with the Cook County Board of Review ("Board") on or about April 4, 2002. The Board reviewed the Application and recommended to the Illinois Department of Revenue that the requested exemption be granted. The Department, however, denied the exemption by means of a determination, dated March 27, 2003, which found that the subject property was not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing held on September 28, 2004. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be reversed and that the exemption application be granted.

Findings of Fact:

1. Applicant was incorporated in Illinois on March 16, 1994 as a non-profit corporation. Tr. p. 74, Applicant Ex. No. 1.
2. The by-laws of the corporation allow it to accept gifts and bequests and prohibit it from issuing shares of stock, paying dividends or distributing profits to any members, directors, officers or other private individuals. Applicant Ex. No. 2.
3. Applicant was organized to provide culture and social programming for youth and to do economic development in the Garfield Park/South Austin area of the west side of Chicago. Tr. pp. 75-76, Applicant Ex. No. 2.

4. In August of 1994, the Internal Revenue Service determined that Applicant was an organization described in IRC § 501(c)(3), 26 USC § 501(c)(3), that is exempt from federal income tax, and that it is qualified to accept deductible charitable contributions from the general public. Tr. p. 91, Applicant Ex. No. 3.

5. Wilner Jackson ("Jackson") has held the position of Executive Director of Applicant since it was founded. Tr. p. 74.

6. Prior to the incorporation of Applicant, Jackson was working for the local alderman in the Garfield Park/South Austin area. Tr. p. 76.

7. The Garfield Park/South Austin area is a depressed area on the west side of Chicago that is primarily residential but contains a large number of vacant lots and abandoned buildings and is within the boundaries of an Empowerment Zone. Tr. pp. 10, 77-78.

8. The Empowerment Zone Program is a program created by the federal government during the Clinton administration to provide funding for economic development in depressed areas of various cities including Chicago. Tr. p. 10.

9. In October or November of 1994, after Applicant was formed, Jackson's employer informed her of a meeting at Malcom X College for organizations that wanted to develop projects in depressed areas. Nicholas Wilder ("Wilder"), a real estate consultant hired by the Department of Planning and Development of the City of Chicago made a presentation at the meeting. Tr. pp. 9-11.

10. Jackson and members of Applicant's advisory board, with help from the office of Congresswoman Cardiss Collins, put together a day care center proposal that it

presented to the City of Chicago and obtained a startup grant of $25,000. Tr. pp. 79-80.

11. In 1995, after Jackson and her advisory board had decided on starting a children's day care center, Jackson became aware of the availability of the property located at 4920 West Madison Street and began talking to the owner about the possibility of acquiring the property. Tr. p. 78.

12. Jackson then had discussions with Wilder about starting a children's day care center, and Jackson, obtained the donated services of Bob Brandwein, a consultant in an organization that helps groups prepare applications for the federal Office of Community Service to obtain financial grants. Tr. pp. 13-19 .

13. On October 14, 1997, Applicant purchased the building located at 4920 West Madison Street with funds from a $300,000 grant Applicant obtained through the Office of Community Service, of the Department of Health and Human Services. Tr. pp. 80-83, Applicant Ex. No. 8.

14. On October 6, 2000, the City of Chicago transferred the adjacent lots that are involved in this application to Applicant by Quitclaim deed. Tr. p. 86, *Id.*

15. The adjacent lots are used exclusively for parking at the day care center and for a playground for the children enrolled in the day care center. *Id.*

16. When Applicant acquired the building at 4920 West Madison, it was rat infested, it required environmental remediation because of buried storage tanks, and required substantial redevelopment. Tr. p. 83.

17. Before the City of Chicago would approve the Enterprise Zone loan, Applicant had to get a tenant that was a day car provider approved by the City, so Applicant began

negotiations with the Lutheran Family Mission which is an approved day care provider and eventually it leased the premises to the Lutheran Family Mission. Tr. pp. 87-90, Applicant Group Ex. No. 10.

18. To obtain Empowerment Zone funds to rehabilitate the property, Applicant needed a development plan to show to the financiers. Tr. p. 94.

19. Applicant engaged the architectural firm of McBride & Kelly, Ltd. to prepare a plan for redevelopment of the building. *Id.*, Applicant Ex. No. 5.

20. The plan shows that the subject property is located in the West Cluster of Chicago's Empowerment Zone. The building is a three-story 24,300 sq. ft. building with a 150' x 100' vacant lot to the west. The ground floor has parking and drop-off areas, a reception area, four classrooms for younger children, secure outdoor and indoor play space and a kitchen. The second floor has five classrooms for older children, offices and a conference room. The third floor has two classrooms for older children, a meeting room with a pantry, and an office for Applicant. Tr. pp. 53-57, 94-97, Applicant Exs. No. 5, 6, 10.

21. Using the architectural plan to redevelop the subject property, Applicant applied for a $1.5 million Empowerment Zone loan, which it received in 1999 with the help of the Illinois State Treasurer's office and the Austin Bank, a local bank in the Austin area. Tr. pp. 84-85.

22. Using loan funds, the rehabilitation of the building began in the year 2000 and was finally completed in June 2001. Tr. pp. 60-61 117-118.

23. Through the 12 months ending December 31, 2001, Applicant received grant funds in excess of expenses of $1,687,395, funds from the Austin Bank loan of

$1,200,000, and funds from a City of Chicago loan of $326,166. Applicant Ex. No. 7.

24. Through the same period, it disbursed $2,802,383 for construction, and various other expenditures primarily in connection with the acquisition and development of the West Madison property for total disbursements of $3,217,035. *Id.*

25. Lutheran Family Mission is a non-profit unit of the Evangelical Lutheran Church of America. Its mission is to help under-privileged, low income or distressed families find childcare for their children so they can go to work and become productive members of society. Tr. pp. 40-41.

26. In the year 2000, Applicant occupied the building, and Lutheran Family Mission began paying teachers while they were receiving the special training required. All of the teachers have teaching certificates Tr. pp. 46, 50-51.

27. At the beginning of the year 2001, the rehabilitation of the building was substantially completed and Lutheran Family Mission moved in to start performing its requirements to obtain the day care center licensing around March of 2001. Tr. p. 103.

28. During June 2001, the City of Chicago, State of Illinois and Fire officials inspected the building. Tr. p. 60.

29. Beginning in 2001, under the terms of a 15-year lease of the subject property between Lutheran Family Mission and Applicant, Lutheran Family Mission began paying rent to Applicant for which it is reimbursed by the City of Chicago under its Head start program. Tr. pp. 52, 94-97, Applicant Ex. No. 5, 10.

30. The amount of rent of approximately $20,000 per month was determined primarily by the amount of debt service required by the mortgage Applicant obtained from the Austin Bank to purchase the property on West Madison Street. Tr. p. 89. Applicant Ex. No. 10.

31. Applicant's only source of income during the year 2001 was the rent it received from Lutheran Family Mission, which Lutheran Family Mission receives from the City of Chicago each month upon the submission of a voucher. Tr. pp. 118, 121.

32. During the year 2001, using funds from government grants, Applicant paid Jackson a salary of $2,000 per month, consultant and legal fees, fees for a survey and appraisal, insurance, and utilities and other administrative expenses for a total operating expense of $112,605. Tr. p. 101, Applicant Ex. No. 7.

33. Currently, Jackson is paid a salary of $1,000 per month and is Applicant's only paid employee. Tr. pp. 106-108.

34. The childcare facility Lutheran Family Mission operates at Applicant's site resulted from a joint collaboration with the City of Chicago and Applicant to satisfy a need in the Austin/Garfield Park area. Tr. p. 41.

35. It provides childcare in a wide variety of programs (13 or 14) established by the Headstart guidelines that involve families that have experienced HIV problems, some type of mental or physical child or other family abuse, or low income. Tr. pp. 42-44.

36. Enrollment of children in the program begins with a family application interview to determine the appropriate program and the ability of the family, if any, to pay for the childcare service. The less money the family makes, the less they pay and some

pay nothing. The ability to pay or not is determined under federal Headstart guidelines. *Id.*

37. No child is turned away because of the inability of the family to pay. *Id.*

38. The only reason a child would be turned away is if there is no room for him or her at the West Madison site in which case the child would be referred to a program elsewhere. *Id.*

39. There are about 170 children enrolled in the facility, which is its full capacity. Close to 100% of the families with children enrolled in the facility receive some type of financial aid. Tr. pp. 46, 66.

40. Lutheran Family Mission has 52 employees at the West Madison Street location, 40 of which work directly with the children. It administers about 600 similar programs from that location. *Id.*

41. The per-child cost of operating the Madison Street facility varies, depending on the family situation, between $20 to $33 per day with the average being about $25. The Headstart program reimburses Lutheran Family Mission through the City of Chicago for the difference between the cost per child and the co-payment received, if any. Lutheran Family Mission makes no profit from the childcare operation. Tr. pp. 47-48.

42. The funds Lutheran Family Mission receives to operate the Childcare Center from co-payments (5% to 7%), donations (10%), Headstart grants (30%), and the balance from grants from the Chicago Public Schools, Illinois State Board of Education, Day Care Action council, the Illinois Department of Human Services, and the Department of Children and Family Services. Tr. pp. 67-70.

43. The Chicago Police Department is allowed to use space on the third floor of the building for its peer jury program. This is a program operated by the Chicago Police Department that involves having children who have gotten in trouble with the police to come with their parents and have their cases judged by a jury of their peers. It operates every fourth Saturday and is not charged for its use of the space. Tr. pp. 96-97.

44. From time to time community groups are allowed to use the facilities for their meetings on Saturdays when the Daycare Center is not operating. They are not charged for this use. *Id.*

Conclusions of Law:

The testimony and exhibits in the record establish that Applicant is entitled to an exemption from 2001 real estate taxes under Section 15-65(a) of the Property Tax Code 35 ILCS 200/1-1 *et seq*. Therefore, for the reasons set forth below, I recommend that the Department's determination that the subject property does not qualify for exemption under Section 15-65(a) be reversed, and that the decision of the County Board of Review granting the application be affirmed.

<u>Constitutional and Statutory Considerations</u>

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.

Acting under the authority granted by the Constitution, the General Assembly enacted a statute exempting certain charitable organizations which, in relevant part, provides as follows:

> § 15-65. Charitable purposes. 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, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.
>
> * * *
>
> 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. 35 ILCS 200/15/65.

In summary, in the context of this case, the statute requires that (1) the property be owned by an entity that qualifies as an "institution of public charity;" and, (2) the property be actually and exclusively used for charitable purposes." *Id*; Methodist *Old People's Home v. Korzen*, 39 Ill.2d 149, 156, 157, 233 N.E.2d 537 (1968).

<u>Exempt Ownership and Exempt Use</u>

In this case the Department's denial of exemption was predicated on lack of exempt ownership and lack of exempt use. The Supreme Court of Illinois has set forth six

requirements for ownership and use that an organization must satisfy to be entitled to exemption. These requirements are as follows:

1. The organization must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or by reducing the burdens of government in some other way.
2. The organization cannot have capital stock or shareholders, earn any profits, or pay dividends.
3. The organization must derive its funds mainly from public and private charity and hold them in trust for the objects and purposes expressed in its charter.
4. The organization must dispense charity to all who need and apply for it.
5. The organization must not provide a profit to any person connected to it.
6. The organization must use its facilities exclusively for the charitable purposes for which it was formed which means that it use must be primarily for that purpose. *Eden Retirement Center, Inc. v. Dept. of Revenue*, 2004 WL 2745641 (December 2, 2004), *Methodist Old People's Home*, 39 Ill.2d at 157.

These factors are not to be applied mechanically or technically. *DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, *Rogers Park Post No. 108 v. Brenza*, 8 Ill.2d 286 (1956); *Morton Temple Association v. Department of Revenue*, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, *DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, *supra*; *Randolph Street Gallery v. Department of Revenue*, 315 Ill. App.3d 1060 (1st Dist. 2000)).

In this case, the Articles of Incorporation state that Applicant is organized "To revitalize community housing stock, *i.e.*, rehab. To beautify local community neighborhoods. To provide educational, religious, or scientific purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code." These purposes would benefit an indefinite number of people in the Austin/Garfield Park area, which is a disadvantaged area in the City of Chicago. It is prohibited by its by-laws from issuing capital stock, earning profits and paying dividends, and it has not done so. It leases the premises to tax-exempt charity that is qualified to operate childcare centers. The lessee began operating a childcare center in the subject premises early in the year 2001.

Applicant's only source of income is the rent it receives from the Lutheran Family Mission, its lessee, which receives it from the City of Chicago. The lessee receives its income from co-payments made by parents who take advantage of its services and who can afford co-payments and from various public entities. No one is making a profit from the operation of the facility. Applicant's operations are consistent with the purposes of its organization as stated in its articles of incorporation.

The lessee accepts all children whose parents apply for childcare at the subject facility whether they can co-pay or not, as long as there is room for them. If there is no room, they are referred to similar facilities elsewhere. The subject property is used almost exclusively for the childcare operation. In this way, the childcare center benefits an indefinite number of people in the community by enabling them to have their children properly taken care of while they are gainfully employed. The only other uses are by the Chicago Police Department and community organizations, for which Applicant receives no

compensation. The use of the subject property by the Applicant indicates that Applicant has satisfied the six tests set forth in *Methodist Old People's Home, supra.*

For these reasons, I recommend that the Department's determination be reversed and that the exemption application be granted.

Date: 1/19/2005

Charles E. McClellan
Administrative Law Judge