

PT 05-2
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)	
)	Docket No. 02-PT-0039
v.)	
)	Tax Year 2001
HOPEDALE MEDICAL FOUNDATION)	
)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: George Logan, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Thomas M. Atherton of Bose, McKinney & Evans for Hopedale Medical Foundation.

Synopsis:

Hopedale Medical Foundation (“applicant”) filed applications for property tax exemptions for 13 parcels of property located in Tazewell County for the year 2001. The Department of Revenue (“Department”) denied the exemptions, and the applicant timely protested the denials. The applicant alleges that the property qualifies for an exemption on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The parties stipulated that the applicant owns the property in question. The parties also reached a stipulation concerning some of the guidelines set

forth in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139 (1968) for determining whether an applicant is a charitable organization and whether the property is used for charitable purposes. The parties agree that the applicant benefits “an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government.” (Tr. p. 9) The parties also agree that the applicant “has no capital, capital stock or shareholders and earns no profits or dividends.” Id. The parties agree that the applicant does not “derive its funds mainly from public and private charity and hold them in trust for the objects and purposes expressed in its charter.” Id. After reviewing the record, it is recommended that the exemption be partially granted.

FINDINGS OF FACT:

1. The applicant is a not-for-profit corporation that was incorporated in Illinois on June 7, 1961. The applicant is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal Revenue Service in January 1964. (Applicant’s Ex. #5, 6)

2. According to the applicant’s Articles of Incorporation, the purposes for which the corporation is organized include, in relevant part, the following:

“To establish and maintain a medical complex which shall include an acute-care hospital and health care facility (hereinafter referred to collectively as ‘Complex’) * * * to treat sick and disabled persons without distinction as to race, creed, sex, age, national origin or disability;

To carry on and provide such educational programs relating to the care and treatment of the sick, aged, retired, disabled and injured or the promotion of health as in the opinion of the [Hopedale Medical] Foundation may be justified by its facilities, personnel, funds and other factors. * * *;

To promote and carry on such scientific research related to the care, treatment of the sick and injured as in the opinion of the [Hopedale Medical] Foundation is related to the efficient operation of the Complex;

To participate * * * in any activity designed to promote the general health, rehabilitation and social needs of the people in the civic community and surrounding geographic area served by the Complex;

To exclusively achieve charitable and scientific purposes, * * *;

To charge and receive compensation for hospitalization, rehabilitation, elderly housing and nursing home care and all things pertaining thereto, but to the extent of the facilities and resources (physical and financial) of said facilities, to make no charge to the indigents and those unable to pay therefore; and to make only partial charge to those unable to pay more than partially therefore; * * *” (Applicant’s Ex. #5)

3. The applicant’s by-laws provide that the applicant “shall maintain a written policy to waive or reduce charges to qualified persons served who are unable to pay due to financial hardship. Said policy will be implemented without discrimination of any type and records maintained by [the applicant].” The applicant’s current written charitable policy was adopted in 2000. (Applicant’s Ex. #5, #7)

4. The following property is the property for which the applicant has requested an exemption:

- Hillman Pavilion Nursing Home (parcel numbers 18-18-26-111-009, 18-18-26-111-010, and 18-18-26-111-014)
- Hospital and A-wing of Nursing Home (parcel number 18-18-26-120-001)
- The Commons West (assisted living facility) (parcel number 18-18-26-129-013)
- The Commons East (independent living facility) (parcel numbers 18-18-26-128-003, 18-26-128-004, 18-18-26-129-001)
- The Roy Imig Administration Building (parcel number 18-18-26-111-011)

- Parking lot for the Hillman Pavilion and Wellness center¹ (parcel number 18-18-26-111-013)
- Parking lot for hospital emergency room (parcel number 18-18-26-129-014)
- Storage building (used for hospital storage) and parking lot for Commons East (parcel number 18-18-26-129-012)
- Parking lot for the Administration building (parcel number 18-18-26-111-008) (Applicant's Ex. #1, 2, 3)

5. The Hillman Pavilion Nursing Home provides intermediate and skilled care to its residents. Since February 2001, it has not been Medicaid certified. (Tr. pp. 15, 82)

6. The entire nursing home, which includes the A-wing (the original portion) and the Hillman Pavilion (the newest portion), has a total of 74 licensed beds. The A-wing is currently servicing 26 beds, and the Hillman Pavilion is currently servicing 26 beds. (Applicant's Ex. #8; Tr. p. 15)

7. The hospital has an emergency room, an intensive care unit, and beds for acutely ill patients. It also has swing beds, which are transitional beds for patients who are not ready to go home but are not ready for a nursing home. The hospital has 34 licensed beds. The applicant accepts both Medicare and Medicaid patients at the hospital. (Tr. pp. 16-17)

8. The applicant has two pharmacies. The retail pharmacy is located in the Medical Arts Building, which is on a parcel that is taxable and is not at issue in this case. The other pharmacy is located in the hospital. The drugs from the hospital pharmacy are used solely in the hospital. (Tr. pp. 35-37)

9. The Commons West is an assisted living facility that has 44 units. The applicant provides services to these residents that include the following: bathing

¹ The Wellness center was under construction during 2001 and is not at issue in this case. (Tr. p. 13)

assistance, medication reminders, emergency call system, and 24-hour staff supervision.
(Applicant's Ex. #8; Tr. p. 19)

10. The Commons East is an independent living facility that has 44 units. The residents of the Commons East do not require all of the services that are provided to the residents of the Commons West. At the Commons East, the applicant prepares the meals for the residents, does their laundry and housekeeping, and provides activities for them. The applicant also provides nighttime security. (Tr. p. 19)

11. The first floor of the Roy Imig Administration Building is used for administrative offices. There is an office for Mark Rossi, who is the chief operating officer and general counsel. There are also offices for the human resources director, information services director, quality improvement director, and accounting division. The basement is used for storage and has a break room. (Tr. pp. 20-23)

12. Approximately 80% of the functions that take place in the administration building concern the hospital. (Tr. p. 149)

13. The storage building is used only for hospital storage. (Tr. pp. 147-148)

14. The only people who use the parking lots are the people who use the applicant's services. (Tr. pp. 141-142)

15. In 2000 there was a corporate reorganization concerning the applicant. The reorganization was done primarily to obtain a Certificate of Need for an MRI machine. The secondary purpose was to obtain property and sales tax exemptions. The reorganization included forming a holding company and removing property that did not meet the applicant's exempt purposes. (Tr. pp. 26-27)

16. In 1955, Dr. Lawrence J. Rossi, Sr. began the process that led to the applicant being organized. He passed away in February 2001. Four of his sons, Lawrence Jr., Alfred, Matthew, and Phillip, are physicians who perform services on the applicant's premises. (Applicant's Ex. #8; Tr. pp. 28-29, 37-39)

17. The Rossi doctors entered into lease agreements with the applicant for the use of its space and for the services provided by the nurses and the employees who bill the patients. The leases also cover a minor amount of supplies. (Applicant's Ex. #19; Tr. pp. 39-40)

18. During 2001, Alfred, Matthew, and Phillip Rossi paid the applicant \$4,200 per month under their lease agreements. Lawrence paid \$700 per month as rent because he does not use the applicant's billing services and does not see patients on the applicant's premises. Alfred, Matthew, and Phillip, according to the leases, provide a minimum of 100 day and week-night coverage as on-call physicians for the emergency room. They also provide a minimum of one weekend per-month on-call coverage. During 2001, their service was valued at \$50 an hour. (Applicant's Ex. #19; Tr. pp. 40-43)

19. The rent that is paid by the Rossi physicians is higher than the rent paid by other non-related professionals who rent from the applicant. (Tr. pp. 53, 58)

20. The lease agreements with Alfred, Matthew and Phillip indicate that the premises being leased are at 107 Tremont Street, known as "Medical Arts Physician Offices." (Applicant's Ex. #19)

21. In addition to the Rossi physicians, the applicant hires temporary physicians to cover the emergency room from noon on Saturdays until 6:00 a.m. the following

Monday. The applicant pays \$75 an hour for those services. (Applicant's Ex. #15; Tr. pp. 43-44)

22. Each lease contains a "rent adjustment" clause that provides that the total cost of operating the building leased by the physicians must not exceed the value of the rent paid and the donated services by the physicians. In the event that this happens, the rent will be increased accordingly. (Applicant's Ex. #19, ¶11.)

23. The Rossi physicians are not employees of the applicant. (Tr. pp. 41-42)

24. The Rossi physicians are compensated in the same way that other non-related physicians at the hospital are compensated. They bill their patients and collect their fees directly from the patients. (Tr. pp. 56-58)

25. During 2001, Mark Rossi's salary was approximately \$118,000. The salary is set by the Board of Directors without any Rossi family members voting on it. (Tr. p. 58)

26. The applicant's auditors have over 30 hospitals as part of their clientele. The auditors performed a compensation survey for the position occupied by Mark Rossi. The auditors found that for eight hospitals in central Illinois with a revenue size similar to that of the applicant's, the 25th percentile of total compensation was approximately \$184,000, and the 75th percentile was approximately \$407,000. (Tr. pp. 114-116)

27. The applicant employs other Rossi family members who are paid market-rate wages. The applicant offers the same discounts on its services to non-related employees as it does to the Rossi family members. (Tr. pp. 151-152)

28. During 2001, Alfred Rossi was the chairman of the Board of Directors and Matthew Rossi was the secretary/treasurer. The other Board members were Neil Alford,

Jr., Tom Hieser, Joe Serangeli, Michael McLaughlin, George Livengood, and Wm. Henry Allen. Alfred and Matthew Rossi do not receive any compensation for their services. (Applicant's Ex. #5A; Tr. p. 47)

29. Alfred Rossi is the CEO of the applicant and spends approximately 5 to 10% of his time performing duties as a CEO. He does not receive a salary for these services. (Tr. pp. 22, 42)

30. The applicant gives an "admissions packet" to all of the hospital's patients, including emergency room patients. At the top of the packet is a letter that states in part as follows: "As part of our charitable mission, if you are interested in a full or partial discount for services at Hopedale Medical Complex, please contact our Patients Accounts Director at extension 4382 for a confidential evaluation or ask the Clerk for a copy of our Charitable Policy." (Applicant's Ex. #8; Tr. pp. 59-60)

31. The applicant has a nursing home brochure that it puts on counters and tables throughout the complex. The brochure states as follows: "Hopedale Nursing Home is owned and operated by the Hopedale Medical Foundation, a not-for-profit organization. As part of our charitable mission, no resident will be denied services based on inability to pay. Contact the director for more information." The same language is included in the brochure for the Hopedale Commons. (Applicant's Ex. #8; Tr. p. 61)

32. At the entrance to the emergency room and several places throughout the emergency room and hospital, the applicant has posted prominent signs that say the following in bold and capital letters: "As part of our charitable mission, no patient will be denied services based solely on inability to pay. If you would like to discuss charitable (free) care, please contact our patient financial services offices at 449-4382 for

a confidential evaluation or ask the clerk for a copy of our policy. For non-emergencies, you may contact us about charity care before services are rendered if you choose to do so.” (Applicant’s Ex. #8; Tr. pp. 62-65)

33. A sign that is similar to the one in the emergency room entrance is posted in the Patient Accounts section of the Administration Building, which is where the patients may pay their bills. (Applicant’s Ex. #8; Tr. p. 66)

34. All of the entrances to the Commons East (independent living facility) and Commons West (assisted living facility) have prominent signs posted that contain the following language in bold and capital letters: “As part of our charitable mission, no applicant or resident will be denied services based solely on inability to pay. If you are interested, please contact the director of Elder Care operations at 449-4298 for information on a confidential evaluation or ask the clerk for a copy of our policy.” (Applicant’s Ex. #8; Tr. pp. 66-67)

35. The applicant’s web-site contains language that is similar to the language on the signs posted at the entrances to the emergency room and Commons. The applicant’s marketing video indicates that its services are available to everyone, regardless of the ability to pay. (Applicant’s Ex. #4, 8; Tr. p. 67)

36. The applicant entered into contractual agreements with Blue Cross, certain commercial insurance carriers, health maintenance organizations and preferred provider organizations whereby the applicant agreed to write-off a portion of its charges for patients who are covered by these organizations. The applicant considers these write-offs to be a discount and not charity care. The applicant attempts to collect the co-pay and

deductible portion from the patient. The applicant treats the accounts for patients covered by Medicare similarly. (Applicant's Ex. #13, Note 12; Tr. pp. 70-73)

37. The applicant accepts whatever payment it receives from Medicaid for patients who are covered by it. The applicant writes-off the difference and does not consider this write-off to be charity. (Tr. p. 73)

38. If a patient who is not covered by insurance, Medicare or Medicaid does not apply for charity and does not pay his bill, the applicant writes-off this amount. The applicant considers this to be a bad debt write-off and not a charitable write-off. (Tr. p. 74)

39. The applicant's reference to "charity care" means write-offs for people who qualify for charity. The distinction between charity care and bad debt is the inability to pay versus the unwillingness of the person to pay their account. If a person wants to apply for charity care, he must contact the administrator or Patient Accounts Department. (Applicant's Ex. #7; Tr. p. 71)

40. In order to qualify for charity, applicants and/or family members, agents or guardians must provide financial information regarding income and/or assets in order to determine the applicant's financial ability to pay. (Applicant's Ex. #7)

41. The applicant's standards for qualifying for charity care are the same for the hospital, nursing home, and Commons. (Applicant's Ex. #7; Tr. p. 92)

42. During 2001, if the patient's household income was less than two times the federal poverty guidelines and the person had few assets, he qualified for charity care. Beginning in 2003, in addition to this policy, if the patient's income is between 200% and

300% of the federal poverty guidelines and he has few assets, he is entitled to a discount on his hospital bill. (Applicant's Ex. #7; Tr. pp. 89-92; 124-127)

43. If a patient is unable to pay his co-pay or deductible portion, the applicant will tell the patient to apply for charity care. (Tr. p. 71)

44. During 2001, the applicant had a total of 949 patients in its hospital of which 610 were covered by Medicare, 48 by Medicaid, 159 by insurance and 132 were "private pay." Approximately 64% of the applicant's patients were covered by Medicare, and 14% were private pay patients. The ratios were similar for outpatient services. The majority of the applications for charity care were from the private pay patients. (Applicant's Ex. #18; Tr. pp. 76-78)

45. During 2001, 617 of the 949 patients in the applicant's hospital were 65 years of age or older. This is approximately 65% of the patients. (Applicant's Ex. #18; Tr. p. 78)

46. During 2001, the applicant provided \$113,374 of charity care to its nursing home residents and \$65,998 to its hospital patients, which totals \$179,372. During 2001, the applicant did not have any requests for charitable care from the residents in the Commons. For fiscal year ending June 30, 2001, the gross patient service revenue was \$18,429,570. For fiscal year ending June 30, 2002, the gross patient service revenue was \$23,187,674. (Applicant's Ex. #11, 12, 12A, 13, note 11; Tr. pp. 96-99)

47. For the fiscal year ending June 30, 2003, the applicant provided approximately \$257,182 of charity care to its residents and patients. The amount that was provided to residents of the Commons was \$27,138. Separate charitable figures for the

nursing home and hospital were not provided. The total patient revenue during that time period was \$25,634,424. (Applicant's Ex. #13, 20; Tr. pp. 102-103)

48. For the fiscal year ending June 30, 2001, the applicant had an operating loss of \$1,955,652. For the fiscal year ending June 30, 2002, the applicant had operating income of \$299,077. For the fiscal year ending June 30, 2003, the applicant's preliminary financial statement shows net operating income of \$188,756. (Applicant's Ex. #13)

49. Beginning in February 2001, the applicant no longer takes Medicaid for the residents of its nursing home. The applicant was "decertified" from the Public Aid Program because it decided to not correct certain deficiencies noted in a "life-safety" survey concerning part of the nursing home. (Applicant's Ex. #10; Tr. pp. 82-84)

50. In February 2001, the applicant sent letters to the guardians of its nursing home residents who were recipients of Medicaid benefits to notify them that the applicant was decertified from the Public Aid Program. In the letters, the applicant stated as follows: "Please note that [the resident] will **not** be charged for his stay at the Hopedale Nursing Home until such time as satisfactory arrangements have been made to either move [him] to a different facility or make satisfactory arrangements with us to have him stay here." (Applicant's Ex. #10)

51. One of the recipients of the letters sent in February 2001 did not remain at the nursing home. The other recipients entered into contracts with the applicant concerning the terms, conditions, and arrangements that were necessary for providing their nursing and/or personal care. (Applicant's Ex. #10; Tr. p. 104)

52. The applicant entered into contracts with all of the residents of the nursing home and the Commons. The contracts typically cover a term of two years. The applicant has accepted one resident on a lifetime basis. The applicant has received additional requests for lifetime care contracts, but has refused to accept them due to the risk involved. The applicant decided that it was too risky to enter into lifetime care contracts because it is impossible to predict how many residents are going to convert from private pay to charity. (Applicant's Ex. #10; Tr. pp. 105-106)

53. For the residents who receive charity care, the applicant takes the remainder of their Social Security income after their other bills have been paid. The difference between the cost of the applicant's services and the amount received from the residents is considered by the applicant to be charitable care. (Tr. pp. 84-85; Applicant's Ex. #10)

54. During 2001, the applicant did not deny charity care to anyone who completed an application for it. In later years, there were two occasions where the applicant denied charity to people who requested it on the basis that they did not meet the charitable guidelines. (Tr. pp. 92-93, 107, 141, 143)

55. During 2001 and 2002, the applicant did not have anyone on a waiting list to be a resident of the nursing home. (Tr. pp. 107-108)

56. On October 16, 2003, the applicant received an application for charity care from the guardian of a person who wanted to reside in the nursing home. The person met the standards of charity set by the applicant. The applicant sent a letter to the guardian stating that the person was being placed on a waiting list because the applicant already had seven residents who were "receiving some form of subsidized care." In the letter, the applicant stated "we are giving priority at this time to those individuals who exhausted

their funds here at HMC as well as those who are of advanced age and in failing health. *

* * You will receive a call at such time as anyone of the current charity residents were to move or pass away and leave an opening.” (Applicant’s Ex. #10; Tr. p. 108)

57. The applicant will call the person on the waiting list when the number of nursing home residents who are receiving some form of subsidized care is reduced to five. (Tr. pp. 110-111)

58. During 2002, the applicant had three residents in the Commons who received charity care. The applicant provided a total of \$28,641 of charity care for its three residents in the Commons during that year. During the first nine months of 2003, the applicant had two residents in the Commons who received charity care, and the charity care write-off for those months equaled \$9,802. (Applicant’s Ex. #20)

59. A resident can stay at the Commons for as little as \$1,400 a month, which is an amount that many residents receive from Social Security. The highest charge is \$2,400 for a single person and \$3,100 for a couple. One factor used to determine the rates is whether the room is private or semiprivate. (Tr. pp. 79-80; 84)

60. The applicant does not have an admittance fee for the nursing home or for the Commons. (Tr. pp. 142, 145)

61. During 2001, the applicant did not have a waiting list for staying at the Commons. (Tr. pp. 146, 149)

CONCLUSIONS OF LAW:

The provision of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant 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. * * *. (35 ILCS 200/15-65(a)).

Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). 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). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). 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 (2nd Dist. 1992)

Two things are necessary for the charitable purposes property exemption: (1) ownership by a charitable organization, and (2) exclusive use for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956). In deciding whether the applicant is a charitable organization that actually and exclusively uses the property for charitable purposes, courts consider the following factors:

1. Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
3. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends;
4. Whether the organization's funds are derived mainly from public and private charity and are held in trust for the objects and purposes expressed in its charter;
5. Whether the organization dispenses charity to all who need and apply for it;
6. Whether the organization does not provide gain or profit in a private sense to any person connected with it;
7. Whether the organization 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 disperses; and
8. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home at 156-57. These factors were articulated in order to determine whether the property is used for an exempt purpose under the Illinois Constitution.² Eden Retirement Center, Inc. v. Department of Revenue, 2004 WL 2745641. They are not requirements but are guidelines that are considered in assessing an organization's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd

² The Fifth District Appellate Court found that under section 15-65(c) of the Code, when a retirement home is exempt under section 501(c)(3) of the Internal Revenue Code and has bylaws that provide for a waiver or reduction of fees, it is entitled to a charitable tax exemption. Eden Retirement Center, Inc. v. Department of Revenue, 346 Ill.App.3d 252, 256 (5th Dist. 2004). On March 24, 2004, the Illinois Supreme Court granted the Department's petition for leave to appeal in that case. 208 Ill.2d 536. Because the applicant in this case meets both of those criteria, the decision in this case was held pending the outcome of that decision. On December 2, 2004, the Supreme Court issued a decision that reversed the appellate court's decision. Eden Retirement Center, Inc. v. Department of Revenue, 2004 WL 2745641.

Dist. 1995). The guidelines are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the applicant serves the public interest and lessens the State's burden. Id. at 469.

With respect to the nursing home and the Commons, the evidence leaves doubts concerning whether the primary use of the property is charitable. At one point during the testimony, the applicant indicated that it has never discharged anyone from the nursing home for the inability to pay. (Tr. p. 86) The applicant also indicated that all of the Medicaid recipients automatically qualified for charity care because if they met the criteria for Public Aid, then they met the applicant's criteria. (Tr. pp. 83-84) Yet after the applicant decided to no longer participate in the Medicaid program, one of its residents who had received Medicaid was removed from the nursing home. (Tr. pp. 103-104) No additional information was given as to why this person left.

The resident who left was one of the recipients of the letters that the applicant sent in February 2001 informing the nursing home residents who received Medicaid benefits that the applicant was being decertified from the Public Aid Program. (Applicant's Ex. #10; Tr. p. 104) In the letters, the applicant stated as follows: "Please note that [the resident] will **not** be charged for his stay at the Hopedale Nursing Home until such time as satisfactory arrangements have been made to either move [him] to a different facility or make satisfactory arrangements with us to have him stay here." (Applicant's Ex. #10) This suggests the possibility of a discharge if satisfactory financial arrangements are not reached between the parties. It seems reasonable to conclude that the inability to pay was at least a factor in the decision to remove this person from the nursing home.

Charging its residents to stay at the nursing home or the Commons does not automatically result in the denial of the exemption. A charitable organization does not lose its tax-exempt status by charging those who are able to pay for its services as long as it furnishes its facilities or services to those who are unable to pay. Small v. Pangle, 60 Ill.2d 510, 515-516 (1975); Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455, 460 (2nd Dist. 1995); Illinois Hospital & Health Service, Inc. v. Aurand, 58 Ill.App.3d 79, 86 (2nd Dist. 1978). Because the applicant removed a Medicaid resident from its nursing home, it is not clear that the applicant provides its services to those who are unable to pay.

Additional evidence raises doubts concerning whether the property is primarily used for charitable purposes. The residents of the Commons and the nursing home, including the former Medicaid recipients, entered into contracts that limit the terms that they are allowed to stay. The term limit is typically two years; only one resident has a lifetime contract. The applicant has refused additional requests for lifetime care contracts, indicating they are too risky from a business perspective because it is impossible to predict how many residents will convert from private pay to charity. Although the applicant stated that this “gives the family the comfort of knowing that they don’t have to worry about moving anywhere for a minimum of two years” (Tr. p. 106), the resident still faces the possibility of being removed in two years. This type of policy has been found to indicate a lack of charitable purpose. See Small, *supra* at 516 (“the absence of a legal obligation to keep and maintain any person who became unable to fulfill his financial obligation or otherwise became sick or unmanageable did not indicate a charitable purpose”).

In October 2003, the applicant denied a person who qualified for charity care the opportunity to reside in the nursing home because the applicant already had seven residents there who were “receiving some form of subsidized care.”³ (Applicant’s Ex. #10) The applicant told this person that they would be called when one of the current charity residents moves or passes away, leaving an opening. The applicant stated that its charity residents would have to be reduced to five before someone on the waiting list would be called because it was “pushing the maximum with seven” and that it is not required to “go bankrupt” by accepting too many charity residents. (Tr. p. 110) The applicant in Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2nd Dist. 1995) had a similar policy. In that case, the court found that the applicant was not dispensing charity to all who needed it because it would do so only in relation to its financial circumstances. Id. at 460. The applicant’s charitable assistance was subject to its ability to afford it and remain financially viable. Id. at 457. In the present case, the applicant’s financial viability appears to be likewise a primary concern.

With respect to the hospital, the evidence supports a finding that the primary use of the property is charitable. The applicant provides charity to all hospital patients who need and apply for it, and it gives ample notice of its policy to the public. The applicant does not provide gain or profit in a private sense to any person connected with it. Nevertheless, the applicant failed to present clear evidence concerning how much of the parcel on which the hospital is located is being used by the hospital for exempt purposes. The parcel that includes the hospital also includes the A-wing of the nursing home, parcel

³ The applicant’s charitable policy in 2003 is relevant to determining whether it qualifies for the 2001 exemption. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455, 460 (2nd Dist. 1995) (“*Korzen* factor that charity be dispensed ‘to all who need it’ is not limited to the past but also requires an assessment of future policy”).

number 18-18-26-120-001. When questioned during the hearing regarding this parcel, the applicant's witness said that the A-wing is a small portion of the property. He said, "I'm guessing less than --- certainly less than five percent of the entire square footage. Maybe even less than two percent." (Tr. pp. 139-140) Although percentages may be used to determine what portion of the property should be exempt, these percentages are guesses, and it is not clear that they are accurate. The A-wing is currently servicing 26 beds. The hospital has 34 licensed beds, which gives the impression that the A-wing would be more than 2% of the building, but the hospital also includes ancillary services such as the emergency room, lab, and surgery. Nevertheless, the square footage for the A-wing and hospital would be necessary to accurately determine what portion of the parcel is entitled to the exemption.

In addition, the application for the parcel that includes the hospital indicates that it has one building with 82,550 square feet located at 107 Tremont Street. (Applicant's Ex. #1) The Rossi physicians lease space from the applicant at 107 Tremont Street, which is called the "Medical Arts Physician Offices" under the lease. The applicant's retail pharmacy is located in the "Medical Arts Building," which is on a parcel that is taxable and not at issue in this case. (Tr. pp. 35-56) It is not clear whether the Medical Arts Building is the same as the Medical Arts Physician Offices. It is also not clear whether this building is part of the hospital or whether it is on a separate parcel that is taxable. Because the addresses are the same and there is only one building on the property, it appears as though the leased portion is part of the hospital that the applicant contends is exempt. Without clear and convincing evidence concerning the portion of this parcel that is used solely for exempt purposes, this parcel is not entitled to the exemption.

The applicant also failed to give the portion of parcel number 18-18-26-129-012 that the storage building covers. This information is necessary to allow the exemption for the storage building that is used for hospital purposes. The parking lot for the hospital emergency room and the portion of the administration building that is used for the hospital are exempt.

Recommendation:

For the foregoing reasons, it is recommended that the exemption be granted for the parking lot used for the hospital emergency room (parcel number 18-18-26-129-014), 80% of the Roy Imig Administration Building (parcel number 18-18-26-111-011), and 80% of the parking lot for the Administration building (parcel number 18-18-26-111-008).

Linda Olivero
Administrative Law Judge

Enter: January 19, 2005