PT 05-08
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

COMMUNITY HEALTH CARE, INC.,	**Docket No: 03-PT-0098**
APPLICANT	
	Real Estate Tax Exemption For 2003 Tax Year
	P.I.N. 10/206
v.	**Rock Island County Parcel**
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**Kenneth J. Galvin Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. William Judge on behalf of Community Health Care, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether real estate, identified by Rock Island County Parcel Index Number 10/206 (hereinafter the "subject property") should be exempt from 2003 real estate taxes under section 15-65 of the Property Tax Code entitled "Charitable Purposes." 35 ILCS 200/15-65.

This controversy arose as follows: On October 16, 2003, Community Health Care, Inc., (hereinafter "Community" or "applicant") filed a Property Tax Exemption Complaint with the Rock Island County Board of Review seeking exemption from 2003 real estate taxes for the subject property. The Board reviewed Community's Complaint

and recommended a partial exemption be granted. The Illinois Department of Revenue (hereinafter the "Department") rejected the Board's recommendation in a determination dated November 26, 2003, finding that the subject property was not in exempt ownership or use during tax year 2003. On December 10, 2003, Community filed a timely appeal of the Department's decision. On August 30, 2004, a formal administrative hearing was held with Ms. Lisa Carson, Chief Financial Officer for Community, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use in tax year 2003. Tr. pp. 8-10; Dept. Ex. Nos. 1 and 2.

2. Community was incorporated in 1975 under the Iowa Non-Profit Corporation Act. Tr. pp. 27, 32-35, 42; App. Ex. E and L.

3. Community is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 42-43; Applicant's Ex. H.

4. Community has three clinics in Iowa, one clinic in Moline, Illinois and a medical and dental clinic in Rock Island, Illinois, the subject property at issue in this hearing. Community's mission is to serve "the Quad Cities region with quality health care for all people in need." Depending on the location, Community offers internal medicine, family practice, OB/Gynecology, pediatrics and dental. Tr. pp. 12-16, 21; App. Ex. B and F.

5. Community is accredited by the Joint Commission on Accreditation and Health Care Organizations. Tr. pp. 12-13.

6. Community is a federally qualified health care organization (FQHC). FQHC's are defined under 42 U.S.C. § 254b as health centers that are located in a "health professional shortage area" and serve medically underserved populations, homeless persons or residents of public housing, by providing required primary and additional health services for all residents served by the center. Community is located along bus routes to ensure that transportation does not preclude patients from visiting. Tr. pp. 14, 16, 58-59.

7. As an FQHC, Community is required to accept Medicare and Medicaid patients and have a sliding fee scale, based on Federal poverty guidelines. The sliding fee scale is based on family size and income. A patient with a family income within 0% to 100% of the poverty level receives a 100% discount in fees. Patients with family incomes within 101% to 134% of the poverty level receive a 75% discount; 135% to 167%, 50% discount; 168% to 200%, 25% discount; over 201% of the poverty level, 0% discount. Sliding fee patients account for 28% of total patients and 16.7% of total patient fee revenue. Tr. pp. 14-15, 45-48, 84-85; App. Ex. I and J.

8. When patients enter the clinic, they are scheduled with a verification employee who will determine if they are paying patients or qualify for the sliding fee scale, Medicaid or Medicare, or a homeless program. This process takes 15 minutes and is done in a private location. If patients request the sliding fee scale, they are asked for a check stub from either an employer or an unemployment check to verify their income level. If a patient states that they have no job or no income, they can sign

a zero income sheet. If a patient does not have verification with them, they can still receive services that day but they are given an envelope to send in verification within 14 days. If information is not returned, patients go to full-pay status until they are verified. If an unverified patient claims that they are at a certain discount level, they are allowed to purchase prescriptions for that day at the level claimed. Tr. pp. 47-53, 68-69, 91-92.

9. All patients, including those on a sliding fee scale, are asked for a $10 co-payment for medical services and a $20 co-payment for dental services. Co-payments may be waived for homeless people but patients can only have "homeless" status for 6 months and then they must be reevaluated. If patients do not have a co-payment with them, they can still receive services that day. Tr. pp. 69-70, 82-83, 91.

10. The sliding fee discount is taken immediately and patients are billed only for the discounted portion of the fees. If a patient doesn't pay their portion in 120 days, a "past-due" letter is sent. If a patient fails to contact Community or fails to pay any portion of their bill, Community adds the amount to a "Bad Debt" account and forwards the bill to a collection agency. Tr. pp. 71-72, 89-90.

11. Community advertises in three phone books in the area with ads stating that Community accepts most insurance, Medicaid, Medicare and offers a sliding fee scale for those who qualify. Community advertised on billboards in 2003 with ads stating "Sliding fee scale available." Community advertises on television with an ad stating that "a sliding fee scale is available to those who qualify." The sliding fee scale is also advertised on Community's web site. Advertising for homeless people is usually by word of mouth. Tr. pp. 76-77, 96; Applicant Ex. K.

12. Community does not have capital stock or shareholders. As an FQHC, 51% of Community's Board of Directors must be composed of consumers of its services. The other 49% can be professionals from the community, bankers, lawyers, financiers and human resource people. There are no doctors or nurses on the Board. Tr. pp. 54-55.

13. Community's physicians are paid a base salary and an annual bonus incentive based on productivity. Productivity is measured as gross revenues prior to adjustments for Medicare, Medicaid, insurance and the sliding fee scale. Base salaries, exclusive of bonuses, range from $95,000 to $137,000. Tr. pp. 22-24, 79-81, 95-97.

14. There are two physicians, an internist and a pediatrician, at the Rock Island facility and one physician's assistant. The physician's assistant visits homeless shelters and sees patients at the shelters. Tr. pp. 24, 96.

15. The Rock Island facility was purchased by warranty deed on January 3, 2003. It has been open since March 31, 2003. Tr. pp. 25-26, 60; App. Ex. C and D.

16. The Rock Island facility has 16 exam rooms. No space in the facility is leased. Tr. pp. 25-26.

CONCLUSIONS OF LAW:

An examination of the record establishes that Community has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2003 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which states as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:
>
> (a) Institutions of public charity.
> 35 ILCS 5/15-65.

The above section provides that the property of "institutions of public charity" is not exempt by virtue of ownership alone. In fact, the General Assembly is constitutionally prohibited from making such property exempt by ownership alone because of the way in which Article IX, Section 6 is worded. The first clause of that

Section, which states that "[t]he General Assembly may by law exempt … only the property of the State, units of local government and school districts" sets forth a very narrow class of entities whose properties are exempt by sole virtue of their ownership. "Institutions of public charity" do not fall within that class. Rather, they fall within the second clause of Article IX, Section 6, which contains an exempt use requirement. Accordingly, the property of such institutions cannot be subject to exemption, as a matter of Illinois constitutional law, unless the property is in fact used for a purpose that qualifies as "charitable" as that term is defined by Illinois law.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the court set forth guidelines for determining whether an organization qualifies as an institution of public charity and whether property is used for charitable purposes: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders, earns no profits or dividends; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) 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 dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id*. at 156.

I am unable to conclude from the evidence and testimony presented at the hearing that Community is, in fact, a charitable organization. One of the guidelines to be

considered from Korzen for assessing whether an organization is charitable is that the organization derive its funds mainly from public and private charity, and the funds be held in trust for the objects and purposes expressed in the charter. Ms. Carson testified that 65% of Community's funds are derived from patient fees, 30% from federal and state grants such as the FQHC grant, Ryan White HIV Early Intervention grant and Health Care for the Homeless Grant, and 5% is from "Other Donations." Tr. pp. 62-63; App. Ex. J. As this testimony and evidence indicates, the majority of Community's funding is derived from patient fees and not from public and private charities.

Moreover, I am unable to conclude that Community does not earn a profit or that Community holds its profits in trust for charitable purposes. No financial statements were provided for Community. Ms. Carson was asked if Community had a budget surplus and what the surplus was utilized for. She responded: "Basically, that just goes right back into the company in the form of reserves or updating equipment, facilities, obviously giving raises to the staff annually is important." Tr. p. 56. There was no testimony as to the dollar amount of the surplus. Community offered into evidence a 31 page "Center/Grantee Profile," which appears to be a report that Community, as an FQHC, is required to submit to the federal government on an annual basis "basically breaking down all of [Community's] services and income and experiences for the year." Tr. p. 17; App. Ex.A. I am unable to determine from the Profile what Community's profit was for 2003. Ms. Carson's testimony about the "budget surplus" "going right back into the company" is insufficient for me to conclude that Community earns no profit or that the profits it does earn are held in trust for charitable purposes.

Ms. Carson testified that Community's physicians are paid a base salary and an annual bonus incentive based on productivity. Productivity is measured as gross revenues prior to adjustments for Medicare, Medicaid, insurance and the sliding fee scale. Base salaries, exclusive of bonuses, range from $95,000 to $137,000. Tr. pp. 22-24, 79-81, 95-97. Ms. Carson testified that "[S]ome of [Community's] physicians are foreign trained, so we are required to pay at least 95% of the prevailing wage." When asked who "required" this, she responded the "Department of Immigration." Tr. p. 22. No statute was cited. Only "some" of Community's physicians are foreign trained and it is unclear how the salaries of Community's domestically trained physicians compare to the "prevailing wage." Ms. Carson testified that physicians get the same credit for their incentive compensation for a patient who pays nothing for services as for a patient who pays full charge for the services. Tr. pp. 23-24. No written documentation of the incentive plan was admitted into evidence. No study showing the "prevailing wage" was admitted into evidence. No study showing how Community's salaries and bonuses compared to those paid by similar organizations was admitted into evidence. No evidence was offered as to the dollar amount of Community's salary expense or bonuses for 2003. Without this evidence, I am unable to conclude that Community does not provide gain or profit in a private sense to its physicians.

Community does not have capital stock or shareholders. Tr. p. 54. Community was incorporated in 1975 under the Iowa Non-Profit Corporation Act and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. App. Ex. E, H and L. I am unsure of Community's status in the State of Illinois, however, because the evidence offered by Community was contradictory. Community offered into evidence an

application for a "Certificate of Authority to Transact Business" in Illinois dated October 4, 1994, which granted authority under the "Business Corporation Act." App. Ex. L (page 4). Other documents admitted into evidence show Community operating in Illinois under the General Not For Profit Corporation Act. App. Ex. L (page 5). When asked about the discrepancy, counsel for Community responded as follows: "I don't know why the Secretary of State included that Business Corporation Act reference in this. I don't know if that is something they do or if it was a mistake on their part." Tr. p. 38. Community's corporate status in Illinois needed to be clarified prior to the hearing. Because of the evidentiary deficiencies, I am unable to conclude that Community is a charitable organization in accordance with the guidelines from Korzen.

Assuming *arguendo* that Community was a charitable institution in tax year 2003, its ownership of the Rock Island clinic is not sufficient to warrant exempting the subject property. Community's ownership of the subject property was established by a warranty deed evidencing that Community acquired title to the property on January 3, 2003. Applicant's Ex. C. As discussed previously, property of charitable institutions is not exempt by virtue of ownership alone. The subject property in Rock Island qualifies for exemption only if it is exclusively used for a purpose that qualifies as charitable as that term is defined in Illinois law. "The mere fact that property is held by an institution of public charity … is not sufficient to exempt it from taxation. The property itself must be devoted to charitable purposes, and it must be in actual use by the institution in carrying out directly its charitable purposes." International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956).

I am unable to conclude from the testimony and evidence admitted at the hearing that the primary use of the Rock Island facility was for charitable purposes. All evidence offered by Community at the hearing was for the consolidated organization only, which includes three clinics in Iowa, one clinic in Moline, Illinois and the Rock Island property at issue. Tr. pp. 15, 58. Ms. Carson testified that the mix of patients, "whether it is a Medicaid patient or a sliding fee patient or a private insurance patient" "doesn't differ from site to site very much at all." Tr. p. 58. The Department's counsel asked for documentation to support this statement and specifically whether the 31-page Profile submitted to the federal government would support it. Ms. Carson responded: "We have only been open in Rock Island since March 31, 2003, so we barely just got a year's data on Rock Island." Tr. p. 60. With "barely" a year's data on Rock Island, any conclusion about its "mix" being similar to the other clinics would appear to be unwarranted.

It must be noted that not all of Community's services are charitable: Private insurance patients account for 18% of patient fees, 2.5% of patient fees are from "full-pay patients" and 50% of patient fees are from Medicare and Medicaid patients. App. Ex. J. There was no testimony or evidence as to the "mix" of these patients at the Rock Island facility. Moreover, Ms. Carson testified that Rock Island had 16 examination rooms and 3 dental laboratories that Community "hopes" will be available "this Fall." Tr. p. 25. It is unclear what percentage of the Rock Island facility is now being used. It is unclear if other Community facilities have dental clinics and how this data fits into the "mix." A charitable exemption for real property is specific to and depends on use of the subject property for charitable purposes. Without a quantification of the charitable care

specifically dispensed by Community at the Rock Island facility in 2003, I am unable to conclude that the subject property is used exclusively for charitable purposes.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). The evidence and testimony presented at the hearing indicate that Community may meet some of the guidelines of Korzen. However, there was insufficient testimony and evidence for me to conclude either that Community is an exclusively charitable institution or that the Rock Island facility at issue in these proceedings was exclusively used for charitable purposes in 2003.

For these reasons, it is recommended that the Department's determination which denied the exemption from 2003 real estate taxes on the grounds that the subject property was not owned or used by an institution of public charity should be affirmed and Rock Island County Parcel Number 10/206 should not be exempt from 2003 real estate taxes.

ENTER:

December 17, 2004 Kenneth J. Galvin