

PT 06-17
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 # 05-PT-0012
v.)	Tax Year 2004
)	PIN 04-12-14-327-023
DOVE, INC.)	PIN 04-12-14-327-025
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Darrel F. Parish of Parish & Castleman, LLP for Dove, Inc.

Synopsis:

This case concerns whether two parcels of property that are located in Macon County and owned by Dove, Inc. (“applicant”) should be exempt from property taxes for the year 2004. The applicant alleges that the property qualifies for an exemption pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/15-65) on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department of Revenue (“Department”) denied the applications for exemption, and the applicant timely protested the Department’s decision. The Department has conceded

that the applicant is a charitable organization. (Tr. p. 6) The only issue presented at the hearing is whether the property is actually used exclusively for charitable purposes. The Department denied the exemption on the basis that the applicant has not sufficiently adapted the property for charitable use. For the following reasons, it is recommended that the parcels be exempt.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on April 19, 1972. (Dept. Ex. #1)
2. The applicant is a social service organization that provides programs such as a domestic violence program, which includes a shelter for women and their children, counseling, legal advocacy, children's programming, parenting classes, substance abuse education, and a batterers' treatment program. (Dept. Ex. #1, p. 3; Tr. p. 8)
3. The applicant's administrative offices are located at 788 and 800 E. Clay Street in Decatur. The applicant's domestic violence shelter is located in the building at 788 E. Clay, and its domestic violence staff is located there. Programs for children also take place there. In the building at 800 E. Clay, the applicant provides classes for people who are perpetrators of domestic violence. (Dept. Ex. #1, p. 12; Tr. pp. 8-9, 19)
4. The domestic violence shelter is open 24 hours and has the capacity for 30 women and children. (Tr. p. 19)
5. The applicant provides adequate lighting and security to ensure that the shelter is safe. (Tr. p. 21)

6. The applicant previously operated a Community Services Program in a house at 830 E. Clay, but a fire in June of 2003 burned that house down. The applicant razed that structure. The lot has been seeded, mowed, and maintained. (Dept. Ex. #1, p. 12; App. Ex. #1; Tr. pp. 9, 13)
7. The applicant also offers other programs at different locations in Decatur. The applicant has a Homeward Bound program that provides transitional housing, case management, and supportive services to homeless people. It also administers the Retired Seniors Volunteer Program, which matches the skills of volunteers aged 55 and over with the need for volunteers by nonprofit organizations. (Dept. Ex. #1; Tr. p. 9)
8. On July 18, 2003, the applicant purchased a parcel of property located at 850 E. Clay Street in Decatur. On December 22, 2003, the applicant purchased a parcel located at 245 S. Maffit Street in Decatur. These are the parcels at issue in this case. South Maffit Street and East Clay Street are perpendicular to one another. Both of the parcels are on the same block and are next to the other lots owned by the applicant. (App. Ex. #2; Tr. pp. 18-19, 22-23)
9. Another residential home is located on South Maffit on the lot between the two lots at issue. The applicant expects to purchase this lot in the future. (App. Ex. #1; Tr. pp. 17, 22-23)
10. Since 1987 the applicant's activities and employees have doubled. (Tr. p. 16)
11. The applicant has been considering what to do to expand its present location and whether to create one campus from which all of its programs are offered. In

2002, the applicant developed a plan that connects the buildings on East Clay Street. (App. Ex. #2; Tr. pp. 13-14)

12. The neighborhood on East Clay and South Maffit Streets is primarily single, lower-income family residences. (Tr. pp. 11-12)

13. When the applicant purchased the property at 850 E. Clay Street, a two-story house was located there. The house was not occupied, had broken windows, and was full of junk. The applicant cleared out the house, and on October 5, 2003 the applicant had it demolished. (Dept. Ex. #1; Tr. pp. 12, 18)

14. The property at 245 S. Maffit also had an unoccupied, dilapidated house on it when the applicant purchased it. The applicant cleared it out, and on April 1, 2004 the applicant demolished the house. (Dept. Ex. #2; Tr. pp. 12-13, 18)

15. After the houses were demolished, the applicant seeded the lots. The applicant continues to mow the lots and maintain them. The lots are used for temporary parking when events are held in the other buildings. The applicant intends to pave the lots and allow access to the parking from Maffit Street. (App. Ex. #1; Tr. pp. 18, 26-28)

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).

Because the parties have stipulated that the applicant is a charitable organization and there is no dispute that the applicant owns the property, the only issue is whether the property is used for a charitable purpose. The Department argues that it was not used for charitable purposes because neither parcel was used at all during 2004. The Department believes that the parcels were purchased for the purpose of future parking and are being held for that purpose. The Department contends that the property was not adapted for an exempt use.

The applicant argues that the property was used during 2004 for temporary parking, and the demolition of the homes that were on the property immediately improved the aesthetic quality of the applicant's campus. The applicant claims that it also improved the safety and security of the area for the people who use its facilities because allowing the dilapidated structures to remain would have created a hazardous environment. According to the applicant, improving the aesthetics and safety of the area means that the property was used for the same purposes as the applicant's other property that is next to it.

The use of the property in this case is similar to the use in Norwegian American Hospital, Inc. v. Department of Revenue, 210 Ill. App. 3d 318 (1st Dist. 1991). In that case, the applicant sought an appeal of the Department's administrative decision denying exempt status to 49 parcels of property. Upon review, the circuit court reversed the Department's decision for 24 parcels and affirmed it with respect to the remaining 25 parcels. The parcels were spread out in a ¼ mile area that was described as a "zone of blight." The hospital was located at the center of the area and had a plan to create a park-like or campus atmosphere around it. As part of its implementation of the plan, the hospital razed dilapidated buildings, seeded the property with grass or landscaped it with flowers and trees, and installed walkways, benches, and picnic areas.

After concluding that the 24 parcels were exempt, the circuit court found that the remaining 25 parcels were nonexempt because they were vacant, noncontiguous, scattered amongst private residences, and too far from the hospital to reasonably contribute to the hospital's visibility from neighboring thoroughfares. The Department did not seek an appeal of the circuit court's decision concerning the 24 parcels. As to the

25 parcels, however, the hospital sought an appeal, and the appellate court reversed the circuit court's decision. In finding that their use was exempt, the appellate court stated that the property does not need to be absolutely indispensable to carrying out the purposes of the charitable institution. Norwegian at 323. "If the party seeking the exemption can establish that the property is used primarily for purposes reasonably necessary for the accomplishment and fulfillment of the institution's objectives and administration, an exemption will be sustained." *Id.*

The court in Norwegian found that the development of the 25 parcels was part of a comprehensive plan to improve access to the hospital and decrease the dangerous conditions of the surrounding area. The court noted that as part of the plan, parcels of land were purchased, cleared, and landscaped. The court added that the fact that the parcels were rendered vacant through the razing of abandoned structures supported the hospital's argument that the properties had been adapted to charitable use.

In the present case, the applicant's use of the two parcels was part of its plan to expand and improve its surrounding property. The applicant cleaned out the abandoned structures, demolished them, and seeded the lots. The applicant continues to maintain the lots and has used them for temporary parking. The applicant's primary concern for the area is to provide the victims of domestic violence with a shelter that is safe and secure. The improvements that the applicant has done to the lots have increased the safety and security of the area. The evidence indicates that the applicant has adapted the property for charitable use.

Recommendation:

For the foregoing reasons, it is recommended that the two parcels be exempt from property taxes.

Linda Olivero
Administrative Law Judge

Enter: June 5, 2006