

PT 06-18
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

GATEWAY TO THE WEST SERTOMA CLUB
Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

A. H. Docket # 05-PT-0007
Docket # 04-58-47
Parcel Index # 04-12-15-429-001

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kevin Sullivan, Sauter, Sullivan and Evans for Gateway to the West Sertoma Club; Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue

Synopsis:

The hearing in this matter was held to determine whether Macon County Parcel Index No. 04-12-15-429-001 qualified for exemption during the 2004 assessment year.

Mr. Tom Smith, Executive Director of the Decatur Housing Authority, and Mr. Terry Weatherby, previous president and chairman of the board and at the time of the hearing, director of programs and finance of Gateway to the West Sertoma Club (hereinafter referred to as the "Applicant" or "Gateway"), were present and testified on behalf of Applicant. Mr. Weatherby is also the designated person in Gateway to oversee Greenwood Manor.

The issues in this matter include, first, whether Applicant was the owner of the parcel during the 2004 assessment year; secondly, whether the Applicant is a charitable organization;

and lastly, whether Applicant used the property for charitable purposes during the 2004 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Macon County Parcel Index No. 04-12-15-429-001 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Department's Exhibit Numbers 1 and 2. (Tr. p. 5)

2. The Department received the application for exemption of the subject parcel from the Macon County Board of Review. The Board recommended granting the requested exemption. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 2; Applicant's Ex. M)

3. Sertoma International (hereinafter referred to as "Sertoma") is a service organization, chartered in 1912. It operates throughout the United States and in several foreign countries. It is an acronym for **SER**vice **TO MAn**kind. (Tr. p. 22)

4. Gateway¹ is the St. Louis chapter of Sertoma and was chartered in 1968. (Tr. pp. 22-23)

5. Gateway is a Missouri nonprofit corporation. Articles of Amendment were filed with the Missouri Secretary of State on January 4, 1999 stating:

The purpose for which the Corporation is organized and operated are exclusively charitable, educational, and scientific within the meaning of Section 501(c)(3) of the Internal Revenue

¹ The Applicant tends to use the names Sertoma and Gateway interchangeably.

Code of 1986, as amended (the “Code”)(all references to the Code herein shall also include the corresponding provision of any future United States Internal Revenue Law and the regulations promulgated thereunder). The purposes for which the Corporation is organized include, but are not limited to, raise funds and receive gifts and grants, and to use such funds, gifts and grants for its proper purposes, or to make distributions thereof for purposes and activities that qualify as exempt under Code Section 501(c)(3).

Nothing herein shall be construed to give the Corporation any purpose that is not permitted under Code Section 501(c)(3). In furtherance of its permitted purposes, the corporation may exercise any, all and every lawful power or activity which a corporation organized under the Act may exercise or transact. (Applicant’s Ex. A)

6. A member candidate for Gateway is invited to attend an orientation and given an opportunity to see if the person is comfortable with Gateway’s activities. The organization has about 40 members with 18-20 active in its events. A typical member is either retired or close to retirement age or a younger established businessperson who wishes to give something back to the community that has been good to them. Businesses are not members of Gateway. Applicant has standing committees including the committee on management of the property, bingo, and sponsorship. (Tr. pp. 80-83)

7. One of the benefits mentioned of being a member of Gateway is getting to know people in different professions. An example was given of a person owning a brake and muffler shop and being able to trust that person with work that needs to be done. (Tr. pp. 86-87)

8. Applicant collects membership dues that are sent to Sertoma. Sertoma is responsible for communicating with the members with a quarterly magazine. Sertoma also provides insurance to the members for the activities in which the members participate. (Tr. pp. 37-38)

9. Applicant acquired the parcel at issue by a Special Warranty Deed dated April 5, 1999. (Dept. Ex. No. 2)

10. Applicant owns and operates Greenwood Manor, located on the subject property. The Manor is a 108-unit apartment complex for low-income tenants in Decatur, Illinois. The property and buildings were a donation from the prior for-profit owner. The buildings located on the property are two 40,310 square foot 5-story apartment buildings and a 22,030 square foot 2-story building consisting of common space, storage, hallways and stairs. All buildings have a basement. (Dept. Ex. No. 2; Applicant's Ex. F; Tr. pp. 10-11)

11. Greenwood Manor is a United States Department of Housing and Urban Development (hereinafter referred to as "HUD") Section 8 housing assistance project. HUD standards require that Section 8 housing must be decent, safe and sanitary. (Applicant's Ex. F, N; Tr. p. 43)

12. When Gateway acquired the property, it had only 70% occupancy. By July 31, 2005, the occupancy had risen to 95.4%. (Applicant's Ex. G; Tr. p. 49)

13. The rent of the tenants that live in the complex are subsidized by a Housing Assistance Payment (hereinafter referred to as "HAP") contract with HUD. HAP payments are supplemental government payments. The amount of rent that the tenant pays plus the amount that the owner receives from the government is intended to be sufficient to cover all the costs of the ownership and maintenance of the real estate. (Applicant's Ex. F; Tr. pp. 16-18)

14. When asked how the amount of rent the owner receives is figured for the government subsidy, Applicant's witness said that the rent is about the median of the fair market rent for that size apartment in the Decatur area. Currently in Decatur that amount is about \$697 for a three-bedroom house. (Tr. p. 16) (Testimony of Tom Smith)

15. The tenants of Greenwood Manor are required by HUD to sign a lease.² One of the requirements of HUD is that the leases state that a resident can be evicted for non-payment of rent. (Tr. p. 71)

16. Approximately 250 tenants live in Greenwood Manor. The average age of a tenant is 20 with the age range from 1 through 68. The average number of residents is 3-per apartment. (Applicant's Ex. H; Tr. pp. 51-53)

17. Gateway's "Statement of Activities for the 10-Month Period Ended June 30, 2004"³ shows program revenue of \$1,176,261. That amount is broken down into membership - \$1,585; net rental income - \$499,626; fundraising activities - \$6,907 and bingo operations - \$668,143. Public support consisting of donations was \$845. Other income consists of capital gains of \$83; dividend income - \$1,670; interest income - \$14,882; realized loss on investments - (\$8,981); and unrealized loss on investments - (\$13,506) for a total loss for other income of (\$5,852). Net assets released from restriction were \$7,500 for total revenue, support and reclassifications of \$1,171,254. Applicant's total program service expenses for the same time period were \$1,157,068 and its total expenses were \$1,228,230. The net assets at the end of June, 2004 were \$2,676,295. (Applicant's Ex. D)

18. "Sertoma obtains its funds through a Bingo operation." (Tr. p. 28) (Testimony of Terry Weatherby) Games are held every Thursday night. Applicant's members volunteer their time for the bingo operation. The main purpose of the Gateway meetings is to evaluate its mechanisms for operating its bingo and pull tab games, a significant income source for this Applicant. Discussions are held about staffing and improving relations with the customers, specials and other activities that the Applicant does, such as applications for potential

² The leases were not in evidence.

³ As directed by Sertoma, the end of Applicant's fiscal year changed in 2004 from August 31 to June 30. (Tr. pp.

sponsorships. (Tr. pp. 28-29, 35-36)

19. Some of Gateway's income is given away to "Sponsorships." For the ten-month period ending June 30, 2004, the organization gave away \$60,446. For July through December 2004, Gateway gave away \$23,155. Examples of sponsorship organizations that Gateway gave money to in 2004 are: Lambda Beta Lambda,⁴ 100 Neediest Cases, St. Louis Metro Athletics, Mary Culver Home,⁵ Feed My People, and Saints Peter and Paul. All of these entities are located in Missouri except for Doris Davis Helping Hand Shelter located in East St. Louis, Illinois, which was given \$2,000 in 2004. (Applicant's Ex. E; Tr. pp. 33-34)

20. As of January 1, 2004, Gateway adopted a resolution regarding Greenwood Manor. The resolution added Article XII to the bylaws and states:

Notwithstanding any rental agreement provisions to the contrary, it shall be the Corporation's policy in owning, managing, and operating its multi-family housing development located in Decatur, Illinois, known as Greenwood Manor not to evict a tenant solely for non-payment of rent or other charges due under the rental agreement, or in connection with the operation of Greenwood Manor, if such non-payment is due to said tenant's documented financial inability to pay said rent or other charges. This provision shall not be construed to prohibit the Corporation from evicting tenants in accordance with the terms of their leases for, among other things, failure to pay for reasons other than their financial [ina]bility to pay rent.

It shall be the Corporation's policy in owning, managing, and operating Greenwood Manor, not [to] [i]mpose fees associated with accepting and processing applications, screening applicants, or verifying [inc]ome eligibility on any applicant, and not to impose other fees, including security deposits, pet [dep]osits, meal program fees, fees for supportive service programming, and late fees, on a[n] applicant or [ten]ant without income, welfare or other

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⁴ There was a relationship to a club officer in 2004. In the exhibit it is spelled both Lamda and Lambda.

⁵ The exhibit states under the heading "Donee's Relationship" that there is a relationship with an employee. It is unclear from the record what entity employs the employee or what are the specifics of the relationship.

⁶ The exhibit was a bad copy of the resolution with parts of words missing. The insertion letters contained in the brackets are reasonable additions.

governmental assistance, if said tenant has a documented [fin]ancial inability to pay said fees. (Applicant’s Ex. K; Tr. pp. 66-67)⁷

21. Sertoma International Sponsorship Fund Gateway to the West 10637 is exempt from Federal Income Tax under “Group Ruling Number 3134, section 501(c)(3) of the Internal Revenue Code.” The exemption was granted in January 1979. (Applicant’s Ex. B)

22. There is no evidence of record that Gateway places money directly into or removes money from this fund.

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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:

⁷ See contradictory testimony of Terry Weatherby, at Finding of Fact 15, regarding the HUD requirement that the leases state that a resident can be evicted for non-payment of rent.

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (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 . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

The statute at issue requires that a charitable organization own the property and use the property for charitable purposes and not lease it or otherwise use it with a view to profit. The term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In Methodist Old Peoples Home v. Korzen, *supra*, the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

These factors are not requirements, but are guidelines that are considered in assessing an organization's charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468 (2nd Dist. 1995) (*leave to appeal denied*, 164 Ill. 2d 561)

As one of the guidelines enumerated in Methodist Old Peoples Home v. Korzen, *supra*, is whether an applicant's funds come from public or private charity, the analysis of the source of an applicant's funding is appropriate. Gateway obtains the majority of its revenues through its bingo operations, pull tab games, rents and membership dues. In each of these situations, the people are giving money to Gateway in return for a definite benefit - i.e. the games of chance offer the possibility of financial reward, rents are payments for leasehold rights and membership dues result in membership benefits. These are not public and private charity, which would be given without the expectation of return compensation or added benefits, as envisioned under the guidelines set forth in Methodist Old Peoples Home v. Korzen, *supra*. True charity is conducted, not for profit, but for the welfare of others.

According to the financial information submitted, in particular Applicant's Exhibit E, as of June 30, 2004 Lambda Beta Lambda received \$20,500 out of the \$60,446 given away and from July through December 2004, Lambda Beta Lambda received \$12,000 out of the \$20,000 given away. Gateway did not explain what Lambda Beta Lambda is and what its connection is with that entity, other than the evidence that a club officer had a relationship with that organization. There was also no information given about the charitable nature of the entities that Applicant gives sponsorship money to, nor how the recipients of the sponsorships are chosen or what those entities do.

Further, Gateway receives substantial income from the Greenwood Manor Apartments that it owns and operates. This property is a subsidized HUD Section 8 housing project. Housing assistance payments from the government plus the amount of rent a tenant pays are intended to be sufficient to cover the costs of ownership and maintenance of the real estate. There is no indication that Gateway is not receiving market value for the housing and in fact in the testimony of the Executive Director of the Decatur Housing Authority, he used the term “fair market rent” when describing how the Federal Government subsidizes public housing and stated that an owner receives a percentage of that. Certainly, there is no indication that Gateway is running Greenwood Manor at a deficit. Applicant offered no manual or brochure as evidence regarding the process a prospective tenant goes through when it contacts Gateway about renting an apartment.

Applicant failed to produce any leases for this property. Although, Gateway produced a 2004 amendment to its bylaws regarding Greenwood Manor that states that it is Gateway’s policy not to evict a tenant solely for the non-payment of rent or related charges due to the tenant’s inability to pay such costs, it failed to show how that provision is implemented. Applicant’s exhibit “D”, entitled “Financial Statements” shows the statements of cash flows for the 10-month period ended June 30, 2004 and year ended August 31, 2003. The statements show a much larger amount of cash on hand at the end of the 10-month period ending June 30, 2004 than the cash Applicant had on hand at the end of August 31, 2003. There is no indication in the record that the bylaw provision was utilized or that any tenant was the recipient of charity from the Applicant. Because of the lack of evidence submitted by Gateway, I cannot conclude that the bylaws were implemented with a result that the Applicant provided any charity.

Applicant’s Exhibit G, entitled “Salient Facts Concerning the Greenwood Manor

Apartments 31-Jul-05”, shows that 17 tenants were evicted from Greenwood Manor Apartments for “behavioral reasons”. What Gateway considers behavioral reasons was not explained. (Tr. pp. 49-56)

Applicant’s Exhibits G and I, entitled “Rent Due By Unit for July, 2005 for Greenwood Manor”, discuss the capacity of the tenants to pay their rent portions. In neither of the documents does Gateway discuss the fact that the \$0 rent paid by some of the tenants is supplemented by government payments. In other words, the self-serving documents prepared by Gateway and submitted as exhibits G and I are not factual as to the amount of rents received by Gateway for the units.

In Exhibit I, which shows that 6.67% was the total rent paid by tenants for July, 2005, the testimony was that the write-off figures for the exhibit were taken from the financial statements. The audited financial statements for 2002 and 2003⁸, the only audited financial statements submitted, are irrelevant in this matter as the taxable year at issue is 2004. Exhibit G entitled “Salient Facts Concerning the Greenwood Manor Apartments 31-Jul-05” was taken from financial statements⁹ that were not in the record, and again 2005 is not the year at issue. The testimony of Terry Weatherby was that he prepared the document and gathered the information and data contained in it. (Tr. p. 48) Of the other documents or exhibits submitted by the Applicant, only Applicant’s Ex. A – Applicant’s Articles of Incorporation; Exhibit B – the letter from the IRS; and a portion of Department’s Ex. 2 – the deed and the audited financial statements for 2002 and 2003, appear to be created or reviewed by an independent entity. Thus Applicant’s Exhibit G cannot be accorded any degree of credibility as it is unsupported by

⁸ A part of Dept. Ex. No. 2.

⁹ Tr. p. 60.

competent evidence identified by Applicant's books, records or audited financial statements. Illini Motor Company v. Illinois Department of Revenue, 139 Ill. App. 3d 411 (1985)

It was asserted that over \$600,000 was spent on the subject property to install air conditioning, redo the ADA ramps, replace 30-40% of the walks, improve the furnaces and completely reengineer the security system. (Dept. Ex. No. 2;¹⁰ Tr. pp. 44-45) It was also asserted that HUD gave Sertoma a grant in excess of \$100,000 for increased security measures (Dept. Ex. No. 2) but again, the only evidence of those assertions were self serving documents and testimony.

Gateway had the Executive Director of the Decatur Housing Authority, a government corporation, testify that Greenwood Manor is a similar housing program to other government projects served through the Housing Authority. The executive director agreed that "if Greenwood Manor was not being operated by SERTOMA and was not in existence it would increase the burden on his agency" and guessed that it would cost the taxpayers more money. (Tr. p. 14) Unfortunately, Gateway did not have the witness elaborate how it would cost the taxpayers more money. As it is, Gateway is receiving taxpayers' money for the subsidized rents for the apartments, which certainly is not relieving any government burden.

What Gateway's financial position statements show is that Greenwood Manor has substantial assets including cash, accounts receivables, tenant security deposits, replacement reserves, property¹¹(less accumulated depreciation), work in progress, and other assets. Its liabilities include accounts payable, accrued payroll, current portion of long-term debt, tenant

¹⁰ Dept. Ex. No. 2 consists of the application and accompanying documents Gateway initially submitted to the Department.

¹¹ Including land and the building valued at \$3,112,129 in 2002 and \$3,121,518 in 2003, which although not relevant for the year 2004, are an indication of the worth of the property to the Applicant.

security deposits,¹² restricted and unrestricted net assets. Gateway's assets include cash, prepaid expenses, preferred stock and mutual funds, equipment (less accumulated depreciation), bonds, and other assets.

When determining whether an applicant is a charitable organization for property tax purposes, it is appropriate to analyze its articles of incorporation, charter and constitution to see how they help explain or highlight an applicant's asserted charitable purpose. The Amended and Restated Articles of Incorporation for Gateway state that it is organized for charitable, educational and scientific purposes within §501(c)(3) of the Internal Revenue Code and to raise funds and receive gifts and grants and to use those for activities that qualify as exempt under §501(c)(3). Sertoma International Sponsorship Fund Gateway to the West 10637 is a §501(c)(3) organization under the Internal Revenue Code. Based upon that, I can conclude that the fund has no capital, capital stock, or shareholders. However, the fund is not the Applicant herein. Gateway failed to provide a connection between the fund and Gateway. How Gateway operates and functions viz-à-viz the fund is unclear from the evidence provided. There is nothing in the record to establish that either the Sertoma or Gateway organization is exempt from federal taxation.

Even if Sertoma International Sponsorship Fund Gateway to the West 10637 were the Applicant herein, the fact that an organization had been granted a letter of exemption from federal income taxes or is exempt from sales and use taxes is not determinative of the issues of whether it qualifies as a charitable institution for Illinois property tax purposes and was using the property exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980); Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist.

¹² This amount does not agree with the tenant security deposit amount listed under assets.

1988) There is nothing in the record or law to show that a not-for-profit entity must own Section 8 Housing. In fact, the prior owner of Greenwood Manor was a for-profit entity. (Tr. p. 11)

What is at issue herein is an apartment complex that Gateway avers is used in a charitable manner. In Rotary International v. Paschen, 14 Ill. 2d 480 (1958), the court found that an administrative and coordinating body for various Rotary clubs throughout the world, having as its objective encouraging and fostering ideals of service to local communities, was not a charitable organization using the property for charitable purposes under the property tax code. The court said that objectives of a not-for-profit corporation may be commendable, yet not charitable under the law. *Id.* at 488-89 The object of Rotary is to encourage and foster the ideal of service as the basis of worthy enterprise, to encourage and foster the development of acquaintances as an opportunity to serve, to set high ethical standards in businesses and professions, and to recognize Rotarians in their businesses as an opportunity to serve society and advance good will and peace through a world fellowship of business and professional men. *Id.* at 482. The evidence of record establishes that Sertoma and Gateway are structured pursuant to these same principles.

The Illinois Supreme Court also determined that another entity with a structure and ideals similar to those of Gateway was not a charitable organization for property tax purposes in Kiwanis International v. Lorenz, 23 Ill. 2d 141 (1961). Citing Rotary International v. Paschen, *supra*, the court said that the record established that the promotion by business and professional men of the spirit of fraternalism among members, providing practical means to form enduring friendships, exchanging experiences and improving the member's leadership in the community was laudable. However, the social professional and business advancement of the members and

the element of personal advantage to those members is not what is contemplated as being charitable. Kiwanis International v. Lorenz, *supra*, at 146

Gateway has shown that it does not meet the majority of the guidelines set forth in Methodist Old Peoples Home v. Korzen, *supra*, and has not established that it is a charitable organization. Nor has Applicant established that it uses Greenwood Manor for charitable purposes. It is clear that Applicant has leased the subject premises. The statute states that in order to qualify for a charitable property tax exemption, property must be used for charitable purposes and not leased or used with a view to profit. Gateway is providing housing pursuant to commercial type leases targeting an economic category of tenants. Since Gateway hasn't provided documentary evidence that would show otherwise, it must be concluded that the property is leased for a profit.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967)

As Applicant has offered clearly insufficient competent and credible evidence concerning its charitable and leasing activities, it is recommended that Macon County Parcel Index No. 04-12-15-429-001 remain on the tax rolls for the 2004 tax year and be assessed to Gateway, the owner thereof.

Barbara S. Rowe
Administrative Law Judge
Date: July 13, 2006