

PT 06-2

Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

**KANKAKEE COUNTY TRAINING
CENTER FOR THE DISABLED,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket Nos. 04-PT-0012
03-46-14
PIN 09-32-202-039
John E. White
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Jeffrey Godin, Elliott & McClure, P.C., appeared for Kankakee County Training Center for the Disabled, Inc.; Shepard Smith, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Brenda Gorski, Assistant State's Attorney for Kankakee County; appeared for Intervenor, the Kankakee County Board of Review.

Synopsis:

This matter arose after Kankakee County Training Center for the Disabled, Inc. (KCTC) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for property KCTC owned during calendar year 2003, and which is situated in Kankakee County, Illinois. The Kankakee County Board of Review (Board) intervened, to contest exemption of the property. The issue is whether KCTC is entitled to a charitable property tax exemption for that property.

The hearing was held at the Department's offices in Chicago. KCTC presented evidence consisting of books and records and other documents, as well as the testimony

of witnesses. The Board also offered documentary evidence and the testimony of the Kankakee County Assessor. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the property remain on the tax rolls for 2003.

Findings of Fact:

1. KCTC was incorporated as an Illinois not-for-profit corporation in 1966. Applicant Ex. 4 (copy of Illinois Secretary of State's Certificate of Incorporation for KCTC, certificate no. 2978); Hearing Transcript (Tr.) pp. 10-11 (testimony of Steve Mitchell (Mitchell), KCTC's president and CEO).
2. On January 18, 2002, the Department issued exemption identification number E 9987-1343-04 to KCTC, after concluding that KCTC was organized and operated exclusively for charitable purposes. Applicant Ex. 10.
3. KCTC's purposes are:
 1. To promulgate and press into operation programs for persons who are mentally or physically disabled, dealing with rehabilitation, welfare and health, in order to assist them, in adjusting themselves to their environment; to train them in vocations and avocations; to aid them in all their activities, and in general, to be of assistance in solving their particular problems.
 2. To provide rehabilitation services, training, employment and opportunities for personal growth as an interim step in the rehabilitation process for the handicapped, disabled, and those who cannot be readily absorbed in the competitive labor market.
 3. To establish a rehabilitation center or centers.
 4. To establish necessary relations with other organizations or functions, including government agencies, to bring about benefit to this organization.
 5. To provide supervision for training and/or occupational and vocational rehabilitation by means of a properly a[ug]mented shelter workshop.

Applicant Ex. 4.

4. In 1971, the Internal Revenue Service (IRS) determined that KCTC was exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code. Applicant Ex. 11 (copy of IRS determination letter); Tr. pp. 16-17 (Mitchell).
5. KCTC acquired the property at issue in November, 2000, and it owned the property throughout 2003. Applicant Ex. 9 (copy of warranty deed to property).
6. Also in November 2000, KCTC received a permit to begin construction of a group home for disabled adults — commonly known and referred to as a “CILA”¹ home — on the property. Applicant Ex. 1 (copy of building permit); Tr. pp. 60-61 (Mitchell).
7. In November 2003, KCTC placed 8 individuals as residents in the CILA home on the property. Applicant Ex. 3 (copy of applicant prepared list of residents); Tr. p. 63 (Mitchell).
8. The Department had previously determined that KCTC’s ownership and use of real property as a CILA home constituted a use of property exclusively for charitable purposes, under § 15-65 of Illinois’ Property Tax Code (PTC). Applicant Ex. 19 (copy of agency decision in docket no. 98-PT-0087). That

¹ I take official notice that the acronym CILA stands for Community Integrated Living Arrangement, which is “a living arrangement certified by a community mental health or developmental services agency under [the Community-Integrated Living Arrangements Licensure and Certification] Act where 8 or fewer recipients with mental illness or recipients with a developmental disability who reside under the supervision of the agency.” 210 ILCS 139/3(d); *see also* 59 Ill. Admin. Code § 115.120 (Illinois Department of Human Services’ (DHS) regulatory definition of CILA); <http://www.dhs.state.il.us/mhdd/dd/CommunityIntegratedLivingArrangement.asp> (DHS’s website) (last viewed on January 27, 2006) (“A CILA is a combination of supports and services individually tailored for an adult with developmental disabilities. The CILA client may live in his or her own home, in a family home, or in a community setting with no more than seven other adults with disabilities. The primary goal of CILAs is to help the individual become more independent in daily living, more involved in his or her own community and more economically self-sufficient.”).

determination was made regarding the 1997 tax year. *Id.*

9. During 2003, KCTC's bylaws did not provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services. Intervenor Ex. 1 (copy of KCTC's bylaws in effect during 2003); Tr. pp. 64-67 (Mitchell). It did, however, have a policy statement that provided, "Also no person is denied enrollment based on their inability to pay for services." Applicant Ex. 6 (copy of KCTC's Procedures for Admission), p. 2; Tr. pp. 43, 64-68 (Mitchell).
10. On April 29, 2004, KCTC's board of directors amended KCTC's bylaws to provide that KCTC would not deny service to persons based on their inability to pay. Tr. pp. 66-68 (Mitchell).

Conclusions of Law:

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970).² One class of property that the legislature may exempt from taxation is property used exclusively for charitable purposes. Ill. Const. Art. IX, § 6 (1970); Eden, 213 Ill. 2d at 286-87, 821 N.E.2d at 248. When considering whether property is exempt pursuant to

² Article IX, § 6 of the Illinois Constitution of 1970 provides:

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.

Ill. Const. Art. IX, § 6 (1970).

PTC § 15-65, an applicant must establish that it satisfies both the statutory requirements as well as the Illinois constitutional requirements, which the Illinois Supreme Court has previously described in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 155, 233 N.E.2d 537, 540 (1968). Eden, 213 Ill. 2d at 290, 821 N.E.2d at 250.

Section 15-65 of the PTC provides, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(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 or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

35 ILCS 200/15-65 (footnotes omitted).

Here, the Department denied KCTC's exemption application after determining that the property was not in exempt use. Department Ex. 1. The Department argues, *inter alia*, that that determination is correct because KCTC has not established that it satisfies the constitutional requirements for exemption, as per the Korzen guidelines. Tr. pp. 226-30 (closing argument). The intervenor also agrees that KCTC does not meet the constitutional requirements, pursuant to Korzen (Tr. pp. 235-239 (closing argument)), but it first urges that the property is not exempt because the evidence indisputably establishes that taxpayer fails to satisfy the statutory requirement set forth in PTC § 15-65(c)(i). Tr. pp. 234-35. Specifically, the Board cites the evidence and KCTC's concession that, during the year at issue, its bylaws did not "provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services" Intervenor Ex. 1; Tr. pp. 64-67 (Mitchell).

The Board is correct. Section 15-65 unequivocally provides that for the particular type of property to be exempt, "either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended." 35 ILCS 200/15-65(c). Thus, KCTC must prove, *inter alia*, that it satisfies one of those two criteria. The evidence here is clear that, during 2003, KCTC's bylaws did not contain the provision required by PTC § 15-65(c)(i). Intervenor Ex. 1; Tr. pp. 64-67 (Mitchell). Nor did KCTC introduce any evidence establishing that the CILA home or facility located on the property is qualified, built or financed under § 202 of the

National Housing Act of 1959, as amended. On this latter point, I presume that KCTC knows whether the CILA home is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended, and its failure to offer any evidence or argument on this issue was not a mistake, but an objective manifestation of its acknowledgement that the property is not entitled to an exemption under PTC § 15-65(c)(ii).

In response to the Board's argument, KCTC argues that I could treat its admissions policy as having been part of KCTC's bylaws, since it had such a policy in place during the years at issue and before, and since it subsequently amended its bylaws, in 2004, to include such a policy. Tr. pp. 239-40. I cannot agree. One of the statutory requirements for exemption is that the applicant's "bylaws ... provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services ...", and there is a recognized legal distinction between a corporation's bylaws and its policies.

At least one Illinois court has noted that "bylaws [are] sometimes referred to as private laws, 'to regulate, govern and control its own actions, affairs and concerns of its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it.'" (8 Fletcher, *Cyclopedia of Corporations* (1966), § 4166 at 622 (footnote omitted [in original]).)" Kendler v. Rutledge, 78 Ill. App. 3d 312, 316, 396 N.E.2d 1309, 1312 (1st Dist. 1979). A corporation's bylaws constitute a contract between the corporation and its shareholders or members. Norris v. South Shore Chamber of Commerce, 98 Ill. App. 3d 32, 34, 424 N.E.2d 76, 77 (1st Dist. 1981). A corporation's bylaws can bind the corporation, as well as its shareholders and/or members. *Id.*;

Kendler, 78 Ill. App. 3d at 316, 396 N.E.2d at 1312. I presume that when the Illinois General Assembly wrote PTC § 15-65(c)(ii) to require such a waiver or reduction to be in the applicant's bylaws, it knew and approved of the judicial construction of the term bylaws, that it intended that applicants have such a declaration in their bylaws. Carver v. Bond/Fayette/Effingham Reg. Bd. of School Trustees, 146 Ill. 2d 347, 354, 586 N.E.2d 1273, 1276 (1992) (“this court presumes that the legislature knew of the prior interpretation placed on its language by judicial decision”).

“Where the language of a statute is clear, the court need look no further than the language itself.” Northwest Diversified, Inc. v. Mauer, 341 Ill. App. 3d 27, 36, 791 N.E.2d 1162, 1169 (1st Dist. 2003). Here, the text of PTC § 15-65(c) is plain and clear, and it required KCTC to have a waiver or reduction provision within its bylaws. KCTC did not have such a provision in its bylaws, and it offers no legal authority to persuade me that I should construe the term “bylaws,” as used in PTC § 15-65(c)(i), to mean “bylaws or policies.” A party seeking an exemption has the burden of proving clearly and conclusively that the property in question falls within the terms of the statute under which the exemption is claimed. Chicago Bar Ass’n. v. Department of Revenue, 163 Ill. 2d 290, 300, 644 N.E.2d 1166, 1171 (1994). KCTC’s concession that it did not have a waiver or reduction provision in its bylaws during the year at issue means that it cannot satisfy the plain and clear requirements of PTC § 15-65(c)(i).

As a final note, I address the Department’s prior determination, for prior tax years, that other properties owned and used by KCTC as CILA homes were exempt. Applicant Ex. 19, p. 3 ¶ 3 (findings of fact). A cause of action for taxes for one year is not identical to a cause of action for taxes in subsequent years, so a decision adjudicating

tax status for a particular year is not determinative of the status of the property in later years. Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546, 417 N.E.2d 1039, 1043-44 (1st Dist. 1981). Consequently, even where the ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption annually. *Id.*

Saying that a prior decision is not determinative, however, does not mean that the fact that the prior determination (or judgment) was made is irrelevant to a particular issue. *See id.* For example, in the prior agency decision, one of the findings of fact provided that the Department had previously exempted property owned by KCTC, and which it used as a CILA home. Applicant Ex. 19, p. 3 ¶ 5. Once a fact-finder is confronted by evidence that the agency has previously determined that a person's particular use of property may constitute an exempt use, whereas, in the case *sub judice*, the Department has determined that the same person's similar use of property does not constitute an exempt use for a subsequent tax year, the logical questions that follow may include: "What is known now that was not known then?" or "What has changed since that prior decision?"

In the prior decision in docket number 98-PT-0097, findings of fact numbers 16 and 21 provided:

16. All CILA homes must abide by a "no decline option," which means that they may not refuse to provide services to any individual for any reason except lack of capacity to accommodate the particular level of disability in question. Thus, for example, a CILA home that services only persons suffering from autism will not be required to service persons with other disabilities. Administrative Notice of 59 Ill. Admin. Code, Ch. I, §§ 115.200(b).

21. Applicant does not evict anyone from one of its CILA homes for financial reasons, including inability to pay. Nor does it suspend any of the services it provides at the subject properties if residents become unable to pay. Tr. pp. 94-97.

Applicant Ex. 19, pp. 5-6 ¶¶ 16, 21.

Thus, in that prior decision, the evidence cited to support the specific findings quoted above consisted of, respectively, a summary of what an administrative regulation provided, and the testimony of a witness. In this matter, the parties specifically addressed a particular fact issue that was apparently never even appreciated by the parties or the ALJ in the prior consolidated cases. The issue crystallized in this matter is whether KCTC met the statutory requirement mandated by PTC § 15-65(c)(i).

Moreover, the documentary evidence offered in this matter is more probative on that particular fact issue than a citation to what a particular regulation provides, and more authoritative and credible than the mere testimony of a witness. What does it matter, for example, that a regulation which provides, in summary, that “[a]ll CILA homes must abide by a ‘no decline option,’ ” when the issue is whether KCTC’s “bylaws ... provide for a waiver or reduction, based on an individual’s ability to pay, of any entrance fee, assignment of assets, or fee for services” 35 **ILCS** 200/15-65(c)(i). Second, even if I were to treat a corporate policy as though it had the status of a bylaw, a witness’s testimony that KCTC enforced a policy that “... no person is denied enrollment based on their inability to pay for services” is severely militated by the text of KCTC’s contracts with its residents at the property at issue, which provided that, “THE FACILITY MAY TERMINATE THIS CONTRACT AND TRANSFER OR DISCHARGE THE RESIDENT FOR ... NON-PAYMENT OF STAY.” Department Ex. 2, p. 3; *see also*

Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542 (“the statements of the agents of an institution ... evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used ...”). Apparently, no such contracts were admitted in the prior case. *See Applicant Ex. 19, passim.*

In sum, the matter at issue presents a new issue, not confronted in the Department’s prior determination. The evidence of record on this particular issue compels a decision in favor of taxation, and against exemption.

Conclusion:

I conclude that the property does not meet the criteria statutory required for exemption under PTC § 15-65(c)(i). Therefore, I recommend that the Director finalize the Department’s tentative denial of KCTC’s application for a property tax exemption, and that the property remain taxable for all of 2003.

Date: 2/2/2006

John E. White
Administrative Law Judge