

**PT 06-36**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**PALLIATIVE CARE CENTER AND  
HOSPICE OF THE NORTH SHORE,  
Applicant**

v.

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

**Docket No: 05-PT-0054  
Real Estate Tax Exemption**

**For 2004 Tax Year**

**P.I.N. 04-22-405-006-0000  
Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Joel Brodsky and Mr. Thomas McCarthy, Quarles & Brady, LLP, on behalf of Palliative Care Center and Hospice of the North Shore; Mr. John Alshuler, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether property, identified by Cook County Parcel Index Number 04-22-405-006-0000 (hereinafter the “subject property”), should be exempt from 2004 real estate taxes under section 15-65 of the Property Tax Code which exempts property actually and exclusively used for “charitable purposes” and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65. This controversy arose as follows: Palliative Care Center and Hospice of the North Shore (“Palliative”) filed a Property Tax Exemption Complaint with the Cook County Board of Review seeking exemption from 2004 real estate taxes for the subject property. The

Board reviewed Palliative's Complaint and recommended that an exemption be granted for 2004. Dept. Ex. No. 1. The Illinois Department of Revenue rejected the Board's recommendation in a determination dated May 26, 2005, finding that the subject property was not in exempt ownership and not in exempt use in 2004. Dept. Ex. No. 1. On July 22, 2005, Palliative filed an appeal of the Department's decision. On April 20, 2006, a formal administrative hearing was held with Margaret Rudnik, Senior Vice-President of Corporate Planning, Mary Shehan, Chief Operating Officer, and Robert Felsenthal, Chief Financial Officer, testifying for Palliative. Following a careful review of the testimony and evidence, it is recommended that the Department's determination denying the exemption for the 2004 assessment year be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership and use in tax year 2004. Tr. pp. 9-10; Dept. Ex. No. 1.
2. The subject property, consisting of 4.22 acres, is located in Glenview. The property was purchased by warranty deeds on November 1, 2002, as two separate P.I.N.'s, 04-22-405-002 and 4-22-405-003, and then consolidated as P.I.N. 4-22-405-006-0000, on October 16, 2003. Tr. pp. 10-11, 14-18; App. Ex. Nos. 10 and 19.
3. Palliative is exempt from income taxes under section 501(c)(3) of the Internal Revenue Code. Palliative was incorporated under the Illinois "General Not For Profit Corporation Act" as "Hospice of the North Shore" in August, 1978. Palliative is exempt from Illinois Use Tax as of October 19, 2001. Tr. pp. 49-55; App. Ex. Nos. 2, 5 and 6.

4. Palliative's Bylaws state that its purposes are to provide hospice care palliative services for the benefit of hospice patients and their families, to create and foster a climate of openness and communications with respect to death and dying and to advance the concept of hospice care for dying persons and their families, to provide bereavement support services for the benefit of persons who are in grief, to provide home palliative care for the purpose of making available optimal symptom control to patients having a life-threatening illness or an advancing state of chronic debilitating condition and to provide other health care services to patients that may be related, incidental or preliminary to those set forth above. Tr. p. 53; App. Ex. No. 3.
5. There is no provision in Palliative's Bylaws for a waiver or reduction, based on an individual's ability to pay, of any entrance fee or fee for services. App. Ex. No. 3.
6. Palliative provides home health services and medical home visits of nurse practitioners to patients who are unable to get to a physician, bereavement services, pediatric programs including hospice and counseling for children and families, and psychosocial counseling for children and families going through a terminal illness but not yet ready for hospice. Tr. pp. 36-37.
7. Palliative's "Admission Criteria: Hospice" contains the following guidelines for admission to the Hospice Care Program. Services will be provided within the service areas of Palliative. The patient/family unit has expressed a need for Palliative's services and is prepared to sign the necessary forms. The patient has a terminal illness as certified by an attending physician. The patient/family unit is willing to accept palliative care in lieu of curative care. Tr. pp. 41-42; App. Ex. No. 7.

8. The “Admission Criteria: Hospice” also contains the following: “The Hospice Care Program services are not to be refused to anyone because of race, color, national ancestry, religion, age, handicapping condition, sex, sexual orientation, lack of advanced directives, source of payment, or other characteristics protected by law.” “Patients meeting the admission criteria will be admitted to the Hospice Care Program without regard to their ability to pay or the availability of adequate governmental or other third party reimbursement.” In the first sentence, “source of payment” was added in November, 2005. The second sentence was added in November, 2005. Tr. p. 42; App. Ex. No. 7.
9. Palliative’s “service area” as mentioned in the “Admissions Criteria: Hospice” extends north to the Wisconsin border, east to the lake, west to Route 83 and south to Fullerton Avenue. Tr. p. 100.
10. Palliative served approximately 1,700 patients and families in 2004. The average charge for a hospice stay is \$252/day and the average length of stay is 60 days. Tr. pp. 35-36, 38-39, 90-91.
11. Palliative’s “Consolidated Statement of Operations” as of December 31, 2004, shows “Total Revenue” of \$24 million, of which \$21.9 million (91%) is from “Net Patient Service Revenue” and \$1.9 million (8%) is from Contributions. In 2004, Palliative had “Operating Income” of \$1,328,116 excluding \$249,568 in “Equity In Earnings of Affiliate.” Palliative has a 50% interest in a for-profit affiliate, “Home Care Assistants of the North Shore,” that provides private duty services to patients. Tr. pp. 75-76, 78-79, 83; App. Ex. No. 17.

12. In 2004, Palliative's payor mix of patient accounts receivable was 59% Medicare, 29% Medicaid, 11% "Other Third-Party-Payors," and 1% "Self-Pay," who were able to pay for hospice care on their own. Tr. pp. 78-79, 98; App. Ex. No. 17.
13. Palliative's 2004 "Notes to Consolidated Financial Statements" state under "Charity Care" that "[T]he Care Center has a policy of providing charity care to patients who meet certain criteria under its charity care policy without charge or at amounts less than its established rates." No charity care was provided to hospice patients in 2004. The Notes also state under "Charity Care" that "the Care Center provides bereavement programs, including counseling and outreach to patients and their families under Medicare mandates for which insurance companies may not be billed. These services are also not billed to the patients and their families." Costs under these programs were \$374,000 in 2004. Tr. pp. 77-79; App. Ex. No. 17.
14. Palliative operates Care Centers in Libertyville, Norwood Park, and Olympia Fields. These properties are leased. Tr. pp. 103-104.
15. On November 1, 2002, Palliative signed a contract with Valenti Builders, for the construction of an "office building containing approximately 40,000 square feet, along with [an] approximately 200 car parking lot and other related improvements" on the subject property. Tr. pp. 18-20; App. Ex. Nos. 13, 14 and 15.
16. The contractor broke ground in April 2004 and Palliative began occupying the subject property in August, 2005. Tr. pp. 20-21.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Palliative has not demonstrated, by the presentation of testimony or through exhibits and argument, sufficient evidence to

warrant an exemption of the subject property from 2004 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 (1<sup>st</sup> 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.
- (b) \*\*\*
- (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 exemption, the applicant provides affirmative evidence that the home or facility 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.<sup>1</sup>  
35 ILCS 200/15-65

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 (1<sup>st</sup> Dist. 1987). At the evidentiary hearing and in Applicant's Post Hearing Brief, Palliative took the position that the applicable statutory subsection was 735 ILCS 200/15-65(a), "institutions of public charity," and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen").

In Korzen, the court set forth guidelines for determining whether an organization qualifies as an institution of public charity: (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, the

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<sup>1</sup> Palliative is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 5. There is no provision in Palliative's Bylaws for waiver or reduction of fees for Palliative's services and there was no testimony or evidence at the hearing that the facility was "qualified, built or financed under Section 202 of the National Housing Act." App. Ex. No. 3. "Applicant's Post-Hearing Brief" does not contain any arguments supporting exemption under 735 ILCS 200/15-65(c). I conclude therefore that the facility on the subject property does not satisfy the statutory requirements of (c)(i) or (c)(ii) in 735 ILCS 200/15-65(c).

funds are held in trust for the objects and purposes expressed in the charter, the organization does not provide gain or profit in a private sense to any person connected with it; (4) no obstacles appear to be placed in the way of those who need and would avail themselves of the charitable benefits it dispenses; (5) charity is dispensed to all who need and apply for it, and; (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 156.

The above factors are guidelines for assessing whether property is exempt from taxation but are not definitive requirements. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

Before addressing the Korzen guidelines, it must be noted that the subject property, consisting of 4.22 acres, was purchased by warranty deeds on November 1, 2002, as two separate P.I.N.’s, 04-22-405-002 and 4-22-405-003, and then consolidated as P.I.N. 4-22-405-006-0000, on October 16, 2003. Tr. pp. 10-11, 14-18; App. Ex. Nos. 10 and 19. On November 1, 2002, Palliative signed a contract with Valenti Builders, for the construction of an “office building containing approximately 40,000 square feet, along with [an] approximately 200 car parking lot and other related improvements” on the subject property. Tr. pp. 18-20; App. Ex. Nos. 13, 14 and 15. The contractor broke ground in April 2004 and Palliative began occupying the property in August, 2005. Tr. pp. 20-21.

Applicant's actual use determines whether the property in question is used for an exempt purpose. Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). Because Palliative's contractor broke ground on the subject property in April, 2004, I conclude that the property in Glenview was in the actual process of development and adaptation during assessment year 2004. Accordingly, it is appropriate to consider an exemption for the subject property in Glenview for assessment year 2004, although Palliative was operating at its location in Evanston in that year. All of the evidence and testimony presented at the hearing related to Palliative's Evanston operation. Based on this testimony and evidence, I conclude that Palliative is not an "institution of public charity," that Palliative did not use its property for charitable purposes, and accordingly, Palliative is not entitled to a property tax exemption for the subject property in Glenview under 35 ILCS 200/15-65 of the Property Tax Code.

**Guideline 1: The benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens of government].**

Palliative's Bylaws state that its purposes are to provide hospice care palliative services for the benefit of hospice patients and their families, to create and foster a climate of openness and communications with respect to death and dying and to advance the concept of hospice care for dying persons and their families, to provide bereavement

support services for the benefit of persons who are in grief, to provide home palliative care for the purpose of making available optimal symptom control to patients having a life-threatening illness or an advancing state of chronic debilitating condition and to provide other health care services to patients that may be related, incidental or preliminary to those set forth above. Tr. p. 53; App. Ex. No. 3.

The testimony and evidence do not allow me to conclude that the benefits derived from Palliative are for an indefinite number of persons or that Palliative's operations reduce the burdens of government. The testimony and evidence show conclusively that Palliative's benefits, providing hospice care services for hospice patients and their families, are provided to patients and their families with the means to pay for the services. Palliative's "Consolidated Statement of Operations" as of December 31, 2004, shows "Total Revenue" of \$24 million, of which \$21.9 million, or 91% is from "Net Patient Service Revenue." App. Ex. No. 17. I conclude, based on the high level of revenue being earned from patient care, that Palliative's primary purpose and the primary use of its property is to provide hospice care to patients who are able to pay for it, either individually, or through Medicare, Medicaid or private insurance. If Palliative is benefiting an indefinite number of persons, these persons are paying customers.

In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (3<sup>rd</sup> Dist. 2003), the court noted that 97% of Riverside's net revenue of \$10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." Id. at 608. Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found

that Alivio was not a charitable institution. As the above cases indicate, the exchange of services for payment is not a “use” of property that has ever been recognized by Illinois courts as “charitable.”

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). In testifying about Palliative’s financial statements for 2004, Mr. Felsenthal was asked why the financial statements did not contain any figure “with regard to charity care for hospice patients in 2004....”. He responded: “That’s the case because we simply didn’t have any.” Tr. p. 78. It must be emphatically noted here that Palliative did not provide charity care to one hospice patient in 2004. As Small indicates, Palliative’s charging of fees to patients who are able to pay does not destroy its “charitable” nature, but only to the extent it provides services to people who are unable to pay. Palliative did not provide hospice services to one person who was unable to pay in 2004. It would be unreasonable to conclude that Palliative’s benefits are for an indefinite number of persons when not one person received hospice care benefits from Palliative in 2004 that did not pay for or have access to insurance coverage for the services.

The second part of the Korzen guideline requires an analysis of whether Palliative’s services lessen the burdens of government. “The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and

Sciences v. Carr, 322 Ill. 562 (1926). In 2004, Palliative's payor mix of patients' accounts receivable was 59% Medicare, 29% Medicaid, 11% Other Third-Party-Payers (commercial insurers), and 1% "Self-Pay," who were able to pay for hospice care on their own. Tr. pp. 67, 78-79, 98; App. Ex. No. 17. As these figures indicate, fully 88% of Palliative's mix of patients' accounts receivables was paid by government insurance plans. It would be unreasonable to conclude that Palliative relieves a burden on government when fully 88% of its patients' accounts receivable will be paid for by the government.

Mr. Felsenthal testified that Palliative provides services to patients, such as music therapy and massage, that are not reimbursed by Medicare. He stated that "[I]n the computation of the Medicare benefit, the government does not include those services when coming up with that calculation." Tr. p. 68. It appears that the implication here is that the unreimbursed costs represent charity. Illinois courts have consistently rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603 (3<sup>rd</sup> Dist. 2003), Riverside argued that the institution's charity care also included "discounted care to patients through Medicare, Medicaid and private insurance." Riverside claimed to provide this care at 50% of actual cost. The court stated that it was "unpersuaded" by Riverside's arguments that the unreimbursed amounts constituted charitable care. The court was "confident that these discounts are not charitable and do not warrant a finding in favor of Riverside." Id. at 610. Palliative does not confer a benefit upon the public or lessen the government's burden by providing hospice services to persons who are able to

pay for the services themselves or have access to government funded or private insurance to pay for the services.

**Guideline 2: The organization has no capital, capital stock or shareholders and earns no profits or dividends.**

Palliative is exempt from income taxes under section 501(c)(3) of the Internal Revenue Code. Palliative was incorporated under the Illinois “General Not For Profit Corporation Act” as “Hospice of the North Shore” in August, 1978. Tr. pp. 49-55; App. Ex. Nos. 2, 5 and 6. There was testimony at the hearing that Palliative has no shareholders and has never paid dividends. Tr. pp. 55-56.

In 2004, Palliative had “Operating Income” of \$1,328,116, “Investment Income” of \$15,761, and “Equity In Earnings of Affiliate” in the amount of \$249,568. The Consolidated Financial Statements for December 31, 2004 state that Palliative has a wholly owned for-profit subsidiary, Palliative Care Center North Shore Private Care (“PCCNS PC”), which is responsible for the development of alliances with other health care organizations. PCCNS PC and a third party have formed a for-profit limited liability company, “Home Care Assistants of the North Shore,” that provides private duty personal care services to patients. PCCNS PC has a 50% ownership interest in Home Care Assistants of the North Shore resulting in the \$249,568 “Equity in Earnings Of Affiliate” in the Consolidated Financial Statements for 2004. Tr. pp. 75-76, 78-79, 83; App. Ex. No. 17. Palliative’s “Operating Income” of \$1,328,116 and “Equity in Earnings of Affiliate” of \$249,568 do not allow me to conclude that Palliative did not earn a profit in 2004.

**Guideline 3: Funds are derived mainly from public and private charity; the funds are held in trust for the objects and purposes expressed in the charter; the organization does not provide gain or profit to any person connected with it.**

Palliative does not meet this guideline. As discussed previously, Palliative's "Consolidated Statement of Operations" as of December 31, 2004, shows "Total Revenue" of \$24 million, of which \$21.9 million, or 91% is from "Net Patient Service Revenue." App. Ex. No. 17. Palliative's funds in 2004 were clearly not derived from public and private charity.<sup>2</sup> Illinois courts have recognized that an otherwise charitable organization does not lose its exemption by reason of the fact that those patients received by it who are able to pay are required to do so as long as all the money received by it is devoted to the general purposes of the charity, and no portion of the money received by it is permitted to inure to the benefit of any private individual engaged in managing the charity. Sisters of St. Francis v. Board of Review, 231 Ill. 317 (1907).

I am unable to conclude that the revenue received by Palliative is devoted to the general purposes of the charity or that it does not inure to the benefit of any private individual engaged in managing it. Palliative had "Operating Income" of \$1,328,116 in 2004. This operating income must be looked at in light of the testimony that not one patient received charitable hospice care in 2004. Clearly, Palliative's "Operating Income" is not being devoted to the general purposes of charity.

Additionally, there was no testimony at the evidentiary hearing as to salaries paid to any employees of Palliative. Ms. Rudnik, Ms. Shehan and Mr. Felsenthal were never

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<sup>2</sup> At the evidentiary hearing, Mr. Felsenthal testified that the land on the subject property cost approximately \$1.6 million, the cost of construction of the Care Center was \$12.3 million and that \$13.4 million of this \$13.9 total cost was donated. Tr. pp. 56-57, 95-96. No documentary evidence was admitted to support any of these figures.

asked what their salaries were. The Consolidated Financial Statements show that “Salaries and Employee Benefits” were \$13,601,572 in 2004. App. Ex. No. 17. There was testimony that Palliative has 350 employees but this testimony was not specific to 2004. Tr. p. 36. There was no testimony regarding the level or grade or salary range of the employees. There was no documentary evidence presented as to how Palliative’s salaries compared to similar organizations or whether the executive and professional people employed by Palliative are paid salaries comparable to similar positions in the not-for-profit sector or whether they receive bonuses.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). No evidence was presented at the hearing as to whether Palliative’s salaries were reasonable. Because there was no testimony regarding Palliative’s salary structure, I am unable to conclude that Palliative’s revenue does not inure to the benefit of any private individual engaged in managing the facility.

**Guideline 4: No obstacles appear to be placed in the way of those who need and would avail themselves of the charitable benefits dispensed.**

Palliative places several obstacles in the way of those who seek charitable benefits. The first and most significant obstacle is that pamphlets that advertise Palliative’s programs contain absolutely no mention that Palliative has a charitable policy. No person reading these pamphlets would know that charitable hospice care was

available at Palliative. Mr. Felsenthal was asked in cross-examination how Palliative engaged in advertising of its charitable policy. He responded:

I don't believe, in the advertising documents that have been entered, there is anything specifically that says that we actually advertise the charitable policy that says you can – if you are qualified, you can enter the hospice regardless of your ability to pay. I do not believe it says that explicitly in those documents.

Tr. p. 90.

Mr. Felsenthal is correct. There is no mention of a charitable policy in the pamphlets that advertise Palliative's programs.

The pamphlet entitled "Hospice Care" states in the section entitled "Payment" that "[F]or patients 65 and older, hospice services are covered by the Medicare hospice benefit." "Most commercial insurance companies, HMOs and PPOs pay for hospice services. Medicaid provides a hospice benefit to its recipients. An Information & Admissions representative can help explain insurance options further." Palliative's pamphlet entitled "Primary Healthcare at Home" states in the section entitled "Payment" that "[S]ervices are covered under Medicare Part B. We can also work out a payment plan with you if necessary. For more information on your payment options, call..." Palliative's pamphlet entitled "Pain & Symptom Management" states in the section entitled "Payment" that "[P]alliative Care Consultation may be covered by Medicare, Medicaid and some commercial insurance. We can also work with you to develop a payment plan if necessary." Palliative's pamphlet entitled "Jewish Care Services" states in the section entitled "Payment" that "[M]edicare, Medicaid, most commercial insurance companies, HMOs and PPOs pay for these services. For patients 65 and older, hospice services are covered by the Medicare hospice benefit." App. Ex. No. 21.

Palliative’s pamphlet entitled “Home Healthcare” appears to be advertising for and directing patients to Palliative’s for-profit affiliate, “Home Care Assistants of the North Shore,” discussed previously in this Recommendation. In this pamphlet, a gerontologist attests to the following: “HomeCare of the North Shore is an outstanding service.” In the section entitled “Payment,” it states that “[M]ost private insurance companies, HMOs, PPOs and Medicare and Medicaid provide a home care benefit. If you do not have insurance, we can also work with you to develop a payment plan. We can help explain payment options once you, your family and your physician determine the kind of care you need. We will work with you and your family to find appropriate ways to obtain reimbursement for necessary services, prescriptions or equipment.” App. Ex. No. 21.

It is simply impossible to conclude from these pamphlets and the testimony at the evidentiary hearing that any person needing hospice or related care would know that charitable assistance is available from Palliative. The phrases that are contained in the “Payment” section of the pamphlets including “insurance options,” “payment plans,” “payment options,” and “appropriate ways to obtain reimbursement,” would not be an indication to any person needing charitable hospice care that charitable care was available from Palliative.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care

may be available to those who need it.” *Id.* at 281. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. Similarly, a person reading Palliative’s advertisements would never know from the pamphlets that charitable assistance is available and this is a significant obstacle in the way of anyone who would avail themselves of Palliative’s services. The fact that no person applied for or received charitable hospice care in 2004 certainly indicates that the availability of charitable assistance is not being advertised to the general public.

Palliative’s “Admission Criteria: Hospice” contains the following sentences: “The Hospice Care Program services are not to be refused to anyone because of race, color, national ancestry, religion, age, handicapping condition, sex, sexual orientation, lack of advanced directives, source of payment, or other characteristics protected by law.” “Patients meeting the admission criteria will be admitted to the Hospice Care Program without regard to their ability to pay or the availability of adequate governmental or other third party reimbursement.” In the first sentence, “source of payment” was added in November, 2005. The second sentence was added in November, 2005. Tr. p. 42; App. Ex. No. 7. According to testimony at the hearing, the criteria were changed “to actually reflect our practice.” “We were practicing that way but decided to make sure our corporate policy reflected that practice.” Tr. p. 42.

It would be illogical for me to conclude that Palliative “practiced that way” in light of the fact that not one person received charitable hospice care in 2004. The

testimony was that “source of payment” and the second sentence were added to the “Admission Criteria: Hospice” in 2005. No “Admission Criteria: Hospice” for 2004, was admitted into evidence and I am unable to conclude that Palliative had any written policy regarding charity care for 2004, the year at issue in this case. The lack of a written charitable policy in 2004 is an additional obstacle in the way of those who would have availed themselves of Palliative’s benefits in that year.

It is unclear from the testimony at the evidentiary hearing when the possibility of charitable assistance is discussed with Palliative’s prospective patients, if it is ever discussed. Prospective patients would not know from Palliative’s advertising that charitable care was available. No corporate policy statement or procedure was identified or admitted showing when a patient is made aware that charitable hospice care is available. Mr. Felsenthal was asked in direct examination if patients who can’t afford to pay “tell the people, upon admission, that they can’t afford it, are they required to sign that form that says they’ll be responsible for paying for that care.” He responded: “They would not be.” He was then asked: “And that is something that’s discussed with them at the time?” He responded: “What do you mean by discussed?” Tr. pp. 107-108. His remaining testimony never clarified this issue.

Ms. Shehan, Chief Operating Officer, was asked the following question: “If you know, during 2004, how many patients received care at no charge?” She responded: “I don’t know that answer.” Tr. p. 46. She did testify, however, that care is provided regardless of one’s ability to pay. “The fact that they are unable to pay or have no insurance is noted on their consent form, so we have it in writing, but it doesn’t alter the provision of care.” Tr. pp. 42-43. It seems strikingly odd that Ms. Shehan, unaware of

how many patients received care at no charge in 2004, could testify so confidently about the procedures followed and the provision of care given to these nonexistent patients.

I am unable to conclude from Palliative's pamphlets that a patient needing charitable hospice care would know to go to Palliative to receive this care. If a prospective patient needing charitable hospice care went to Palliative, notwithstanding the pamphlets, I am unable to conclude from Mr. Felsenthal's testimony that Palliative ever "discussed" charitable care with this patient. It remains unclear from the testimony of both Mr. Felsenthal and Ms. Shehan how or when an applicant would know that charitable assistance is available. Palliative did not produce any document, corporate policy or procedure, showing that a prospective patient is made aware that charitable assistance is available, if in fact it is available. Mr. Felsenthal testified that there were no charitable hospice patients in 2004 "because we simply didn't have any." Tr. p. 78. It seems quite probable that Palliative "simply didn't have any" charitable patients because charity was not advertised to or "discussed" with those patients needing it. Accordingly, I am forced to conclude that Palliative places significant obstacles in the way of those who would avail themselves of its charitable benefits.

**Guideline 5: Charity is dispensed to all who need and apply for it.**

Palliative's argument with regard to this guideline appears to be that the organization dispenses charity to all who need and apply for it, but in 2004, the year at issue in this case, no one needed it or applied for it. There was considerable testimony at the evidentiary hearing regarding the fact that no person received charitable hospice care from Palliative in 2004.

In 2004, Palliative was located in Evanston and in August, 2005, Palliative opened its Care Center in Glenview. Tr. pp. 14-15. Palliative’s “Admission Criteria: Hospice” contains a “guideline” for admission to the Hospice Care Program that states that services will be provided within the service areas of Palliative. App. Ex. No. 7. Palliative’s “service area” extends north to the Wisconsin border, east to the lake, west to Route 83 and south to Fullerton Avenue. Tr. p. 100.

Several arguments were advanced by Palliative as to why no charitable hospice care was dispensed in 2004. Counsel for Palliative asked Mr. Felsenthal the following questions:

Q. Is the location of [Palliative], do you think that has had an effect on the amount of patients that need charity care?

A. I believe that to be the case.

Q. Okay. I mean if [Palliative] was located somewhere other than Glenview, in a poorer area, let’s say, do you believe that the number of people needing charity care would increase?

A. Yes.

Tr. pp. 85-86.

This testimony is patently disingenuous. Palliative is asking this tribunal to conclude that they are “an institution of public charity” and that they use their property for charitable purposes as they move to an area, according to the testimony, where no one needs or requests charity. The testimony on this issue becomes even more absurd when one considers that in 2004, the year at issue in this case, Palliative was located for the entire year in Evanston, not Glenview. Assume, for purposes of argument, that Evanston is a “poorer area” than Glenview. If there was no charitable use of Palliative’s property in Evanston in 2004, then it seems entirely probable, according to the testimony, that there will never be charitable use of Palliative’s property in Glenview, even as Palliative reaps

substantial benefits from the property tax exemption that they are requesting from this tribunal. My research indicates no case in Illinois where an organization was given a property tax exemption for its charitable use of property while they moved to an area where they anticipate that they will have no charitable use of the property.

It is also noted that Palliative operated leased Care Centers in Libertyville, Norwood Park, and Olympia Fields. Tr. pp. 103-104. Testimony at the evidentiary hearing indicated that the operations at these locations are included in the consolidated financial statements. Tr. pp. 103-104. In determining whether Palliative is an “institution of public charity” as is required by 35 ILCS 200/15-65, it is necessary to look at Palliative’s entire consolidated operation. Palliative’s Consolidated Financial Statements indicate that no one received charitable hospice care from any of Palliative’s four locations in 2004. App. Ex. No. 17. Mr. Felsenthal testified that no patients received charitable hospice care because “we simply didn’t have any.” Tr. p. 78. I must assume from this testimony that Palliative “simply didn’t have any” requests for charitable hospice care in Evanston, Libertyville, Norwood Park or Olympia Fields in 2004. Surely, one or more of these four suburbs is a “poorer area” than Glenview and some person in these four suburbs needed charitable hospice care in 2004. It is impossible for me to find from the testimony that Palliative, dispensing no charitable hospice care at four locations while moving to a location where charitable care is not anticipated, is truly “an institution of public charity.”

Ignoring Palliative’s location in either Evanston or Glenview, the organization provides treatment in a designated service area. Palliative’s “service area” extends north to the Wisconsin border, east to the lake, west to Route 83 and south to Fullerton Avenue.

Tr. p. 100. Mr. Felsenthal was asked on cross-examination if there were “plenty of poor people in Waukegan,” which is located between Glenview and the Wisconsin border. He responded: “I believe there’s plenty of poor people in Waukegan.” Tr. p. 105. On redirect examination, the following exchange took place:

Q. These poor people in Waukegan are on Medicare, correct?

A. You know, depending on their age. Some have Medicare, some have Medicaid, and some have none of those things. And if they would come to us and seek care, we would provide it.

Tr. pp. 107-108.

Mr. Felsenthal had also testified earlier in the evidentiary hearing that the reason that Palliative’s percentage of charity care was so small was because there were so few patients coming to Palliative that weren’t on Medicare. Tr. pp. 101-102.

The testimony is not believable and not logical. It is safe to assume that there are “plenty of poor people” located in Palliative’s service area that are too young for Medicare benefits, earning too much for Medicaid benefits, are not covered by private insurance plans and in need of Palliative’s hospice services. There is an apparent and obvious reason that these people do not seek charitable care from Palliative and this reason has nothing to do with Palliative’s location in either Evanston or Glenview. Patients needing charitable hospice care do not know that charitable care is available at Palliative. They do not know that charitable hospice care is available because not one pamphlet advertising Palliative’s services indicates that Palliative will provide hospice care without the patient having Medicare, Medicaid, an insurance plan, or without the patient developing a “payment plan” or learning about “payment options” or “appropriate ways to obtain reimbursement.” If a prospective patient needing charitable hospice care went to Palliative, notwithstanding its advertising, it is unclear from the testimony when

the possibility of receiving charitable assistance is discussed with the patient if, in fact, it is ever discussed.

In its “Post Hearing Brief,” Palliative cited and relied on Sisters of Third Order of St. Francis v. Board of Review of Peoria County, 231 Ill. 317 (1907). In Sisters, the Court found that a charitable purpose may be recognized, in spite of a great disparity between the number of charity patients and those who pay for care “so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such person making application to or obtaining admission to the hospital.” *Id.* at 322.

Palliative has a huge disparity between the number of paying patients and the number of charitable patients. There was testimony that Palliative served approximately 1,700 paying patients and families in 2004, when Palliative “experienced some growth.” Tr. p. 36. Palliative’s “Post Hearing Brief” states as follows in justifying Palliative’s operating income of \$1,328,116 in 2004: “In 2004, Palliative had an increase in net operating income because it had an increase in people seeking services but did not have sufficient number of clinical personnel. Therefore, the clinical personnel were stretched very thin and the additional reimbursement went to the ‘bottom line.’” (“Post Hearing Brief,” p. 11). Even as Palliative “experienced some growth,” and had an “increase in people seeking services” in 2004, the testimony is that Palliative’s disparity of 1,700 paying patients and zero charitable patients was because the organization “simply” didn’t have any requests for charitable hospice care.

Palliative’s justifications for this disparity are not credible. Mr. Felsenthal argued that one reason for the disparity between paying patients and charitable patients is

Palliative's locations, and in 2005 Palliative moved to an area where they anticipate an even greater disparity. Another justification for the disparity is that people who need hospice care are either on Medicare or Medicaid or have private insurance and these patients are not asking Palliative for assistance. This would require me to conclude that in Palliative's service area in 2004, no uninsured patient under 65 needed charitable hospice care. Palliative's justifications for the disparity between paying patients and charitable patients become totally meaningless in light of its lack of advertising of its charitable policy. The reason for the disparity between paying patients and charitable patients is Palliative's failure to make known to the general public that charitable hospice care is available, either through advertising or "discussions" with prospective patients. Palliative is not dispensing charity to all who need and apply for it because no one needing charitable hospice care would know from Palliative's advertising or "discussions" to apply for it.

**Guideline 6: Exclusive (primary) use of the property is for charitable purposes.**

Palliative's "Consolidated Financial Statements" for 2004 state in Note 3, entitled "Charity Care" that the "Care Center provides bereavement programs, including counseling and outreach to patients and their families under Medicare mandates for which insurance companies may not be billed. These services are also not billed to the patients and their families." Cost incurred under these programs were \$374,000 in 2004, which represented 1.5% of Palliative's total revenue of \$24 million. App. Ex. No. 17. Mr. Felsenthal testified that there was "no billing at all" for "community bereavement for both adults and children." Tr. p. 92. The costs involved in the \$374,000 "are the cost of the counselors that provide that service." Tr. p. 93.

Palliative's corporate policy titled "Community Outreach and Bereavement Division," revised in February, 2004, states that Palliative "offers several types of services either at no charge or at charges substantially below the value of such services" for several programs including the Adult Bereavement Program and the Children's Grief Program. The policy states that Palliative "is committed to supporting these programs as much as possible by securing funds from charitable donations and other means." Tr. pp. 43-44; App. Ex. No. 8.

Mr. Felsenthal's testimony and the corporate policy relating to the bereavement programs are in conflict with Palliative's pamphlet entitled "Bereavement Programs." The section of the pamphlet entitled "Payment" contains the following statement: "Members of the community not currently in our hospice program can participate in support groups or individual counseling. Our staff will help you find a workable payment option." App. Ex. No. 21. This statement could only be interpreted by members of the community not currently in Palliative's hospice program who need a bereavement program but are unable to pay for it, that they could not participate in counseling without first "finding" a "workable payment option." There is absolutely no indication in this statement that any charitable assistance is available for community members not in the hospice program or that there will be "no billing at all" for the bereavement program, as Mr. Felsenthal testified, or that bereavement services are offered at no charge or reduced charge, as the corporate policy states. The "workable payment option" for members of the community not in Palliative's hospice program does not constitute charitable use of Palliative's property.

The “Payment” section in the pamphlet entitled “Bereavement Programs” also states that “[O]ur bereavement programs are free of charge for 13 months following the death of a loved one for family members in our hospice program.” App. Ex. No. 21. Testimony at the hearing was that Palliative’s average charge for a hospice stay is \$252/day and the average length of stay is 60 days. Tr. pp. 90-91. A hospice patient would pay approximately \$15,120 (\$252 times 60 days) for Palliative services. There was no evidence or testimony at the hearing as to what services the hospice patient receives for his payment to Palliative. Accordingly, it is not possible to conclude that the cost of bereavement programs for family members in Palliative’s hospice program are not already part of the cost of hospice care. Another reason for this is the fact that members of the community not in Palliative’s hospice program can only receive bereavement counseling after “finding” a “workable payment option.”

I am unable to conclude that Palliative’s “free of charge” bereavement counseling for family members, who have already paid significantly for Palliative’s services, constitutes charitable use of the property. Additionally, bereavement counseling for members of the community not in Palliative’s hospice program is likely to be as important and compelling for them as it would be for members in the hospice program. Yet members of the community not in Palliative’s hospice program can only participate in counseling after “finding” a “workable payment option.” The differentiation that Palliative makes between the two groups appears to be “lacking in the warmth and spontaneity indicative of a charitable impulse.” Korzen at 158.

Finally, the “Payment” section of the “Bereavement Programs” pamphlet states that “[S]ervices for children are free of charge.” This is the only indication in any of

Palliative's advertising pamphlets that any charitable services are offered by Palliative or that any services are offered free of charge. App. Ex. No. 21. There was no testimony as to how much of the \$374,000 that Palliative argued was incurred in costs for bereavement programs in 2004 was directly attributable to services for children. Assuming that "free of charge" bereavement services for children represents charitable use of Palliative's property, it does not lead to the conclusion that the subject property is used exclusively for charitable purposes. 35 ILCS 200/15-65 of the Property Tax Code requires that the subject property be "exclusively" used for charitable purposes. An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987).

Palliative's primary purpose is providing hospice care for paying patients and Palliative earned almost \$22 million in revenue from providing this service in 2004. No charitable hospice care was provided by Palliative during this period. If Palliative offers free of charge bereavement services to children, this represents an incidental use of its property in 2004 and an incidental act of beneficence that is legally insufficient to establish that Palliative is "exclusively" or primarily a charitable organization or that it exclusively uses its property for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

For these reasons, it is recommended that the Department's determination which denied the subject property an exemption from 2004 property taxes should be affirmed

and Cook County Parcel Index Number, 04-22-405-006-0000 should not be exempt from 2004 real estate taxes.

October 16, 2006

Kenneth J. Galvin