

PT 11-13
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

NEW SULLIVAN THEATER,

APPLICANT

v.

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

Docket No: 10 PT 0027 (09-101-27)
Real Estate Tax Exemption

For 2009 Tax Year

P.I.N. 11-23-307-010

Winnebago County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Erin E. Walsh, Reno & Zahm, LLP, on behalf of New Sullivan Theater; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Winnebago County Parcel, identified by property index number 11-23-307-010 (hereinafter the “subject property”), should be exempt from 2009 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, which exempts all property actually and exclusively used for charitable or beneficial purposes, and not leased or otherwise used with a view to profit.

This controversy arose as follows: On October 13, 2009, New Sullivan Theater (hereinafter “New Sullivan” or “applicant”) filed a Property Tax Exemption Complaint with the Winnebago County Board of Review seeking exemption from 2009 real estate

taxes for the subject property. The Board reviewed New Sullivan's Complaint and recommended that a partial year exemption be granted. The Department of Revenue of the State of Illinois (hereinafter the "Department") rejected the Board's recommendation in a determination dated January 7, 2010, finding that the subject property was not in exempt ownership or exempt use in 2009. Dept. Ex. No. 1. New Sullivan filed a timely appeal of the Department's exemption denial. On February 14, 2011, a formal administrative hearing was held with Richard Nordlof, a member of the Board of Directors of New Sullivan, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2009. Tr. pp. 5-6; Dept. Ex. No. 1.
2. Amcore Investment Group, as trustee, transferred the subject property to New Sullivan, by Trustee's Deed, on January 23, 2009. Tr. pp. 11-13; App. Ex. No. 3.
3. New Sullivan was incorporated under the Illinois "General Not For Profit Corporation Act" on February 8, 2008. Tr. pp. 9-10; App. Ex. No. 1.
4. New Sullivan is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code as of July 10, 2008. Tr. pp. 10-11; App. Ex. No. 2.
5. In 2009, "Children's Youth Theater Project," "Charlotte's Web for the Performing Arts," and the "Rockford Dance Company" used New Sullivan for performances. Tr. pp. 14-17; App. Ex. No. 4.

6. New Sullivan's "2009 Income Worksheet" shows total income of \$9,655 for the year. Three discounts were given in 2009, all to Children's Youth Theater Project, which received a "performance rental 10% multiple discount" of \$298, a "performance rental 20% multiple performance discount" of \$852, and a "performance rental multiple use discount 10%" of \$285. Tr. pp. 16-18; App. Ex. No. 4.
7. The Coronado Performing Arts Center, ("CPAC"), built in 1927, is a theater located down the street from New Sullivan. CPAC had stage hands and people that were familiar with theater operations. In 2009, CPAC "took care of all the labor [at New Sullivan] and then they received any income that was given." Mr. Nordlof testified that he did not know "how [CPAC] made out." "I think they made out okay..." Tr. pp. 16-19; App. Ex. No. 5.

CONCLUSIONS OF LAW:

An examination of the record establishes that New Sullivan has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the property from 2009 real estate taxes. In support thereof, I make the following conclusions:

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

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

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

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both owned by “institutions of public charity” and “actually and exclusively used for charitable or beneficent purposes” provided that the property is not leased or used with a view to profit. 35 ILCS 200/15-65. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). The charitable exemption statute requires that property sought to be exempt must be owned by an institution of public charity. 35 ILCS 200/15-65. Amcore Investment Group, as trustee, transferred the subject property to New Sullivan, by Trustee’s Deed, on January 23, 2009. Tr. pp. 11-13; App. Ex. No. 3.

The issue to be decided is whether New Sullivan qualifies as an “institution of public charity” under the terms of Korzen and whether the subject property was used for charitable purposes in 2009. In Korzen, the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (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; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen at 157.

In exemption cases, the applicant bears the burden of proving by “clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Any and all doubts that arise in an exemption proceeding, if attributable to evidentiary deficiencies, must be resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

The record in this case forces me to conclude that the subject property is used with a view to profit, a use proscribed by 35 ILCS 200/15-65. In 2009, the income that New Sullivan received from rental of the theater was paid to the Coronado Performing Arts Center. CPAC, built in 1927, is a theater located down the street from New Sullivan. Because CPAC had been in existence for some time, CPAC had stage hands and people that were familiar with the operations of a theater. Mr. Nordlof testified that in 2009, CPAC “took care of all the labor [at New Sullivan] and then they received any income that was given.” Mr. Nordlof testified that he did not know “how [CPAC] made out.” “I think they made out okay...” Tr. pp. 16-19; App. Ex. No. 5.

The record contains no documentary evidence on CPAC. No one from CPAC testified at the evidentiary hearing. I am unable to determine from the record whether

CPAC is, itself, a charitable organization. As the Department's counsel argued in her closing statement, "[I]f [New Sullivan's] income is going to benefit an organization that we cannot determine is charitable, we can't make a determination that the applicant is charitable." Tr. p. 31. Mr. Nordlof testified that CPAC was "making out okay," from its arrangement with New Sullivan. It is reasonable to infer from this testimony that CPAC profited from lending its stage hands to New Sullivan, while collecting \$9,655 in New Sullivan's rental income. I conclude that the subject property was used with a view to profit, with this profit inuring to CPAC, which, in itself, is a sufficient reason to deny a property tax exemption for New Sullivan on the subject property.

In addition, the documents admitted into evidence and the testimony at the hearing are inadequate for me to conclude that New Sullivan is a charitable organization or that the property is used primarily for charitable purposes. No financial statements were offered into evidence for New Sullivan. An "Income Worksheet" showing that New Sullivan received \$9,655 in income from rental of the property was offered into evidence. App. Ex. No. 4. However, no documents showing New Sullivan's costs of operating the theater were offered into evidence. It is not reasonable to conclude that the only income that New Sullivan received was the \$9,655 that CPAC collected from lending its stage hands to New Sullivan. I cannot determine from the record what source of funding New Sullivan used to pay utilities, such as water and electricity, and other costs of operating the theater. The limited financial evidence in the record does not give a clear picture of New Sullivan's finances in the year at issue. Without complete financial statements, I am unable to determine if New Sullivan derives the majority of its funds from public and private charity, whether it hold the funds in trust for the purposes as stated in its charter, whether New Sullivan provides gain or profit to individuals, other

than CPAC, who are connected to it, or whether New Sullivan, itself, is using the theater with a view to profit, a use proscribed by 35 ILCS 200/15-65.

Moreover, no Bylaws for New Sullivan were admitted into evidence. There was testimony at the hearing that New Sullivan amended their Bylaws on January 29, 2010 allowing for “waiver of fees” effective February 5, 2008. Tr. pp. 20-23; Dept. Ex. No. 1. The year at issue in this hearing is 2009. It is unclear how Bylaws could be amended in 2010 to provide for waiver of fees in 2008. I presume that fees have already been paid for the year at issue. Without the Bylaws in evidence, I cannot determine if retroactive amendment of Bylaw provisions is allowed. Without a provision in the Bylaws for waiver of fees during the year at issue, I am unable to conclude that New Sullivan has not placed obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses.

In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 743-744, (4th Dist. 2008), aff’d 236 Ill. 2d 368 (2010), the Court noted that “the fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them...” To be for a charitable use or purpose, a gift must be a public, rather than a private gift. It must be general benevolence, rather than personal bounty to particular individuals.

New Sullivan’s “Income Worksheet” shows total income of \$9,655 for the year. Three rental discounts were given in 2009, all to Children’s Youth Theater Project. This organization received a “performance rental 10% multiple discount” of \$298, a “performance rental 20% multiple performance discount” of \$852, and a “performance rental multiple use discount 10%” of \$285. Tr. pp. 16-18; App. Ex. No. 4. These discounts were given to a private organization. I am unable to determine from the record

how New Sullivan's discounts to Children's Youth Theater Project in 2009 benefitted the public. There is no testimony or evidence in the record that Children's Youth Theater Project allowed the public into the theater for free or at a discounted rate. In fact, there is no testimony or documentary evidence in the record that Children's Youth Theater Project is a charitable organization. Without this evidence, it is conceivable that this organization increased its own profit, with no benefit conferred upon the public, by taking advantage of New Sullivan's multiple use discounts. Without evidence in the record of a benefit to the public, I am unable to conclude that whatever "charity" is dispensed by New Sullivan is dispensed to all who need and apply for it or that this "charity" benefits an indefinite number of persons.

I am unable to determine from the record that New Sullivan possesses the "distinctive characteristics" of a charitable organization, according to Korzen or that the property is used in accordance with these characteristics. For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not owned by an "institution of public charity" or used for charitable purposes should be affirmed, and Winnebago County Parcel, Index Number 11-23-307-010, should not be exempt from 2009 real estate taxes.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

May 16, 2011