

PT 06-8
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-PT-0039
v.)	
)	Tax Year 2004
MACOMB AREA ECONOMIC)	
DEVELOPMENT CORPORATION)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John D. McMillan of March, McMillan & DeJoode, P.C. for Macomb Area Economic Development Corporation.

Synopsis:

This case concerns whether property located in McDonough County and owned by the Macomb Area Economic Development Corporation (“applicant”) qualifies for a property tax exemption for the year 2004. The Department of Revenue (“Department”) denied the exemption, and the applicant timely protested the denial. The applicant is an organization that tries to bring economic opportunity to the Macomb area. The applicant purchased a 220,000 square foot building for use as its offices and for potential

businesses; the building was formerly used as a manufacturing plant.¹ During 2004 approximately 10,000 square feet of the building was being used, and the remainder was vacant. The applicant has stipulated that the vacant portion is not entitled to an exemption. (Tr. p. 45) The applicant contends that the remaining 10,000 square feet is exempt pursuant to section 15-65 of the Property Tax Code on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois non-profit corporation that was organized in April 1983. (App. Ex. #1)

2. The applicant's by-laws provide as follows: "The civic purpose for which this Corporation is formed is to promote industry and commerce in the Macomb area." The purpose section also includes the following paragraph:

"To accomplish this objective, the Corporation may buy, sell, own, hold, use or lease and otherwise deal in any real or personal property of any interest therein; and in general do such things as will maintain and enhance the economic climate of the community for existing industry and commerce, as well as, those things to promote new industry and commerce." (App. Ex. #2)

3. The applicant is able to provide potential businesses with information such as the sites that are available, the demographics of the area, the type of work force, the incentives and abatements that are offered, zoning issues, and the amount of property taxes. (Tr. pp. 42, 46)

¹ The applicant's building is located on six different parcels of property.

4. From the time of its incorporation until 2004, the applicant used space free of charge at Western Illinois University (“WIU”) in Macomb. (Tr. pp. 12-13)

5. On April 16, 2004, the applicant acquired the property at issue in this case. The property is located at 510 North Pearl Street in Macomb and was formerly owned by the Porcelain Products Company. It is approximately 220,000 square feet of manufacturing and office space. (App. Ex. #6; Tr. pp. 12, 15)

6. The applicant renovated the office space in the building and is in the process of making it a Business Assistance Center. The applicant moved into the building on July 1, 2004.² (Tr. p. 16)

7. Approximately 10,000 square feet of the building is for office space, and this is the only part of the building that was used in 2004. The remainder was vacant. (Tr. pp. 16, 39)

8. The applicant’s executive director uses approximately 276 square feet of the office space. The reception room, library, training room, and conference room total approximately 1,273 square feet. (App. Ex. #8)

9. The applicant leases some of the office space in the building to WIU for use by its Small Business Development Center (“SBDC”) and its Entrepreneurship Center (“EC”). WIU pays the applicant \$6,000 per month in rent. The lease term is 10 years beginning on July 1, 2004. (App. Ex. #5; Tr. pp. 17-18)

² If the applicant were entitled to the exemption, it would be allowed from the time of the purchase of the property if the renovations began immediately after the purchase. See 35 ILCS 200/9-185. The record does not clearly indicate the date when the renovations began. Therefore, if the exemption were allowed, it would begin on July 1, 2004.

10. The applicant, the SBDC and the EC occupy approximately 4,700 square feet of the building. There are some for-profit entities that occupy approximately 1,100 square feet of the building. (Tr. pp. 18-19)

11. The SBDC helps new entrepreneurs in a twelve county area get organized with a business plan, be better prepared to ask for a loan from a bank, and understand all of the rules and regulations for operating a business. It provides primarily educational services and does not charge for any of its services. The Director of the SBDC is an employee of WIU. (App. Ex. #15; Tr. pp. 50-51, 64)

12. The EC helps clients from a nine county region start technology businesses. Its services are primarily educational, and the one person who operates it is an employee of WIU. (App. Ex. #19; Tr. pp. 66-67)

13. During 2004, the applicant had four tenants that were for-profit entities. These tenants pay \$15.28 per square foot in rent to the applicant. (App. Ex. #8; Tr. pp. 19-23)

14. The applicant has other tenants that are non-profit entities: Workforce Office, Illinois Prairie Ag Coalition, and Opportunity Returns. The first two entities pay rent to the applicant. (App. Ex. #8; Tr. pp. 23-25)

15. The applicant expects to be able to offer space in its building to new businesses that need manufacturing and/or temporary office space. (Tr. pp. 33, 39-40)

16. The applicant's principal source of revenue is from member dues and the City of Macomb. The applicant receives dues from its members annually. (Tr. pp. 13-14)

17. The applicant receives \$30,000 each year from the City of Macomb. The money received from the city is applied to administration costs. (App. Ex. #4; Tr. pp. 14, 34)

18. The applicant's member dues are described in its by-laws, which provide as follows:

“A member shall be in good standing and be entitled to all rights of a member if the membership investment has been remitted to the Corporation Treasurer consistent with the member's pledge agreement. Membership investment levels shall be made according to this schedule.

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|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| a. Contributor: | Discretionary |
| b. Sustaining: | \$200 --- 499/year for three (3) years |
| c. Associate: | \$500 --- 1999/year for three (3) years |
| d. Regular: | \$2000 --- up/year for three (3) years |
| e. Institutional: | As detailed below |
| 1. City of Macomb | 30,000/year for three years |
| 2. Western Illinois University | That mix of staff time and other in-kind services as agreed to between WIU and the Directors of the Corporation |
| 3. Macomb Area Chamber of Commerce | That mix of staff time and other in-kind services as agreed to between the Chamber and the Directors of the Corporation |
| 4. McDonough District Hospital | That mix of staff time and other in-kind services agreed to between the Hospital and Directors of the Corporation |
| 5. County of McDonough | That mix of staff time and other in-kind services as agreed to between the County and the Directors of the Corporation.” (App. Ex. #2) |

19. The by-laws also include the following: “At least seventy percent of the membership fees remitted by Sustaining, Associate, and Regular members shall be deposited in the capital fund of the Corporation to be used for the physical improvement of property and capital support of new small business. All earnings will be transferred to the operating fund at least on an annual basis.” (App. Ex. #2)

20. The loan program that is financed with 70% of the dues started at the same time that the applicant was organized. (Tr. p. 27)

21. In order to receive a loan, the recipient must create or retain the equivalent of one full-time job for every \$10,000 loaned. Anyone, including non-members, may apply for a loan from the applicant. (App. Ex. #9; Tr. pp. 27-28, 30)

22. The financial statements show that for the year ending December 31, 2002, the total of the applicant's unrestricted and restricted revenue was \$124,555. This consisted of \$30,000 from the City of Macomb and \$40,574 from membership dues.³ (App. Ex. #4)

23. The financial statements indicate that for the year ending December 31, 2002, the increase (decrease) in unrestricted net assets was (\$4,537), and for restricted assets it was \$48,922. (App. Ex. #4, p. 4)

24. The Board of Directors is comprised of the following individuals:

- Institutional members
- Regular members
- Associate members elected from their constituency in a number which is proportional to the number of Regular Directors based upon total dollars pledged by Associate members to total dollars pledged by Regular members
- Sustaining members elected from their constituency in a number which is proportional to the number of Associate Directors based upon total dollars pledged by Sustaining members to total dollars pledged by Associate members
- Two members appointed by the President, with approval of the Board
- Honorary and Ex-Officio members appointed by the Board. (App. Ex. #2)

³ The revenue also included a "Clean Energy Grant" of \$40,000, which was not explained in the record.

25. The applicant encourages all businesses in Macomb to join its organization.
(Tr. p. 31)

26. The applicant markets the Macomb area through its website, mass mailings, and campaigns. The website provides information about Macomb, its workforce, available buildings and sites, and the availability of loans. (App. Ex. #11; Tr. pp. 31-33)

27. The members of the Board of Directors are not compensated. (Tr. p. 36)

CONCLUSIONS OF LAW:

Section 15-65 of the Property Tax Code allows exemptions for charitable purposes and provides in part as follows:

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

(a) Institutions of public charity. * * *. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and 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; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are not requirements and are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

The Department contends that under the statute a charitable organization is not entitled to an exemption for space that is leased to for-profit entities, and therefore the space leased to the for-profit entities is not exempt. The Department states that the space

leased to WIU cannot be exempt because WIU receives an exemption based on ownership only, and under the decision in Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), this space is not exempt. Finally, the Department argues that the applicant itself is not a charitable organization because economic development is not a charitable activity, and the applicant only indirectly benefits the general public. The Department asserts that only businesses directly benefit from the applicant's services.

The applicant contends that the Village of Oak Park case is distinguishable because the owner in that case was not a charitable institution, and the applicant asserts that it is a charitable organization. It argues that it is not a trade association because it does not provide services to its members for the benefit of its members. It claims that it provides services to the public at large.

The evidence shows that the primary use of the property is for business, rather than charitable, purposes. The by-laws state that the purpose for which the applicant is formed is to promote industry and commerce in the Macomb area. Nothing in its purpose statement indicates that it is organized for charitable purposes. In addition, the applicant's purpose, as the Department has indicated, only benefits the general public indirectly through the improvement of the economy. Its primary purpose is to serve the businesses in the community. Although the applicant's operations have a positive effect on the community, the applicant's benefits to the public are nonetheless incidental to the primary benefits received by the businesses. Charitable exemptions have been denied in cases where the organization does not directly benefit the general public. See Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1st Dist. 1997); DuPage

County Board of Review, supra; Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

Also, the record is not clear that the applicant does not use the property with a view to profit. The applicant charges rent to for-profit entities in the amount of \$15.28 per square foot, which appears to be the market rate. The testimony indicated that the applicant, the SBDC, and the EC occupy approximately 4,700 square feet of the building, and WIU pays the applicant \$72,000 a year in rent for the space used by the SBDC and the EC. The amount of this rent (\$72,000) divided by \$15.28 equals 4,712 square feet. If the space used by the SBDC and the EC is less than 4,700 square feet, then rent for that space must be greater than \$15.28 per square foot. It appears as though WIU is paying rent at a higher rate than the rate that is charged to the for-profit entities. Two other non-profit entities, Workforce Office and Illinois Prairie Ag Coalition, also pay rent; the amount of this rent is not provided in the record. Nothing indicates that these organizations were charged less than the market rate. Furthermore, the testimony indicates that the applicant expects to offer space to new businesses that need manufacturing and/or temporary office space, so it intends to continue to lease space to for-profit entities. From the evidence presented, it appears as though the applicant leases the office space in the building with a view to profit.

Finally, although the applicant indicates that its services are free, the record does not establish that the applicant's real benefits are provided to people despite their inability to pay. The applicant did not show that it provides loans at rates lower than the market rates or that it provides office space at rates that are reduced or waived for those

who are unable to pay. The applicant has not established that it is a charitable organization or that the primary use of the property is charitable.

Recommendation:

For the foregoing reasons, it is recommended that the property should not be exempt from taxes for the year 2004.

Linda Olivero
Administrative Law Judge

Enter: January 31, 2006