PT 95-9
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

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

ST. ANDREW RETIREMENT VILLAGE	Docket No.(s) 92-22-716
Applicant	PI No.(s) Part of 02-23-402-008 (DuPage County)
v.	
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	George H. Nafziger Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES Mr. Paul J. Kozacky, attorney for Applicant, appeared on behalf of Applicant. Mr. Robert G. Rybica, assistant state's attorney of DuPage County, appeared on behalf of the DuPage County Board of Review.

SYNOPSIS The hearing in this matter was held on August 30, 1994, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not part of DuPage County parcel No. 02-23-402-008, should be exempt from real estate tax for 1992.

Did the part of DuPage County parcel No. 02-23-402-008 here in issue qualify for exemption from real estate tax for the 1992 assessment year? Is Applicant a charitable organization? Did Applicant use the part of the parcel here in issue and the building thereon, for charitable purposes during the 1992 assessment year? Following the submission of all the evidence and a review of the record in this matter, it is determined that St. Andrew Ukrainian Orthodox Church owns the part of the parcel here in issue, which is subject to a 99-year ground lease to Applicant, who has

built a three-story apartment building thereon. Said building was completed on, or about, January 1, 1992, and occupied during that year. Applicant is not a charitable organization, and did not use the part of the parcel here in issue and the building thereon, for charitable purposes during 1992.

FINDINGS OF FACT The Department's position in this matter, namely that the part of the DuPage County parcel here in issue and the building thereon, did not qualify for exemption during 1992, was established by the admission in evidence of Department's Exhibits 1 through 6C.

Mr. John Kozacky, the president of Applicant and Dr. Vasil Truchly, a board member of Applicant, were present at the hearing, and testified on behalf of Applicant.

On January 20, 1993, the DuPage County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning part of DuPage County parcel No. 02-23-402-008, for the 1992 assessment year, to the Illinois Department of Revenue (Department's Exhibit 2). On August 19, 1993, the Department notified Applicant that it was denying Applicant's request for exemption for part of DuPage County parcel No. 02-23-402-008, for 1992, and also notified Applicant that the feeinterest in the foresaid parcel was taxable for the 1992 assessment year (Department's Exhibit 3). Applicant's attorney, by a letter dated September 8, 1993, requested a formal hearing in this matter (Department's Exhibit 4). The hearing held on August 30, 1994, was held pursuant to that request.

Applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, on May 14, 1990, for the following purposes:

> "...to provide housing, charitable, benevolent, educational, cultural, and social services to its members. The corporation shall exclusively be operated as a not for profit corporation."

The Articles of Incorporation form includes the following question:

> "Is this corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954?"

Applicant answered this question "Yes".

On March 29, 1991, St. Andrew Ukrainian Orthodox Church leased the northerly 400 feet of Lot 5 in Bloomingdale Township Supervisor's Assessment Plat No. 3, which is part of DuPage County parcel No. 02-23-402-008, to Applicant from that date, to and including, March 29, 2090. The rent for said lease was a one-time charge of $500.00, to be paid on the execution of the lease, plus all charges for sewer usage or rental, refuse removal, all utilities consumed on the premises, and all taxes and assessments levied against the leased property.

Applicant then proceeded to build a 23-unit, three-story apartment building on the portion of DuPage County parcel No. 02-23-402-008, here in issue. Said building contains 4 efficiency apartments, of 457 square feet each, 8 one-bedroom apartments, each of which contain 792 square feet, and 11 two-bedroom apartments, each of which contain 1,026 square feet.

Construction of this apartment building began on July 1, 1990, and was completed on January 1, 1992. By the end of 1992, only two apartments were vacant. St. Andrew Ukrainian Church owned one apartment, and the remainder of the units were owned by the persons who occupied them. The occupants of the building here in issue, during 1992, ranged in age from 62 to 88, with the average age being 75. According to the bylaws of Applicant, a person who wished to occupy an apartment was required to buy that apartment and become a member of Applicant. The membership fee to purchase an efficiency unit during 1992, was $48,000.00. The membership fee for a one-bedroom unit, during 1992, was $78,000.00, and for a two-bedroom unit the membership fee was $108,000.00. During 1992, Applicant charged the members a monthly maintenance fee. For the two-bedroom apartments, the monthly maintenance fee was $100.00. For the one-bedroom apartments, the monthly maintenance fee was $82.00, and for the efficiency apartments, the maintenance fee was $76.00. During all of 1992, Applicant's occupancy

agreement included a paragraph which read as follows:

> "Provided, however, that no membership shall be terminated and no Member shall be evicted under this or any other provision of this Agreement regarding failure to pay, if the Member shows, to the Directors' satisfaction, that the Member's failure to pay is due to an inability to pay. The Corporation shall assist Members with financial difficulties in obtaining financial assistance from other sources."

This provision was not in Applicant's bylaws. During 1992, Applicant waived, or reduced, its maintenance fee for two members. However, the testimony was that all of the members of Applicant had paid the full membership fee. During 1992, the occupancy agreement included a provision for a late payment charge, and also a provision for termination of occupancy if a resident was 30 days in arrears in paying the maintenance fee. However, the testimony of Applicant's witness was that neither of those provisions were enforced.

The property where the apartment building here in issue is located, is next to the St. Andrew Ukrainian Orthodox Church. There is one entrance to the parcels owned by the church. That entrance is located on the parcel where the Church is located. Most of the members of Applicant are members of St. Andrew Ukrainian Orthodox Church. There is one member who is a member of a Ukrainian Catholic Church.

The bylaws of Applicant provide that on the death of a member, if the membership does not pass to an approved joint tenant, or an approved legatee, then Applicant shall have the first right to purchase the membership. If a member decides to leave the apartment building, again Applicant has the first right to purchase the membership. If Applicant does not exercise this right, then the member may sell his or her stock to any qualified person who has been approved by Applicant, for its fair market value. A stock certificate would then be issued to the new member.

1. Based on the foregoing, I find that the portion of the parcel here in issue was owned by St. Andrew Ukrainian Orthodox Church, and leased to

Applicant, pursuant to a 99-year ground lease.

2. Applicant, beginning on July 1, 1990, I find, constructed a 23-unit apartment building on this ground lease.

3. These 23 apartments, I find, were available for occupancy, beginning on January 1, 1992.

4. These apartments were sold to persons, all of whom were 65 years of age, or older, who were approved by Applicant's board of directors.

5. The price of the apartments varied according to size, and ranged from $48,000.00 for an efficiency apartment, to $108,000.00 for a two-bedroom apartment.

6. Applicant did not waive, or reduce, the initial membership fees.

7. Applicant's bylaws, I find, granted Applicant the first right to purchase an apartment when a member died without an approved joint owner, or an approved heir qualified to occupy the unit.

8. Applicant, I find, also was granted the first right to purchase an apartment, if a member decided to move out.

9. If Applicant did not exercise its first right to purchase, then the member or the member's representative, I find, could sell the member's apartment to a qualified person approved by Applicant's board of directors, for its fair market value.

10. During 1992, I find that Applicant waived, or reduced, its maintenance fees, in cases of need.

11. I find that the members of Applicant are issued stock which they, or their representative, may then sell either to Applicant or to other qualified approved persons. Consequently, I find that the members may profit from the enterprise.

12. Applicant's funds, I find, were primarily derived from membership fees and contributions from St. Andrew Ukrainian Orthodox Church.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois

Constitution of 1970, provides in part as follows:

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

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

> "All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit....All old peoples homes or homes for the aged...shall qualify for the exemption stated herein if upon making application for such exemption, the applicant provides affirmative evidence that such home...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's ability to pay,...."

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

While Applicant is exempt from Federal Income Tax, pursuant to Section 501(c)(3) of the Internal Revenue Code and Applicant's occupancy agreement provides for the waiver or reduction of the maintenance fees based on an individual's ability to pay, Applicant has not waived its entrance fee, in this case, referred to as a membership fee, which ranges from $48,000.00 to $108,000.00, depending on the size of the unit.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. I have previously found that: (1) the benefits are limited to those persons able to pay the substantial membership fees; (2) Applicant does issue stock to the members, and the members or their representatives stand to benefit from the sale of a membership; (3) the funds were primarily derived from the sale of memberships; (4) in view of the membership fees, charity is not dispensed to all who needed and applied for it; (5) again, in light of the membership fees, a substantial obstacle is placed in the way of those seeking the benefits; and (6) the primary use of the property is for the benefit of the stockholder members.

I therefore conclude that Applicant is not a charitable organization, and did not use the portion of the parcel here in issue for charitable purposes during 1992.

35 ILCS 205/26 (1992 State Bar Edition) provides as follows:

> "Except as provided in Section 19.5 of this Act, when real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate." (Emphasis supplied)

The portion of the parcel here in issue is owned by St. Andrew Ukrainian Orthodox Church. 35 ILCS 205/19.2 (1992 State Bar Edition) reads

in part as follows:

> "All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit,...."

The part of the parcel here in issue has been determined to not qualify for a charitable exemption, on the basis that it was not owned by a charitable organization, or used for primarily charitable purposes. In the case of Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (1987), the Court held that the operation of a nursing home is primarily a charitable activity, and not a religious activity, or use of property.

The Supreme Court, in the case of Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), held that where one exempt entity leases property to another exempt entity, which uses said property for an exempt purpose, the lease will not be considered a lease for profit. However, in this case, the lease is to Applicant which has been previously determined to not qualify for exemption. This case is then one of those cases where the leasing of property makes the real estate taxable. Consequently, a leasehold assessment is inappropriate.

I therefore conclude that since the portion of the parcel here in issue is leased, or otherwise used for profit by St. Andrew Ukrainian Orthodox Church, it does not qualify for exemption.

I therefore recommend that the Northerly 400 feet of Lot 5 in Bloomingdale Township Supervisor's Assessment Plat No. 3, which is the part of DuPage County parcel No. 02-23-402-008 here in issue, remain on the tax rolls for the 1992 assessment year, and be assessed to St. Andrew Ukrainian Orthodox Church.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995