

PT 96-40

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

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

CITY OF WHEATON)	Docket #s 94-22-315
Applicant)	94-22-316
)	94-22-317
v.)	
)	Parcel Index #s 05-22-102-019
THE DEPARTMENT OF REVENUE)	05-22-102-012
OF THE STATE OF ILLINOIS)	05-22-102-011

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Mark R. Olander and Mr. Scott E. Saef appeared on behalf of the People's Resource Center and the DuPage Community Clinic. Mr. Robert G. Rybica, assistant state's attorney of DuPage County, appeared on behalf of the Board of Review of DuPage County.

Synopsis:

The hearing in these matters was held at 100 West Randolph Street, Chicago, Illinois, on March 26, 1996, to determine whether or not DuPage County Parcels numbered 05-22-102-019, 05-22-102-012 and 05-22-102-011 qualified for exemption from real estate taxation for the 1994 assessment year.

Ms. Mary Ellen Durbin, executive director of the People's Resource Center (hereinafter referred to as "PRC"), was present and testified on behalf of the PRC. Ms. Lori Dehn, community relations director of the DuPage Community Clinic (hereinafter referred to as the "DCC"), was present and testified on behalf of the DCC. Mr. Clyde Kautz and Mr. Carl Peterson, members of the Board of Review of DuPage County were also present at this hearing.

The issues in this matter include first, whether the City of Wheaton (hereinafter referred to as the "Applicant") owned the parcels here in issue and the building thereon, during the 1994 assessment year. The second issue is whether these parcels qualified for exemption during 1994 pursuant to 35 **ILCS** 200/15-60, which exempts the property of taxing districts under certain circumstances. The third issue is whether the PRC and the DCC were charitable organizations during the 1994 assessment year. The last issue is whether the PRC and the DCC used these three parcels and the building thereon for charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned these three parcels and the building thereon during the entire 1994 assessment year. It is also determined that although the PRC and the DCC are charitable organizations which used these parcels and the building thereon for charitable purposes, these parcels did not qualify for exemption during the 1994 assessment year, since the applicant failed to meet the requirements for exemption set forth in 35 ILCS 200/15-60 (c) (iii).

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcels here in issue and the building thereon, did not qualify for exemption during the 1994 assessment year,

was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On December 28, 1994, the DuPage County Board of Review transmitted the Applications for Property Tax Exemption to Board of Review, which had been filed by this applicant on November 18, 1994, concerning these parcels for the 1994 assessment year, to the Department. (Dept. Ex. Nos. 1, 1B, and 1D)

3. On April 13, 1995, the Department notified the applicant that it was denying the exemption of these parcels for the 1994 assessment year. (Dept. Ex. Nos. 2, 2A and 2B)

4. By a letter dated April 24, 1995, one of the attorneys for the PRC and the DCC in these proceedings requested a hearing in these matters. (Dept. Ex. No. 3)

5. The City of Wheaton, the applicant herein, is a city, a municipality and a taxing district. (Dept. Ex. Nos. 1G and 1H)

6. The applicant acquired these parcels by a trustee's deed dated December 18, 1992. (Dept. Ex. No. 1G)

7. These parcels are located within the City of Wheaton. (Dept. Ex. Nos. 1, 1B & 1D)

8. On November 16, 1992, the applicant, as lessor, entered into a Building and Ground Lease with the PRC and the DCC, as lessee. (Dept. Ex. No. 1H)

9. Pursuant to that lease, the lease term began on the date the applicant purchased the property and expired 5 years from that date. (Dept. Ex. No. 1H)

10. That lease is a triple net lease. (Dept. Ex. No. 1H)

11. Paragraph 5 B of that lease provides in part as follows:

Lessee agrees that it shall pay, bear, and discharge all current and future real estate taxes....

12. The PRC was incorporated pursuant to the General Not For Profit Corporation Act, of Illinois for purposes which included the following:

Said corporation is organized to promote, carry on and foster charitable purposes, including for such purposes, aid to women and their families requiring short-term emergency need, such as food, housing, counseling, referral to other social agencies and other substance and support service without cost to the recipients. (Dept. Ex. No. 1T)

13. The PRC provides very basic programs and services to persons living on low incomes in DuPage County. These services include a food pantry, a clothes closet, which distributes donated clothing and household items, a Share the Spirit Program at holiday time and programs for the homeless seeking shelter or transitional housing. (Tr. pp. 15 & 16)

14. The PRC does not have any shareholders or capital stock. (Tr. p. 17)

15. During 1994, the officers and directors of the PRC did not receive any pay for their services and all the services were rendered by volunteers. (Tr. p. 20)

16. During 1994 the sources of the funds received by the PRC include 40 percent donations from individuals, 30 percent donations from local churches, 20 percent from governmental funding and 10 percent from foundations. (Tr. p. 34)

17. While the PRC has no eligibility requirements it does have guidelines and tries to serve the poorest segment of the population. The PRC has never turned anyone away. (Tr. pp. 25 & 26)

18. All the services provided to the public during 1994 by the PRC were provided free of charge. (Tr. p. 20)

19. The PRC established the DCC, the only free medical clinic in DuPage County and nurtured it until it became an independent organization, which also occupies space in the building on these parcels. (Tr. p. 18)

20. The DCC was incorporated pursuant to the General Not For Profit Corporation Act of Illinois for purposes which included the following:

To support and engage in charitable, benevolent, eleemosynary, educational and civic functions and programs related to the needs of DuPage County indigent and marginal income individuals needing health care and related services. In furtherance of the above the Corporation shall have the power to own and lease clinic facilities provided, however, the Corporation will not engage in the practice of medicine. At such clinic facilities primary and secondary health care and follow-up care will be provided by appropriately licensed medical professionals to those indigent and marginal income individuals residing within DuPage County who have no other access to such care in DuPage County. (Dept. Ex. No. 1W)

21. The DCC does not have any capital stock or shareholders. (Tr. pp. 43 & 44)

22. The DCC has specifically targeted low-income medically uninsured persons, who are primarily under the age of 40, and also their children. (Tr. p. 45)

23. The DCC staff includes volunteer physicians, nurses, dietitians, social workers and referral physicians. The DCC also receives in-kind contributions from 4 hospitals, including laboratory testing, X-rays and even hospitalization and surgery, when necessary. (Tr. p. 46)

24. The officers and directors of the DCC do not receive any compensation for their services. The DCC does not earn any profits. (Tr. p. 47)

25. Although the DCC targets persons that have low incomes and are medically uninsured, it does not have any restrictions. (Tr. pp.61 & 62)

26. Before these parcels were acquired, the PRC and the DCC occupied a small two bedroom rental house. The amount of services that both the PRC and the DCC were providing required that they look for larger quarters. (Tr. p. 48)

27. When these parcels became available, neither the PRC or the DCC had the money to acquire this property. After discussing this dilemma with DuPage County and the City of Wheaton, it was determined that the City would apply for a Community Development Block Grant to purchase these parcels and the building thereon and then enter into a lease agreement with the PRC and the DCC so that the PRC and the DCC would be responsible for all operating expenses for the building. (Tr. pp. 48-52)

28. The PRC had the draft lease with the applicant reviewed by an attorney familiar with real estate taxation. (Tr. p. 52)

29. The City of Wheaton became the owner of the property so that it would qualify for the block grant. (Tr. p. 50)

30. At the time of this transaction, the PRC and the DCC were not aware of any other method by which they could obtain the use of these parcels. (Tr. p. 50)

31. On August 2, 1995, the applicant conveyed these parcels and the building thereon to the PRC and the DCC for a nominal consideration. (Tr. p. 37)

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.

The Illinois Supreme Court, long ago, determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provisions in force, at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922).

35 **ILCS** 200/15-60 in force during 1994, provides in part, as follows:

Taxing district property....

Also exempt are:...

(c) all property owned by any city or village located within its incorporated limits....

(iii) for a lease entered into before the effective date of Public Act 87-1280, if the terms of the lease do not bind the lessee to pay the taxes on the leased property or if, notwithstanding the terms of the

lease, the city or village has filed or hereafter files a timely exemption petition or complaint with respect to property consisting of or including the leased property for an assessment year which includes part or all of the first 12 months of the lease period. The foregoing clause (iii) added by Public Act 87-1280 shall not operate to exempt property for any assessment year as to which no timely exemption petition or complaint has been filed by the city or village or as to which an administrative or court decision denying exemption has become final and nonappealable.....

35 ILCS 200/15-65 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;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

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); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). 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) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). 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); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The applicant acquired these parcels and the building thereon on December 18, 1992, and on that date leased said parcels and building to the PRC and the DCC. That lease included a specific provision that the lessee, the PRC and the DCC, would pay the real estate taxes. The first 12 months of this lease ended on December 17, 1993. Public Act 87-1280 became effective January 1, 1994. The applicant did not file its application for exemption until November 18, 1994, which was for the 1994 assessment year. Consequently the applicant failed to qualify for exemption pursuant to 35 **ILCS** 200/15-60(c)(iii) set forth above.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down 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 its 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. Based on the foregoing findings of fact, I conclude that both the PRC and the DCC met each of the foregoing six guidelines. However the PRC and the DCC did not own these parcels during the 1994 assessment year, the applicant did, and in view of the facts in this case the applicant did not qualify for exemption.

The attorneys for the PRC and the DCC in their brief contend that the PRC and the DCC used these parcels for charitable purposes during the 1994 assessment year. They then proceed to cite the line of cases which hold that where a charitable organization uses property for charitable purposes, under certain circumstances that charitable organization may be determined to be the owner of the property for real estate tax purposes. These cases include: Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978); People v. Chicago Title and Trust Company, 75 Ill.2d 479 (1979); Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th Dist. (1981)); Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill.App.3d 96 (4th Dist. 1983) and Henderson County Retirement Center v. Department of Revenue, 237 Ill.App.3d 52 (3rd Dist. 1992). It should be noted however, that each of these cases involved the charitable exemption found at 35 **ILCS** 200/15-65, which requires both ownership and use of the property, while the exemption for taxing district property, found at 35 **ILCS** 200/15-60 generally exempts the property of cities and villages located within the city or village, provided

the city or village owns the property. Each of these cases is distinguishable from these proceedings.

In the Christian Action Ministry case, the ministry, the contract purchaser, pursuant to a contract for deed, was held to be the owner for real estate tax purposes of the property used for charitable purposes. As the contract purchaser, the ministry, at the end of the contract term, if it made all the payments, would be the title holder of the property.

The People v. Chicago Title and Trust Company case held, not surprisingly, that the beneficiary of an Illinois land trust, who had the possession and control of the property, and used it for charitable purposes, was the owner of the property for real estate tax purposes.

The case of Southern Illinois University Foundation v. Booker involved property which had been owned by the University and was conveyed by the University to the Foundation. The Foundation then entered into a mortgage agreement with the Federal Housing Administration and constructed low income housing on the property to be used as married student's housing by the University. At the time of the transfer of title of the property to the Foundation, the corporate bodies of both organizations passed resolutions stating that upon retirement of the mortgage, the Foundation would reconvey the property as improved, to the University. In this transaction, the property owner was required to enter into a long term loan, an obligation which the University was legally prohibited from incurring.

The remaining two cases, the Cole Hospital case and the Henderson County Retirement Center case, each involved a sale and lease back. In the Cole Hospital case, the hospital had both a right of first refusal and an unconditional right to purchase the property on the 11th and 16th anniversary dates of the lease. In the Henderson County Retirement Center case the Court held that the retirement center was not entitled to an exemption until the lease was amended to grant to the center an unconditional option to purchase the property on the 15th and 20th anniversaries of the lease. It should be noted that the lease here in issue does not contain any provision for the PRC and the DCC to purchase these parcels at any time.

The exemption for taxing district property found at 35 **ILCS** 200/15-60, generally exempts the property of cities and villages located within the city or village, provided the city or village owns it. In the charitable exemption cases cited in the brief of the attorneys for the PRC and the DCC the courts, where the property has been used for charitable purposes, have treated the ownership issue differently than they have in the case of city and village property located within the city, where the only issue is ownership. See The People v. City of Chicago, 323 Ill. 68 (1926), in which the Supreme Court held that property, located within the city, leased to the City of Chicago, did not qualify for exemption since it was not owned by the city.

Concerning the provisions of 35 **ILCS** 200/15-60(c)(iii), the parties to this lease would appear to have both been

represented by legal counsel and there most certainly were methods available which would have reached the desired result of the exemption of these parcels and the building thereon. However, the parties, for their own reasons, elected to draft the lease as hereinbefore set forth and consequently are bound by the tax consequences of the terms of this lease.

Since the applicant conveyed these parcels to the PRC and DCC during the 1995 assessment year, the tax consequences may change at that time. However that is not in issue in these proceedings. Because a cause of action for real estate taxes for one year is not identical to a cause of action for taxes in subsequent years, a decision adjudicating tax status for a particular year is not controlling for later years. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981) and People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980)

I consequently conclude as a matter of law that these parcels and the building thereon did not qualify for exemption from real estate tax for the 1994 assessment year as a result of the provisions of 35 **ILCS** 200/15-60(c)(iii).

I therefore recommend that DuPage County Parcels 05-22-102-019, 05-22-102-012 and 05-22-102-011 remain on the tax rolls for the 1994 assessment year. I further recommend that said parcels and the building thereon be assessed to the applicant, the City of Wheaton, for the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
November 14, 1996