

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION

MERCY NORTHGLEN, INC.,)	Case No. 96E-9
and)	and
MERCY WESTERN MANOR)	Case No. 96E-10
Appellants,)	
)	
vs.)	FINDINGS AND ORDER
)	
)	
LANCASTER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Filed February 5, 1997

Appearances:

For the Appellant: Jerry Slusky, Esq., #13881
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For the Appellee: Diane M. Staab, Esq., #20165
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Before: Commissioners Edwards and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

The Commission affirms the decision of the Lancaster County Board of Equalization which denied the exemption requested by the Taxpayers.

NATURE OF THE CASE

Mercy Housing, Inc., is the parent company in a system of related and interdependent nonprofit corporations. Two of the subsidiary nonprofit corporations are Mercy Northglen, Inc. and Mercy Western Manor, Inc. (for ease of reference the companies are referred to as "Taxpayers"). Each of these subsidiaries own an apartment complex located in the City of Lincoln, in Lancaster County, Nebraska. Taxpayers had requested that these apartment complexes be exempt from real property taxation. County denied the applications for exemption, from which decisions Taxpayers appeal. The cases were then consolidated for hearing before the Commission.

DUTIES OF THE PARTIES

Taxpayers must file an application for exemption with the county assessor before January 1 of the year for which the exemption is sought on forms prescribed by the Property Tax Administrator. Neb. Rev. Stat. §77-202.01. (1996 Reissue). County is required to hold a hearing on the request between February 1 and June 1. Taxpayers is entitled to ten days notice of the hearing. County, after considering the recommendation of the county assessor and any other information it may obtain, shall grant or withhold tax exemption for the real or personal property on the basis of law and of regulations promulgated by the Property Tax Administrator. Neb. Rev. Stat. §77-202.02 (1996 Reissue). The Property Tax Administrator has promulgated these rules in Property Tax Exemption Regulations, Title 316, Nebraska Administrative Code, Chapter 42.

EVIDENCE OFFERED

Taxpayers appeared by and through counsel. County appeared by and through counsel. Taxpayers offered the following exhibits:

- Exhibit 1- Articles of Incorporation of Mercy Western Manor
- Exhibit 2- Articles of Incorporation of Mercy Northglen, Inc.
- Exhibit 3- Bylaws of Mercy Western Manor
- Exhibit 4- Bylaws of Mercy Northglen
- Exhibit 5- Catholic Directory
- Exhibit 6- Mercy Housing Mission Statement
- Exhibit 7- Mercy Western Manor Income Statement
- Exhibit 8- Mercy Northglen Income Statement
- Exhibit 9- Mercy Housing Annual Budget

Exhibit 10- Video, "A Place for Everyone", counter 0 to 130 and 1043 to 1203.
Exhibit 14- "Needs Assessment" form.

The County offered the following exhibits:

- Exhibit 11- Exemption Application for Mercy Western Manor
- Exhibit 12- Exemption Application for Mercy Northglen
- Exhibit 13- Transcript of Lancaster County Board of Equalization hearing.

FINDINGS OF FACT

From the evidence the Commission finds and determines as follows:

- I. Taxpayers are private, non-profit corporations organized under the laws of the State of Nebraska.
- II. Taxpayers own certain real property in Lancaster County.
- III. The application for exemption from property tax by the Taxpayers' was timely filed with the Lancaster County Assessor.
- IV. On June 4, 1996, County denied the applications for exemption.
- V. On July 2, 1996, Taxpayers timely filed an appeal with this Commission.
- VI. The properties are owned by charitable organizations.
- VI. The properties are not owned or used for financial gain or profit.
- VII. The properties are not used for the sale of alcoholic liquors.
- VIII. The properties are neither owned nor used by any organization which discriminates in membership or employment based on race, color, or national origin.

JURISDICTION

The Tax Equalization and Review Commission has jurisdiction of this case pursuant to Neb. Rev. Stat. §77-1233.04(6) (Reissue 1996).

STANDARD OF REVIEW

The Commission must, as required by Neb. Rev. Stat. §77-1511 (Reissue 1996) “affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary. . . .”

ANALYSIS

The process of exempting property from taxation is governed by a number of statutes, rules, and regulations. The Legislature has enumerated the requirements for exemption of property from taxation in Neb. Rev. Stat. §77-202 (1996 Reissue). The Property Tax Administrator has promulgated rules and regulations regarding exemptions in Title 316, Nebraska Administrative Code, Chapter 42 Property Tax Exemption Regulations, under the authority granted in Neb. Rev. Stat. §77-202.06 (1996 Reissue). These regulations identify five criteria for determining eligibility for property tax exemptions. These criteria are:

“006.01. Ownership. The property must be owned by an educational, religious, charitable, or cemetery organization.

“006.02. Exclusive Use. The property must be used exclusively for religious, educational, charitable, or cemetery purposes. For purposes of this exemption, the Property Tax Administrator has stated that the term exclusive shall mean the predominant or primary use of the property as opposed to an incidental use thereof.

“006.03. No Financial Gain or Profit. The property must not be used for financial gain or profit to either the owner or user.

“006.04. Prohibited Alcoholic Liquor Sales. The property must not be used for the sale of alcoholic liquors for more than twenty hours per week.

“006.05. Prohibited Discrimination. The property must not be owned or used by an organization which discriminates in membership or employment based on race, color, or national origin.”

There are, by stipulation of the parties at the hearing, two issues before the Commission: (1) whether the properties are owned or used for financial gain or profit; and (2) whether the properties are used exclusively for educational, religious or

charitable purposes. The regulations contain certain provisions governing these tests. For example, the primary or dominant use, and not an incidental use, is controlling in determining whether or not property is exempt from taxation. Neb. Admin. R. & Reg. Tit. 316, Ch. 42-006.02. Furthermore, it is the use of the property as distinguished from the use of the income from the property that determines whether or not the property is exempt for the purposes of taxation. Finally, the burden of proof is upon the one claiming the property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in Neb. Rev. Stat. §77-202 (1994 Cum. Supp.).

The Commission notes that in its brief County conceded that the properties are not owned or used for financial gain or profit.

Taxpayers were incorporated as nonprofit corporations under the laws of the State of Nebraska in 1995. Taxpayers' Articles of Incorporation state as their purpose to "provide low income housing and homeless persons (sic), potentially homeless persons, or otherwise disadvantaged persons with housing facilities and educational and supportive services." Taxpayers contend that the purpose to which the property is put is "providing service-enriched charitable housing." Brief of County at p. 9.

Statutes which govern property exemptions are to be strictly construed. *Nebraska State Bar Foundation v. Lancaster County Board of Equalization*, 237 Neb. 1, 465 N.W.2d 111 (1991). Therefore, in order to qualify for exemption, "service-enriched charitable housing" must qualify as an exempt use. "Charitable housing" is not an exempt use. *Evangelical Lutheran Good Samaritan Society v. Buffalo County Board of Equalization, et al.*, 230 Neb. 135, 141, 430 N.W.2d 502, 506 (1988). The only substantive issue, therefore, is whether adding a "service-enriched" component satisfies the "exempt use" test.

In the instant case, the addition of a "service-enriched" component does not satisfy the "exempt use" test. The enriched services are characterized in the Taxpayers' brief as: "(1) donations were made which allowed children to be involved in baseball leagues and summer camps; (2) donations were made which provided food, clothing, and school supplies along with a back-to-school picnic for resident children; (3) needs assessment surveys (as entered into evidence as Exhibit 14) were given to all heads of households to anticipate the residents' needs and desired services; (4) the residents organized a neighborhood watch program; (5) a newsletter was developed to inform residents of activities and services provided by the Properties; and (6) an ongoing Wellness Clinic was established at the Western Manor

property.”

However, these “activities,” even if “charitable” or “educational,” do not qualify as an “exempt use” within the meaning of the regulations or the statutes. The nature of the “activities,” when considered in light of the duties imposed on the tenants supports this conclusion. The duties imposed on the tenants include an obligation to pay rent, which is at or below the market rate; they must sign a lease; and they are responsible for paying their own utilities. No tenant is required to avail himself or herself of the offered “enriched services.” If, however, the tenant fails to pay the rent, the tenant will be evicted. This evidence establishes that the primary or principal use of the property is for low-income housing. This evidence also establishes that the “service-enriched” component is an incidental use of the property.

CONCLUSIONS OF LAW

The Commission must, therefore, and hereby does conclude as a matter of law that “service enriched charitable housing” as established by the evidence in this case does not qualify as an exempt use of property for purposes of taxation.

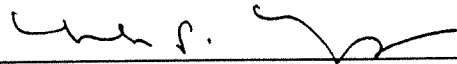
ORDER

IT IS, THEREFORE, ORDERED as follows:

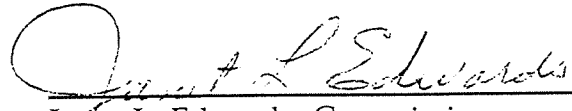
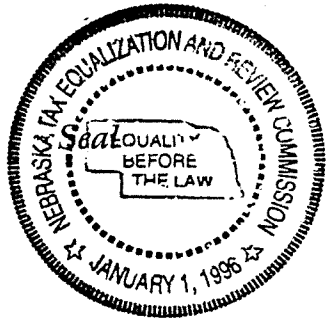
- I. That the decision of the Lancaster County Board of Equalization denying the application for exemption of real property by Mercy Northglen, Inc. and Mercy Western Manor, Inc., is affirmed.
- II. That pursuant to Neb. Rev. Stat. §77-202.06 (1996 Reissue), this decision shall be mailed to the applicant, the county assessor, and the county board of equalization.
- III. That this decision, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996), shall be certified within thirty days to the Lancaster County Treasurer, and the Lancaster County Assessor if no appeal is filed.
- IV. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 5th day of February, 1997.



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner