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Revenue department permitted to change position on tax exemptions

Can the Illinois Department of Revenue change its mind about whether an organization is entitled to charitable-use or religious-use tax exemptions?

The Illinois Appellate Court answered yes to that question in *Meridian Village Association v. Hamer*, 2014 IL App (5th) 130078 (March 28, 2014).

Under Illinois law, an organization seeking a tax exemption bears the burden of proving that it has a right to the exemption.

Meridian Village is affiliated with the Lutheran Church that operates a home for elderly residents in downstate Glen Carbon.

The Revenue Department denied Meridian Village's application for charitable-use and religious-use property tax exemptions for the tax years 2003 through 2006.

The Madison County Circuit Court, in an administrative review, affirmed the department's decision to deny the property tax exemptions.

On appeal, Meridian Village argued that it was entitled to the property tax exemptions for three reasons.

First, Meridian Village contended that the department had previously determined that Meridian Village was exempt from retailers' occupation and use taxes on the basis that it is organized and operated primarily for charitable purposes. Meridian Village contended that the department could not change its position by determining that Meridian Village was not entitled to property tax exemptions.

The Illinois Supreme Court has established a six-criteria analysis for determining whether an entity meets the requirement for a charitable-use tax exemption.

The same six criteria apply to determine whether an entity is entitled to exemptions from property taxes and retailers' occupation and use taxes.

An entity is entitled to a charitable-use exemption if that entity (1)

benefits an indefinite number of people for their general welfare and reduces burdens on the government; (2) has no stock or shareholders and does not profit from its operations; (3) derives its funds mainly from private and public charity; (4) dispenses charity to all who need and apply for it; (5) places no obstacles in the way of people seeking benefits; and (6) primarily uses its property for charitable purposes.

Meridian Village argued that, applying these six criteria, the department previously granted it an exemption from retailers' occupation and use tax. Accordingly, in Meridian Village's view, the department was required to grant the property tax exemptions.

But, when analyzing the property tax matter, the department decided that Meridian Village did not satisfy most of the six criteria necessary to establish charitable-use exemptions from property tax.

And the appellate court held that the department's prior decision to exempt Meridian Village from retailers' occupation and use tax did not necessarily entitle Meridian Village to charitable-use exemptions

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from property tax.

The department was not bound by its previous decision to permit Meridian Village exemption from retailers' occupation and use tax and was correct to evaluate the property tax exemption application under the six criteria that establish charitable use.

Second, the appellate court considered Meridian Village's argument that it had established a right to charitable-use exemptions from property tax under the six criteria required to establish charitable use.

The department found that Meridian Village did not meet the



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first and fourth criteria, relating to the benefits and charity provided, because Meridian Village's bylaws permitted denial of benevolent care to any resident if that care would jeopardize Meridian Village's financial stability and ability to meet its obligations and because benefits were limited to only current residents.

The department found that Meridian Village did not meet the third criterion, relating to funding sources, because its primary source of income was fees paid for services rendered.

With respect to the fifth criterion, relating to access to benefits, the department found that Meridian Village placed obstacles in the way of people seeking charity because it charged rental fees comparable to those charged by for-profit entities,

required large security deposits, enforced 10 percent late fees and required renters to maintain rental insurance.

The department also found that Meridian Village failed to meet the sixth criterion, relating to the primary use of the property, because the above facts failed to establish that Meridian Village primarily used the property for a charitable purpose.

The appellate court held that the department's determination that Meridian Village had not met its burden to establish the charitable-use exemption was not clearly erroneous.

Third, the appellate court considered Meridian Village's final argument that it was nevertheless entitled to property tax exemptions due to its religious use of the property.

Meridian Village argued that it was affiliated with the Lutheran Church and used the property primarily for religious purposes and that it therefore was entitled to the property tax exemptions.

Under the Property Tax Code, a religious use means the use of property as a stated place for public worship, Sunday schools and religious instruction. Although this list of religious uses is not exclusive, it illustrates the nature of a religious use in the context of property tax exemptions.

Meridian Village contended that it used the property primarily for religious purposes because the retirement community allows members of the Lutheran Church an opportunity to act out and evangelize their religion in the context of caring for elderly people.

But the department concluded that, other than caring for the elderly in a faith-inspired manner, there was little evidence of actual religious activity on the property.

The department found that the primary, if not exclusive, use of the property was housing the elderly.

The appellate court held that the department's determination that the property was not used primarily for religious purposes was not clearly erroneous.

The appellate court therefore rejected each of Meridian Village's three arguments, affirmed the department's decision to deny property tax exemptions to Meridian Village and affirmed the trial court's dismissal of the complaint.

The appellate court's analysis and decision emphasize that charitable organizations operating in Illinois cannot simply rely on tax exemption decisions by the Revenue Department in prior years or regarding other taxes.

Charitable organizations must continuously ensure that their operations meet the criteria for charitable-use tax exemptions to ensure they will maintain their tax-exempt status under Illinois law.