

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

ST. MONICA’S,)	
)	
Appellant,)	CASE NO. 05OP-001
)	
vs.)	FINDINGS AND ORDER ON REMAND
)	DENYING RELIEF ON PETITION
LANCASTER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case has been submitted to the Tax Equalization and Review Commission. (“Commission”) without a hearing.

William E. Peters has appeared as legal counsel for St. Monica’s (“the Taxpayer”).

Michael E. Thew, a Deputy County Attorney for Lancaster County, has appeared as legal Counsel for the Lancaster County Board of Equalization, (“County Board”).

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and conclusions of law, on the record or in writing.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lots 13 through 16, Block 2, Wedgewood Manor, Lincoln, Lancaster County, Nebraska, (“the subject property”).
2. The Taxpayer and the County Board, by stipulation and motion, have submitted this matter for consideration without a hearing.
3. The Taxpayer purchased the subject property after January 1 of the year 2005.

4. The Taxpayer filed an application as a non profit corporation for exemption of the subject property from taxation based on a charitable use.
5. The Taxpayer's application was filed on March 28, 2005.
6. The County Assessor recommended denial of the Taxpayer's application on May 2, 2005.
7. After notice to the Taxpayer the County Board affirmed the County Assessor's recommendation on May 24, 2005.
8. The County Clerk failed to mail or deliver notice of the County Board's decision to the Taxpayer.
9. The Taxpayer's Petition to the Commission was timely filed.
10. The Taxpayer has not shown that it is an organization which may hold real property exempt from taxation.
11. The Taxpayer has not shown that a use qualifying the subject property for exemption was made as of March 25, 2005, the date of its application for exemption.

II. APPLICABLE LAW

1. An organization or society may seek a tax exemption for real property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year. Neb. Rev. Stat. §77-202.03 (3) (a) (Cum. Supp. 2004).
2. An application pursuant to section 77-202.03 (3) (a) Nebraska Revised Statutes must be made on or before August 1 of the applicable year. *Id.*

3. An application filed pursuant to section 77-202.03 (3) (a) Nebraska Revised Statutes is to be reviewed pursuant to sections 77-202.01 to 77-202.05 of Nebraska Revised Statutes except that the exempt use shall be determined as of the date of the application and review by the County Board of Equalization shall be completed by August 15. *Id.*
4. If an application is reviewed by the County Board of Equalization, notice of the Board's decision must be mailed or delivered to the applicant and the county assessor by the county clerk within seven days of the date of the board's decision. Neb. Rev. Stat. §77-202.04 (Supp. 2005).
5. Any person otherwise having the right to file an appeal with the Commission may petition the Commission for a determination of the taxable status of real property if a failure to give a prescribed notice prevented timely filing of an appeal provided for in sections 77-202 to 77-202.25. Neb. Rev. Stat. 77-202.04(2) (Supp. 2005).
6. Petitions pursuant to section 77-202.04(2) must be filed on or before December 31 of each year. Neb. Rev. Stat. 77-202.04(2) (Supp. 2005).
7. "Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: (1) The property of the state and its governmental subdivisions shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature. To the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to

property taxes or payments in lieu of property taxes except as provided by law; (2) the Legislature by general law may classify and exempt from taxation property owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user....”

Neb. Const, Art VIII § 1

8. Section 1 of Art VIII of Nebraska's Constitution, providing for tax exemption of certain property, is not self-executing, but requires action by the Legislature to carry such constitutional provision into effect. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).
9. “(1) The following property shall be exempt from property taxes:...(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or

historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons....” Neb. Rev. Stat. §77-202 (Cum. Supp 2006).

10. In reference to subsection (1)(d) of Nebraska Statutes section 77-202, exclusive use means the primary or dominant use of property, as opposed to incidental use. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993)
11. Subsection (1)(d) of Nebraska Statutes section 77-202 contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
12. To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(d) of Nebraska Statutes section 77-202; (2) be used exclusively for at least one of the purposes specified in subsection (1) (d) of Nebraska Statutes section 77-202; and (3) not be (a) owned or used for financial gain to the property owner or user, (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
13. Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of

- proving the right to the exemption is upon the claimant. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).
14. A liberal and not a harsh or strained construction is to be given to the terms 'educational,' 'religious,' and 'charitable' in order that the true intent of the constitutional and statutory provisions may be realized. The interpretation should always be reasonable. *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921).
 15. The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. *OEA Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971)
Berean Fundamental Church Council, Inc. v. Board of Equalization, 186 Neb. 431, 183 N.W.2d 750 (1971).
 16. Regarding "mental" benefit of the public in subsection (1)(d) of section 77-202 of Nebraska Statutes as one of the requisite purposes of a charitable organization, "mental" means "intellectual," which means, among other things, engaged in creative literary, artistic, or scientific labor. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
 17. Relative to a charitable organization, "an indefinite number of persons" in subsection (1)(d) of this section means a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

18. “The word “charitable” has been held to mean something more than mere alms-giving or the relief of poverty and distress and it has been given a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits.” *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 363-64, 133 N.W.2d 455, 460, (1965).
19. A tax exemption for charitable use is allowed because those exemptions “benefit the public generally and the organization performs services which the state is relieved pro tanto from performing.” *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 3, 337 N.W.2d 103, 105 (1983).
20. Under subsection (1)(d) of section 77-202 of Nebraska Statutes, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

III. ANALYSIS

Before an application for exemption of property from taxation can be granted there must be a determination that the property is held by a qualified organization and that the exclusive use of the property is for a qualified purpose. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991). The first question is therefore whether the Taxpayer is an organization designated in subsection (1)(d) of Nebraska Statutes section 77-202. An affidavit offered by the Taxpayer shows that it has qualified for 501 (c)(3) exemption from

the Internal Revenue Service as a religious-charitable organization. The income tax status of the Taxpayer is not determinative of the question of whether or not it is a qualified organization. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991). A charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons....” Neb. Rev. Stat. §77-202 (Cum. Supp 2006). On its application for exemption a box was checked for the Taxpayer showing that it is a non profit corporation. Boxes were also checked showing that the Taxpayer did not use the subject property for the sale of alcoholic liquors and that the Taxpayer does not discriminate in its membership or employment based on race, color, or national origin. The Taxpayer has not shown that it is an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons as required by section 77-202 of Nebraska Statutes.

A Taxpayer seeking an exemption from taxation for property acquired after January 1 of each year is required to show that an exempt use is being made of the property as of the date of application for exemption. Neb. Rev. Stat. §77-202.03 (3) (a) (Cum. Supp. 2004). In this appeal the application for exemption is dated March 25, 2005. The Taxpayer on its application for exemption states use of the subject property as “Houses St. Monica’s Short-term Residential, Therapeutic Community, Outpatient services and Administrative offices.” The County Assessor determined that an exempt use of the subject property had not been made as of the application date because building permits allowing construction necessary to adapt the subject property to the uses stated in the Taxpayer’s application had not been granted as of March 25, 2005. The Taxpayer acknowledges that a building permit was issued on July 21, 2005, and that construction

was necessary to convert the subject property from a physician's clinic building to a short-term residential therapeutic community, an outpatient facility and administrative offices. The Taxpayer stated that it did not move its address to the subject property until October 2005. There is no evidence that the exclusive use by the Taxpayer of the subject property on March 25, 2005, was for an exempt use.

The Commission finds that the subject property is not exempt from taxation for the tax year 2005.

IV. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction.
2. The subject property is not exempt from taxation for the tax year 2005.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The Petition of St Monica's to determine that Lots 13 through 16, Block 2, Wedgewood Manor, Lincoln, Lancaster County, Nebraska, are exempt from taxation for the tax year 2005 is denied.
2. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.

4. This decision shall only be applicable to tax year 2005.

Dated September 12, 2007.

Wm. R. Wickersham, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

Nancy J. Salmon, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.