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GOVERNOR

DEPARTMENT OF REVENUE
FINANCE AND ADMINISTRATION CABINET
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
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ROBBIE RUDOLPH
SECRETARY

In the matter of:

[REDACTED], INC.

Contact:

[REDACTED]

FINAL RULING NO. 2005-07
March 2, 2005

[REDACTED]

, Inc.

Denial of state ad valorem tax refund claims
based upon application of property tax exemption
for institutions of purely public charity

FINAL RULING

The Office of Property Valuation of the Department of Revenue has denied the application of the [REDACTED], Inc. ("the [REDACTED]") for an exemption from property taxation. For purposes for clarification of the rights and duties of the parties, the Department has treated the application as a claim for state ad valorem taxes paid by the [REDACTED] within two years of its [REDACTED], 2003 exemption application and since that application (i.e., \$ [REDACTED] in state ad valorem tax paid for 2001 on [REDACTED], 2002, \$ [REDACTED] in state ad valorem tax paid for 2002 on [REDACTED] and [REDACTED], 2003 and \$ [REDACTED] in state ad valorem tax on [REDACTED], 2004), in accordance with KRS 134.590(2). The Department has previously advised the [REDACTED] that it cannot consider or issue any ruling on claims for refunds of other taxing jurisdictions' ad valorem taxes, which must instead be taken up with the jurisdictions levying those taxes, under the terms of and in accordance with the refund statute, KRS 134.590. See Board of Education v. Taulbee, 706 S.W.2d 827 (Ky. 1986).

For the reasons that follow, it is the final ruling of the Department of Revenue pursuant to KRS 131.110 and 103 KAR 1:010 that the [REDACTED] is not exempt from property tax under

Ky. Const. § 170 as an institution of purely public charity and that the refunds of state ad valorem taxes sought by the ██████████ have been properly denied.

In the context of ad valorem taxation, taxation is the rule and tax exemption the exception, with exemptions from taxation not favored in law and claims for exemption strictly construed in the public's favor. Banahan v. Presbyterian Housing Corp., 553 S.W.2d 48, 51 (Ky. 1977). See also Ky. Const. §§ 3, 170, 172, 174. “[G]ranting tax exemption to charitable and educational institutions is a policy founded upon the fundamental ground of benefit to the public by such organizations and recognition of the fact that they perform a service which the State would or should otherwise have to perform, so there is consequent relief of the tax burden of others.” Kesseling v. Bonnycastle Club, 299 Ky. 585, 186 S.W.2d 402, 404 (1945).

The burden rests upon an organization claiming an exemption from taxation to establish clearly its entitlement to that exemption. Iroquois Post No. 229 v. City of Louisville, 309 S.W.2d 353 (Ky. 1958). To qualify for the exemption from property taxation for purely public charities, an institution must “itself be a charity and the income from its property must be used to further its charitable purpose; secondly, the property must be employed for a purely charitable purpose.” Id. at 354. “It is the primary use made of the property...which determines whether it is exempt.” Id.

The Kentucky courts have viewed a charity or public charity as

“a gift, to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.”

City of Dayton v. Trustees of Speers Hospital, 165 Ky. 56, 176 S.W.361, 364 (1915). See also Goode’s Adm’r v. Goode, 238 Ky. 620, 38 S.W.2d 691 (1931). Charity is not restricted to relief of the needy poor. Banahan, *supra*.

As we understand it, the ██████████ is a nonprofit corporation formed by area ██████████ churches that operates a bowling alley in ██████████, Kentucky. It sells food and beverages at its concession stand and sometimes rents its premises out for special occasions such as wedding receptions, birthday parties, etc. The ██████████’s bowling alley is not restricted to members of area churches but is also patronized by area citizens. The ██████████’s exemption application states that the “bowling center acts as a recreational place for area churches of different denominations” and “[w]e operate league and open bowling for area church members and citizens.”

The ██████████'s exemption application further states that "[a]ll income is used to operate the bowling center." Therefore, we do not have a situation where the property is alleged to be exempt on the ground that it is income-producing property of an exempt charitable or educational institution. See, e.g., OAG 43, 733; City of Louisville Presbyterian Orphans Home Society of Louisville, 299 Ky. 566, 186 S.W.2d 194 (1945).

We do not believe that the ██████████ has met its burden under the law of establishing that it is an institution of purely public charity within the meaning of Ky. Const. § 170. Iroquois Post No. 229, *supra*. Nonprofit status is only one requirement of the exemption and does not by itself confer exempt status. Kesseling, *supra*. As we see it, the primary use of the property is to serve as a bowling alley for the pleasure, entertainment, and social activities of its paying customers. To be sure, the Association does appear to provide a well-regulated and wholesome atmosphere for the activities it conducts on its premises; however, any benefit to the public as a whole that may result from the ██████████'s activities would be indirect or incidental and not their principal object or effect. Iroquois Post No. 229, *supra*; Vogt v. City of Louisville, 173 Ky. 119, 190 S.W.695 (1917). In any event, we do not see the ██████████'s activities as meeting the definition of purely charitable activities that has been established by the courts in construing this exemption.

The ██████████ cites a Pennsylvania court decision (Appeal of Young Men's Christian Association of Pittsburgh, 383 Pa. 176, 117 A.2d 743 (1955)) in support of its claim that it is exempt from taxation as an institution of purely public charity. That decision dealt with a situation where the bowling alleys were "not open for public use [and did] not compete with commercial establishments and [were] only incidental to the overall operation of [an] organization" that was an institution of purely public charity. 117 A.2d at 764. By contrast, the ██████████'s predominant, if not sole, activity is the operation of a bowling alley. The Pennsylvania decision is therefore readily distinguishable from the ██████████'s situation and does not support the ██████████'s exemption claim.

The foregoing constitutes the final ruling of the Department of Revenue pursuant to KRS 131.110 and 103 KAR 1:010.

YOUR APPEAL RIGHTS

You may appeal this ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this ruling, you must file your complaint or petition of appeal with the Clerk, Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601, within thirty (30) days from the date of this letter. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the complaint or petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. State the petitioner's position regarding the law, facts or both; and
4. Include a copy of this final ruling letter with each copy of the complaint or petition.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



THOMAS H. BROWN
Director
Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



