

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SISTERS OF CHARITY OF)
LEAVENWORTH HEALTH)
SYSTEMS, INC. C/O ST.)
VINCENT HEALTHCARE, INC.,)
Appellant,) DOCKET NO.: SPT-2004-6
)
-vs-)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF MONTANA,) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
Respondent.) FOR JUDICIAL REVIEW

The above-entitled appeal was heard on briefs. The parties agreed to a simultaneous briefing schedule. The initial briefs were due by August 1, 2005 and reply briefs were due by September 9, 2005. John T. Jones and Michele L. Jensen, attorneys, prepared the taxpayer's briefs and arguments. The Department of Revenue's (DOR) position was outlined by Michele R. Crepeau, tax counsel.

The duty of this Board is to determine whether the property qualifies for an exemption based on a preponderance of the evidence and applicable law and administrative rules of the State of Montana. Sisters of Charity of Leavenworth Health Systems, Inc (SCLHS), c/o St. Vincent Healthcare, Inc. (SVH) is the appellant in this proceeding and, therefore, has the burden

of proof. Based on the evidence and testimony, the Board finds that the decision of the Department of Revenue is affirmed.

STATEMENT OF ISSUE

SCLHS, a 501(c)(3) tax-exempt entity of which SVH, is a non-profit entity, is seeking a property tax exemption for a portion of the lower level of the building located at 1144 North 28th Street Billings, Montana.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, and of its briefing schedule. All parties were given the opportunity to present documentary evidence.
2. On July 5, 2004 SVH submitted its "Application For Real Property Tax Exemption" to the DOR. The application applies to the lower level of the building located at 1144 North 28th Street, Billings, MT 59107 (appellants initial brief; attachment A,).
3. On September 2, 2004, the DOR denied the exemption, pursuant to Part 2, Chapter 6, Title 15 M.C.A. (appellants initial brief; attachment F).
4. SCLHS appealed the DOR's decision to this Board on September 30, 2004, pursuant to Mont. Code Ann §15-2-302(1).

5. On October 5, 2004, the Board notified the DOR that its decision is being contested pursuant to Mont. Code Ann §15-2-302(1).
6. On November 12, 2004, the DOR acknowledged the Board's notification.
7. A hearing on the issue was scheduled for June 6, 2005 in Helena, but a joint motion to submit the matter on the record was received May 27, 2005.
8. Per a Board Order, the June 6, 2005 hearing was vacated, and a briefing schedule was established. Initial briefs were due by August 1, 2005, with a reply brief due by September 9, 2005.

ST. VINCENT HEALTHCARE, INC'S CONTENTIONS

The property located at 1144 North 28th Street, Billings, MT, is owned by the SCLHS. SCHLS is a 501(c)(3) tax-exempt entity.

The main floor of the building is leased and occupied by the Yellowstone Surgery Center (YSC) (Lease Agreement - exhibit B). The lower level, or basement, consists of approximately 15,000 square feet of space, of which 10,938 square feet is entirely unfinished space. The basement also contains approximately 4,000 square feet of semi-finished space, consisting of an electrical closet, a medical gas room, a

telecommunications closet, a mechanical room, and a space for bulk storage of medical supplies (Appellants Brief).

Mont. Code Ann. § 15-6-201 provides that: (1) [t]he following categories of property are exempt from taxation: . . . (c) property used exclusively for . . . nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3 . . .".

The Appellant argues that, in *The Salvation Army, Missoula v. DOR*, SPT-2000-2, the STAB granted tax-exemption for a similar situation. In their initial brief, the Appellant states:

The same issue is present in this case. Petitioner intends to use the property for exempt purposes. Therefore, the unfinished portion is entitled to tax-exempt status. As the Board held in Salvation Army, "where an entity, which under law is entitled to have its property exempted from taxation, acquires real property with the intention of devoting it to a use exempting it from taxation, such property is entitled to be exempted from taxation, as long as it is not devoted to a nonexempt or commercial use, even though actual physical use of the property for the exempt purpose has not yet begun. In other words, it is not necessary that actual physical use of property for an exempt purpose be commenced before it is entitled to be exempted from taxation. It is sufficient if it is acquired by the organization entitled to the exemption, with the intention of devoting it to an exempt use. (Appellant's initial brief (page 7)).

The Appellant's initial brief continues:

The situation present in this case is unique. In most circumstances, when a tax-exempt entity is applying

for an exemption, the property is already in use. Therefore, the "in use" test, as routinely interpreted by the Department, cannot be strictly applied. The unique facts of this case must be acknowledged. The test must be based upon SVH's intention regarding use and undisputed present ownership of the unfinished space.

If, at some time in the future, the unfinished space is used for non-exempt purposes, the DOR can easily return the property to the tax rolls. A provision for review of exempt property exists within the Administrative Rules of Montana. A.R.M. 40.20.106(2) states that "[t]he property tax exemption will be reviewed as of January 1 of the next year to determine if the property was placed in the intended use. If it was not placed in the intended use, the Department of Revenue will rescind the exemption and tax the property for the previous tax year." A.R. M. 40.20.106(2).

It is the position of the Appellant that the Board should grant the tax exemption for the lower level of the building located at 1144 North 28th Street, Billings, MT.

DOR'S CONTENTIONS

Contrary to that of the SVH, the DOR's position is that the subject property does not qualify for tax exemption because a portion of the lower level of the building is not directly used for purely public charitable purposes as required by Mont. Code Ann. § 15-6-201(1)(c).

In October of 2004, DOR representative, Tracy Lame, visited the property, and was accompanied by representatives of SVH (Marty Hirschy) and YSC (Rob Gagnon). As a result of that onsite review and discussions with Mr. Hirschy and Mr. Gagnon, it was determined that, of the approximately 15,087 square feet of basement area, 12,087 square feet was unfinished and unused.

Therefore, the unfinished portion of the building did not meet the requirements of Mont. Code Ann. § 15-6-201(1)(c) (Affidavit of Tracy Lame - Exhibit D).

The DOR emphasizes the following as to the reason for denying the tax exemption:

1. Article VIII, §3, Mont. Const. "appraise, assess and equalize the value of all property which is to be taxed in the manner provided by law."
2. Mont. Code Ann. § 15-6-101. Property subject to taxation -
- classification. (1) All property in this state is subject to taxation, except as provided otherwise.
3. *"The taxing power of the state is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms." Cruse v. Fischl, 55 Mont. 258, 265-66, 175 P. 878, 881, (1918).
Therefore, every claim for exemption from taxation should be denied unless the exemption is granted so clearly as to leave no room for any fair doubt." Id.*
4. Mont. Code Ann. 15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:
(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human

services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt (Emphasis added).

5. Pursuant to Mont. Code Ann. 15-6-201(1)(c) the property must be used. The record indicates that the unfinished portion of the basement is unused and no proposed use exists.
6. The property does not meet the use requirement of the statute; therefore, the DOR denied the Taxpayer's exemption application.

BOARD DISCUSSION

The Appellant asserts that the issue here is analogous to the issues raised in *The Salvation Army, Missoula v DOR, SPT - 2000-2*. In that case, the DOR denied an exemption for land that was being developed for low-income housing pursuant to ARM 42.20.106. That rule denied DOR the ability to allow an exemption until the point at which the building's foundation was complete. This Board reversed the DOR's decision because the Salvation Army proved that it was moving forward with the project. "...*The Salvation Army of Missoula has invested approximately \$50,000 in the project to date, for architectural drawings, land and soil studies, and other requirements. The*

Salvation Army has contractual agreements with architects and with a contractor, hence construction will begin immediately upon receipt of the grant. It would not be realistic or financially feasible, however, to begin construction of such a project, or to attempt to complete a foundation, as set forth in ARM 42.20.106, until the grant has actually been approved..." (The Salvation Army, Missoula v DOR, SPT - 2000-2).

The DOR's rebuttal brief notes that DOR appealed STAB's decision in The Salvation Army to the District Court, 4th Judicial District. The Court upheld this Board's decision (State of Montana, Department of Revenue v. The Salvation Army, Missoula, Cause No. DV-01-148).

This Board does not view the arguments put forth in The Salvation Army, Missoula as being similar to the immediate appeal. In the immediate appeal, SVH owns the unfinished and unused portions of the basement. In fact, the Appellant's rebuttal brief states, "*This case presents a unique situation where an exemption is sought even though the space is not presently being used*".

The Montana Supreme Court considered an issue similar to the present one on what constitutes "direct" use of property necessary to satisfy the statutory requirements of Mont. Code Ann. § 15-6-201. The Court found that: "*[W]hen considering tax-exempt status, it is the use of the property that is*

determinative rather than the ownership of the property".
Steer, Inc. v. Department of Revenue (1990), 245 Mont. 470, 803
P.2d 601 (1990).

In the Opinion and Order entered by the District Court in
State of Montana, Department of Revenue v. Salvation Army,
Missoula, the judge noted that, prior to granting a tax
exemption, each application should be reviewed for tangible
factual evidence:

"...Moreover, the Supreme Court acknowledges the fallacy
of applying a hard and fast requirement by stating that
"[t]he balance is swung toward strict construction rather
than a more permissive interpretation since the property is
largely undeveloped and the use thereof is not clearly
evident nor documented." Old Fashion Baptist Church v.
Montana Dept. of Revenue, 206 Mont. 451, 456, 671 P. 2d 625,
627 (1983). These statements by the Supreme Court can only
be reasonably interpreted to mean that the DOR must look to
and weigh "all" the facts and circumstances of each
application and reach a well-reasoned conclusion whether at
the time of the application for the exemption is made, there
is tangible evidence that the entity seeking exemption "is
actively working toward the actual use" for charitable
purposes. (Emphasis added). (Opinion and Order, State of
Montana, Department of Revenue v. Salvation Army, Missoula,
Cause No. DV-01-148).

The Board concludes that there is no factual evidence
that SVH is utilizing the contested portion of the building in
a manner that meets the statutory requirements of Mont. Code
Ann. § 15-6-201(c).

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this
matter. Mont. Code Ann. §15-2-301, MCA.

2. Mont. Code Ann. §15-2-302, MCA. **Direct appeal from department decision to state tax appeal board - hearing. (2)(a)** Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision.

3. Mont. Code Ann. 15-6-201. **Exempt categories.** (1) The following categories of property are exempt from taxation:

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

4. Cruse v. Fischl, 55 Mont. 258, 265-66, 175 P. 878, 881, (1918).

5. Steer, Inc. v. Department of Revenue, 245 Mont. 470, 803 P.2d 601 (1990).

6. Old Fashion Baptist Church v. Montana Dept. of Revenue, 206 Mont. 451, 456, 671 P. 2d 625, 627 (1983).

7. The Salvation Army, Missoula v. DOR, SPT 2000-2, State Tax Appeal Board (2000).

8. State of Montana, Department of Revenue v. Salvation Army, Missoula, Cause No. DV-01-148

9. The appeal of the taxpayer is hereby denied and the decision of the Department of Revenue is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall remain on the tax rolls of Yellowstone County.

Dated this 15th day of September, 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of September, 2005, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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