



January 30, 2009

Richard M. Brescia, Chief Assessor
Somerville Board of Assessors
93 Highland Avenue
Somerville, MA 02143

Re: Exemption Issues
Our File No. 2008-937

Dear Mr. Brescia:

You have requested an opinion regarding the eligibility of real property owned in the City of Somerville by Saint Polycarp LLC ("SPLLC") for exemption under G.L. c. 59, § 5, cl. 3. You indicate that SPLLC is a limited liability company with the Somerville Community Corporation as its sole member. You further indicate that the Somerville Community Corporation is an entity which has been accorded exempt status under G.L. c. 59, § 5, cl. 3 for its real and personal property holdings. The organizational documents of SPLLC state that the entity is organized for charitable purposes.

In the case of *CFM Buckley/North, LLC v. Assessors of Greenfield*, Mass. ATB Findings of Fact and Reports 2007-220, the Appellate Tax Board held that limited liability companies are ineligible for the property tax exemption conferred at G.L. c. 59, § 5, cl. 3. The Board explained that "Clause 3 explicitly requires that the organizations be 'incorporated.' Pursuant to G.L. c. 156C, § 2(5), LLCs are defined as "unincorporated organizations formed under [c. 156C] and having 1 or more members." Mass. ATB Findings of Fact and Reports 2007-220, 229. The Board rejected the argument that an LLC's stated charitable purposes and activities sufficed to qualify it for the charitable exemption. "While it is true that courts will look to the work a corporation actually performs in determining whether it is in fact a "charitable organization for purposes of Clause 3, that does not mean that the organization's work is the only relevant criteria." *Id.* at 2007-232.

The appellants in the *CFM Buckley/North, LLC* case have appealed the decision of the Appellate Tax Board. We understand that oral arguments in the case were heard by the Supreme Judicial Court last month. A decision from the Supreme Judicial Court is expected sometime in the first half of 2009. Unless and until the Supreme Judicial Court reverses the Appellate Tax Board's judgment, SPLLC, as a limited liability company, does not qualify for exemption under G.L. c. 59, § 5, cl. 3 for any of its real or personal property holdings.

You also inquire about the status of the parcel at 110 Temple Street (a/k/a 114 Temple Street). This parcel was sold by SPLLC to Just-A-Start Corp., which you indicate is considered a tax exempt entity planning to use the property and the existing improvement as a home for unwed mothers. The deed of sale was recorded July 2, 2008, but representatives of the taxpayer have stated that the closing occurred before the end of June.

July first is “the date of determination as to age, ownership or other qualifying factors required by any clause [of section five of chapter fifty-nine.]” G.L. c. 59, § 5. Even if Just-A-Start Corp. is eligible for exemption and occupied the property for its charitable purposes immediately upon acquisition, it must have owned the property as of July 1 to qualify under G.L. c. 59, § 5, cl. 3. We believe that assessors may rely exclusively on recorded documents to determine if the ownership interest required for a property tax exemption existed on July 1. The owner “appearing of record, in the records of the county” may properly be treated as the true owner for purposes of the charitable exemption. *See* G.L. c. 59, § 11. You have indicated that the record owner of the real property at 110 Temple Street (a/k/a 114 Temple Street) on July 1, 2008 was SPLLC, which is not eligible for the G.L. c. 59, § 5, cl. 3 exemption as the law presently stands. Nevertheless, the assessors may choose to review the deed for the property to look more closely at actual ownership as of July 1, 2008, though such further investigation is not required.

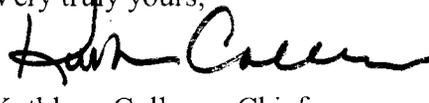
Finally, you inquire about real properties owned for purposes of G.L. c. 186, § 1 by either the Somerville Community Corporation or Just-A-Start Corp. The extent to which these real properties were occupied for charitable purposes on July 1, 2008 is not clear from the information supplied. “Concurrence of ownership of corporate property of the charitable institution and occupancy by it for its corporate purposes is required for an exemption from taxation upon real estate under § 5, Third.” *Animal Rescue League v. Assessors of Bourne*, 310 Mass. 330, 337 (1941). The test for determining whether a property owned by a charitable organization is “occupied” for charitable purposes appears in *Assessors of Boston v. Vincent Club*, 351 Mass. 10, 14 (1966):

‘Such occupancy means something more than that which results from simple ownership and possession. It signifies an active appropriation to the immediate uses of the charitable cause for which the owner was organized. The extent of the use, although entitled to consideration, is not decisive. But the nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent objects.’

Quoted from Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage, 225 Mass. 418, 421-422 (1917).

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG