

February 28, 2006

Jeffrey T. d'Ambly, Chief Appraiser  
Milton Board of Assessors  
525 Canton St.  
Milton, MA 02186

Re: Darryl Williams Foundation, Inc.  
Our File No. 2005-255

Dear Mr. d'Ambly:

I am writing in regard to your question whether certain real property of the Darryl Williams Foundation, Inc. (the Foundation) qualifies for a property tax exemption. Based on the information you provided to us, it is our understanding that the Foundation is a Massachusetts Chapter 180 corporation with an Internal Revenue Code federal classification as a §501(c)(3) corporation. The Foundation was established for the stated purpose of raising and donating funds "to specific organizations dedicated to the prospect of betterment of the quality of life for those who are severely handicapped by reason of birth defects or severe physical trauma." The Foundation owns a single-family home located at 45 Hemlock Drive in Milton for which it has received charitable exemptions in past years. The 2004 application for exemption (Form 1B-3) indicated that the property is occupied and used by the Foundation as well as by Darryl Williams personally. Mr. Williams is disabled.

You wrote that the Milton Board of Assessors is seeking direction as to the exempt status of the property located at 45 Hemlock Drive. As you know, the requisites, which a charitable organization must satisfy in order to qualify for a tax exemption on real property, are set out in Chapter 59, Section 5, Clause Third of the General Laws. This provision allows an exemption from property tax assessment upon:

"real estate owned or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations."

This statutory provision sets out three, discrete requisites, all of which must be satisfied in order for real property to qualify for exempt status. First, the organization must be a charity. Secondly, the

charitable organization must own the property. And finally, the charitable organization or some other charitable organization must occupy the property for a charitable purpose.

From the information provided, it appears that the Foundation has established its status as a qualifying charitable organization. The Foundation filed the requisite forms to properly apply for a tax exemption, and the documentation submitted provides an overview of its activities. The Foundation claims to conduct fundraising activities and community-based public events, grant stipends to related organizations, develop in-service workshops, and serve as a resource providing information and direction to those in need. Based on this information, it seems that the Foundation's purposes and activities would be considered charitable in nature. See Little v. Newburyport, 210 Mass. 414 (1912). In addition, the Foundation owns a single-family home in Milton. This home is occupied by Mr. Williams, family members, and other officers of the Foundation. Accordingly, it seems that the only issue regarding exempt status relates to the occupancy requirement.

Even if the Foundation is considered a charitable organization, it still must show that the occupancy and use of the single-family home is in furtherance of its stated charitable purposes. See Boston Lodge, B.P.O.E. v. City of Boston, 217 Mass. 176 (1914); Salem Lyceum v. City of Salem, 154 Mass. 15 (1891). An organization that conducts charitable activities is not entitled to claim the charitable exemption if the dominant use of the organization's property is for purposes that are not a part of, or incidental to, the organization's charitable purposes. Id.

Residential property used by a charitable corporation to house its personnel is not exempt from taxation where such property is provided primarily for personal convenience or private benefit. See e.g., Phi Beta Epsilon Corp. v. City of Boston, 182 Mass. 457 (1903); William T. Stead Memorial Center of New York v. Town of Wareham, 299 Mass. 235 (1938). In order for the property to be exempt, the personnel residing there must pay little or no rent, live there as a condition of their employment, and use the property in a way that is essential to the operation of the charitable corporation and in furtherance of its charitable purposes. See e.g., Wheaton College v. Norton, 232 Mass. 141 (1919); Board of Assessors of New Braintree v. Pioneer Valley Academy, Inc., 355 Mass. 610 (1969).

It is not clear from the information provided to us whether the Foundation's use of the single-family home meets these requirements for exemption. The exemption application submitted by the Foundation for the 2004 fiscal year states that the single-family home is occupied and used by the Foundation as well as by Darryl Williams personally.<sup>1</sup> Presumably, this means that the house is being used for the administration of the DW Foundation and as the living quarters of Darryl Williams. We assume that Mr. Williams does not pay rent to the Foundation for his residential use of the home. However, apart from learning that Mr. Williams holds the office of president, we were not provided with any information about what activities were conducted by the Foundation in 2004 in the home.

If a defined portion of the property is used by the Foundation as its administrative offices, i.e., as the place where records are stored and Mr. Williams and other officers conduct the organization's business, that portion may qualify for exemption. The portion used as a residence,

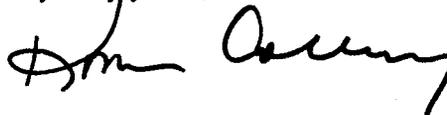
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<sup>1</sup> We note, however, that it appears from the information you submitted that the home also is occupied by family members and other officers of the Foundation.

however, can qualify only if the assessors find that residential use of the property by officers of the organization is essential to the operation of the organization and in furtherance of its charitable purposes. That is, the assessors must find that the occupancy by the president, or by any officer of this organization, of this property as a residence is necessary for the operation of the charity.

We hope that this information is helpful. If you have any additional questions concerning this matter, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary  
Chief, Bureau of Municipal Finance Law

KC/mcm