

PT 08-10
Tax Type: Property Tax
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

In re 2006)	Docket Nos.	07-PT-0008
Property Tax)		06-22-381
Exemption Application of)	PIN	09-12-111-102
ZION LUTHERAN CHURCH)	John E. White,	
OF HINSDALE)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Sally Wagonmaker, Mosher & Associates, appeared for Zion Lutheran Church of Hinsdale; Paula Hunter, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied an application for a non-homestead property tax exemption for property that Zion Lutheran Church of Hinsdale (Zion) owns, and which is situated in DuPage County, Illinois. The issue is whether certain property was being used exclusively for religious purposes or for charitable purposes, and is entitled to the exemptions authorized by §§ 15-40 or 15-65 of Illinois' Property Tax Code (PTC), for 2006.

The hearing was held at the Department's offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that Zion's exemption application be approved in part and denied in part.

Findings of Fact:

1. Zion, under its prior name of the Zion Evangelical Lutheran Church of Hinsdale, was incorporated in Illinois in 1924. Applicant Ex. 10 (copy of certified corporate resolution to make election).
2. Jay Klein (Klein) is Zion's pastor. Hearing Transcript (Tr.), p. 15 (Klein).
3. Zion is a member of the Lutheran Church — Missouri Synod. Applicant Ex. 1 (copy of pages from the 2006 Lutheran Annual, including a listing of Zion on the Roster of Congregations); Applicant Ex. 4 (copy of Zion's Constitution and bylaws); Tr. pp. 15-16 (Klein).
4. Zion is organized and operated exclusively for religious purposes. Applicant Ex. 2 (copy of June 3, 1992 Group Tax-Exempt Ruling letter from the Internal Revenue Service (IRS) to the Lutheran Church-Missouri Synod); Applicant Ex. 3 (copy of June 9, 2006 letter from the Department to Zion granting it a tax exemption identification number pursuant to Illinois' Retailers' Occupation and Use Tax Acts).
5. Zion owns property in Hinsdale, which includes a brick church building with basement, at which it had conducted weekly worship, Sunday School and bible classes, as well as youth group meetings, confirmation classes and devotional meetings. Applicant Ex 22 (copy of George Mueller's Supplemental Affidavit in Support of Exemption, dated May 5, 2007), ¶ 7; Tr. pp. 31-33 (Klein).
6. In 1963, Zion obtained, by devise, the parcel of property (the Property) that is the subject of this dispute. Applicant Ex. 22, ¶ 8; Applicant Ex. 11-12 (copies of,

respectively: the Last Will and Testament of Maria Weiss, the Property's former owner; a Receipt acknowledging Zion's taking of the Property bequeathed to it by Weiss's will; copy of Owners Title Insurance Policy identifying Zion as the insured, with a fee simple interest in the Property).

7. The Property is adjacent to the property on which Zion's church building is situated. Applicant Ex. 6 (copy of architectural drawing of the Addition, church building, and property). From 1963 until 2003, the Property was improved with a two-story brick house, and was, Applicant concedes, properly subject to Illinois property tax. Applicant Ex. 22, ¶ 8.
8. The Property consists of land measuring approximately 50 feet by 182 feet. Department Ex. 1 (copy of Zion's completed form PTAX-300-R, Religious Application for Non-Homestead Property Tax Exemption — County Board of Appeals Statement of Facts); Applicant Ex. 6; Tr. pp. 32-33 (Klein).
9. The adjacent property on which Zion's church building is situated consists of a lot that is twice the size of the Property, that is, a single lot of land measuring 100 feet by 182 feet. Applicant Ex. 6. The church building is situated on the northern half of that lot. *Id.*; Tr. pp. 32-33 (Klein).
10. In the early 2000's, Zion's leaders began to develop plans to construct an addition to its church property, which addition Zion planned to use for various ministry work. Applicant Ex. 22, ¶ 9. Specifically, the planned addition was to provide space for Zion's fellowship activities, its administrative offices, and for a new child care ministry which Zion called the Early Childhood Education Center (ECEC). *Id.*
11. Zion produced a written Mission Plan for its ECEC in 2003. Applicant Ex. 17 (copy

of Mission Plan, dated August 1, 2003).

12. That Mission Plan provides, in part:

It is our vision to build and operate an [ECEC] as an integral part of the mission of Zion Lutheran Church, as well as to expand our Narthax to provide fellowship space, elevator access to all levels, and needed office space.

We have studied the “Child Care Model” of church planting, first developed by the English District of the LCMS [Lutheran Church-Missouri Synod]. After prayerful consideration and planning, we believe it is a strategy that will work for our mission of revitalizing an established congregation as well. We envision serving families in Hinsdale and surrounding communities in a number of ways by:

- Providing full-time and part-time child care for children from two years through five years of age.
- Expanding our preschool program for children ages three through five by offering both morning and afternoon programs.
- Expanding our before and after-school programs for children in kindergarten through eighth grade.
- Providing an additional avenue of feeding young children into our existing school ministry.
- Providing greater ease of access to senior members and more fellowship space for before and after worship.
- Providing more comfortable and functionally efficient parish offices that will be more accessible to both members and visitors to Zion church.

All of these ministries will be distinguishable as Christian, high-quality, state licensed, and accredited by both the National Association of Education for Young Children (NAEYC) and the National Lutheran School Accreditation, through the LCMS.

Furthermore, the planned facilities will enable us to offer the following outreach programming for the families of our center as well as the general community:

- Seminars on a variety of topics (parenting, marriage, time-management, career opportunities, etc.).
- A full range of support groups.
- “Whole family” events designed to build communication and closeness in families through shared activities.
- Other programming needs that we are able to discern and have the resources to meet effectively.

To establish the ministry, we plan to build an Early Childhood Education facility parallel to the current sanctuary, connected by

an expanded Narthax and office addition, that will house a potential 214 students in an approximately 16,000 square foot addition. The addition will include one preschool classroom on the upper level and one preschool classroom and three daycare classrooms on the lower level at an approximate cost of \$3.2 million dollars.

As this planning document will demonstrate, we place a high value on quality, financial viability and an evangelistic mindset. We are convinced that these values are the key to the success of this ministry.

1.1 Mission

1.1.1 Mission Statement

The Zion [ECEC] is one of the critical targets identified in the mission of Zion Lutheran Church, along with the need to expand our Narthax, provide elevator access to the sanctuary and provide additional fellowship and office space. Therefore, the Center's mission flows from the Mission Statements of our congregation and school, which are:

“To invite people into a relationship with Jesus Christ, so that they become part of the community of believers and grow in faith and service to Him through worship, fellowship, nurture, care and prayer.” (Congregation)

“To develop the light that God has placed in each student, providing a child-sensitive, Christ-centered, challenging environment in which all children learn to understand and rejoice in their responsibilities as lifelong learners and shining examples of Christ's light in the world.” (School)

Applicant Ex. 17.

13. Consistent with Zion's execution of its Mission Plan, in 2003, Zion razed the house that was on the Property and built a new, two-story brick building, which I will refer to as the Addition. Applicant Ex. 22, ¶ 11.
14. The Addition was built on the Property and on the adjacent property that Zion owned. Applicant Exs. 6, 7 (copy of architectural drawings of the Addition and property).
15. From the time it opened, and during the year at issue, 60% of the Addition was used primarily for Zion's ECEC program (8,690 square feet) and 40% has been used

primarily for the Church's other religious activities (4,905 square feet). Applicant Ex. 22, ¶ 11; *see also* Applicant Exs. 6, 7, 8 (copy of a document titled, Zion Lutheran Church Activities in Zion Lutheran Church and [ECEC]); Tr. pp. 41-49 (Klein).

16. Zion also used the 60% of the Addition space used for Zion's ECEC program for religious activities including church administration, meetings and Sunday school classrooms, when the areas were not being used for ECEC's daycare programs. Applicant Exs. 7-8; Tr. pp. 43-46 (Klein), 125-32 (Farrell).

17. The ECEC opened in 2005, serving children in Hinsdale and surrounding communities. Taxpayer Ex. 22, ¶ 13. The ECEC program offers religion-based child care, including daycare and educational programs for children 2½ to 5 years old. *Id.* The ECEC is licensed by the Illinois Department of Children and Family Services (DCFS) as a daycare provider. *Id.*

18. Peggy Farrell (Farrell) is the director of Zion's ECEC. Tr. p. 97 (Farrell).

19. The ECEC is not a separately incorporated entity. Tr. pp. 71-72 (testimony of George Mueller (Mueller)); 99 (Farrell).

20. Zion prepares and keeps financial books and records regarding all of its operations, including those undertaken as part of its ECEC mission. Applicant Ex. 18-19 (copies of, respectively, Zion's financial statements for 2006 and 2007); Tr. pp. 73-90 (Mueller, discussing the entries on Applicant Exs. 18-19).

21. Zion's financial statements for 2006 identify the following items of revenue Zion realized, and the corresponding expenses it incurred, from its ECEC operations:

REVENUE ITEM DESCRIPTION	Amount
Preschool program fees	223,721.43
Child care program fees	45,906.27
Early Childhood registration fees	12,160.92

ECEC Summer program fees	21,658.95
ECEC misc. income	500.75
Total Revenue	\$303,948.32

EXPENSE ITEM DESCRIPTION

ECEC board expenses	33,126.19
Salaries, benefits, telephone, etc.	328,652.71
Property board expenses	34,874.91
Construction loan interest	17,217.00
Bridge loan interest	11,894.00
Total Expenses	\$425,764.81
TOTAL INCOME (LOSS) FROM ECEC OPERATIONS	(\$121,816.49)

Applicant Ex. 18, *passim*.

22. Zion offset the losses it incurred from operating the ECEC using other church funds.

Applicant Ex. 18, p. 5; Applicant Ex. 19, p. 6; Tr. pp. 85-87 (Mueller).

23. In 2006, Zion had revenues of \$1,061,431, most of which were received in the form of contributions from its congregants, and from tuition from its kindergarten through eighth grade school. Applicant Ex. 18, p. 1.

24. For the period from September 2006 through June 1, 2007, Zion had a published fee schedule for its different ECEC programs. Department Ex. 3.

25. Zion charged the following fees for a 2½ year old attending preschool at the ECEC:

Program	Time	1 day option	2 day option Tues/Thurs	3 day option Mon/Wed/Fri	5 day option Mon-Fri
Morning program	9:15 am — 11:15 am	Not available	\$1,470.00 (\$147 mo.)	\$1,900.00 (\$190 mo.)	\$2,900.00 (\$290 mo.)
Extending a morning program into a short full-day	9:15 am — 3:30 pm	Not available	As above + \$1,460 – 1 day	As above + \$1,460 – 1 day \$2,660 – 2 days	As above + \$1,460 – 1 day \$2,660 – 2 days \$3,340 – 3 days \$4,180 – 4days
Short full-day program	9:15 am — 3:30 pm	Not available	\$4,200.00 (\$420 mo.)	\$5,430.00 (\$543 mo.)	\$7,900.00 (\$790 mo.)
Action afternoons only	1:00 pm — 3:30 pm	Not available	\$1,600.00 (\$160 mo.)	\$2,120.00 (\$212 mo.)	\$3,180.00 (\$318 mo.)

Department Ex. 3.

26. Zion charged the following fees for 3 and 4 year olds attending ECEC’s preschool:

Program	Time	1 day option	2 day option Tues/Thurs	3 day option Mon/Wed/Fri	5 day option Mon-Fri
Morning program	8:45 am — 11:15 am	Not available	\$1,470.00 (\$147 mo.)	\$1,900.00 (\$190 mo.)	\$2,900.00 (\$290 mo.)
Extending a morning program into a short full-day	8:45 am — 3:30 pm	Not available	As above + \$1,460 – 1 day	As above + \$1,460 – 1 day \$2,660 – 2 days	As above + \$1,460 – 1 day \$2,660 – 2 days \$3,340 – 3 days \$4,180 – 4days
Short full-day program	8:45 am — 3:30 pm	Not available	\$4,200.00 (\$420 mo.)	\$5,430.00 (\$543 mo.)	\$7,900.00 (\$790 mo.)
Action afternoons only	1:00 pm — 3:30 pm	Not available	\$1,600.00 (\$160 mo.)	\$2,120.00 (\$212 mo.)	\$3,180.00 (\$318 mo.)

Department Ex. 3.

27. For full-day preschool at the ECEC, Zion charged the following weekly fees:

Age	1 day program Fri	2 day program Tues/Thurs	3 day program Mon/Wed/Fri	4 day program Mon, Tues, Wed, Thurs	5 day program Mon — Fri
2.5 years	\$80	\$129	\$206	\$240	\$270
3 years	\$65	\$103	\$165	\$185	\$216
4 years	\$65	\$103	\$165	\$185	\$216

Department Ex. 3.

28. Full-day preschool at the ECEC begins at 7:00 a.m. and ends at 6:00 p.m. Department Ex. 3; Tr. pp. 108-09 (Farrell).

29. In 2006, the ECEC provided daycare to approximately 120 children, including full daycare from 7 a.m. to 6 p.m., from 8:30 a.m. to 3:30 p.m., and half-day child care programs with the option for extended child care for one to five days per week. Applicant Ex. 22, ¶ 14.

30. Shortly after opening, Zion and the ECEC Board began to develop, and in 2007, established and began to implement, a policy of offering discounts to persons unable

to pay the cost of the programs offered at its ECEC. Department Ex. 2 (copy of document titled, Zion Lutheran Church [ECEC] Financial Assistance Policy); Tr. pp. 87-94 (Mueller).

31. Zion's ECEC Financial Assistance Policy provides:

The Philosophy of Zion's [ECEC] is that each little one is a child of God, uniquely gifted and unconditionally loved. Our goal at Zion is to nurture and support each child's development (intellectual, emotional, social, physical and spiritual) in an atmosphere of love and joy. Our role as Christian educators is to support each family, working together to ensure each child's educational success.

Zion Lutheran Church desires to assist families who cannot afford the tuition rates of our early childhood ministry. A means of financial assistance is available through the church's Early Childhood Financial Assistance Fund. This fund is established each fiscal year by the Parish Executive Council, as part of the annual budgeting process. The amount allocated to the fund is dependent on budget and debt projections. During the year, the fund is supplemented by fundraising activities and/or donations by church members and friends.

Applications for financial assistance are available for families at the time of registration. An application must be returned with documentation verifying income. The documentation must include a copy of the family's most recent form 1040, 1040A, or 1040EZ, and a recent pay stub or public aid card. Families unable to provide this type of documentation can contact the office to establish an alternative means of verifying income. All personal information is kept strictly confidential.

The Director of the [ECEC] and the Chairperson of Zion's Board of [ECEC] review all applications and determine the amount of financial assistance decision within one month of the date of application. The total amount of financial assistance offered in a given school year is determined by the amount of money available in the Early Childhood Financial Assistance Fund, the number of applications, and family income. As an example, the following guidelines are used for a family of four:

Family Gross Income	Estimated Assistance
\$30,000 and under	75% or more of tuition
\$30,000 - \$40,000	25-75% of tuition
\$40,000 - \$50,000	25% or less of tuition

Other factors considered in establishing an award may include family size and recent family circumstances, such as unemployment, illness or death. Zion Lutheran Church wishes to serve all families deserving of family assistance. However, assistance is dependent on the success of fundraising events and other variables that affect the annual congregational budget.

Department Ex. 2.

32. Zion's Early Childhood Financial Assistance Fund was established in March 2007.

Tr. pp. 90-94 (Mueller), 149 (Farrell).

33. During 2006, Zion provided no tuition discounts to anyone using ECEC's child care programs. Tr. pp. 94 (Mueller), 133-34 (Farrell). During that same year, Zion made no public written statements to announce its Early Childhood Financial Assistance Fund, or its Financial Assistance Policy, because they were still in development. *See* Tr. pp. 90-96 (Mueller).

34. Children that attend Zion's ECEC programs do not have to be church members or Christians. Tr. pp. 118-19 (Farrell).

Conclusions of Law:

Arguments

At closing argument, counsel for the Applicant argued that the property is exempt because it was being used exclusively for religious purposes. Tr. pp. 157-59. Counsel also argued, in the alternative, that it is exempt because it was being used exclusively for charitable purposes. Tr. pp. 159-63. The Department countered that, during the period at issue, Applicant had no policy in place to allow for discounted tuition for its daycare services. Tr. pp. 163-64. Department counsel also pointed out that Applicant's fees for daycare services could range as high as \$13,000 per year, which, counsel asserted, was a

significant obstacle to overcome to obtain the benefits offered. Tr. p. 164. Counsel argued that Applicant's significant fees constituted evidence that Applicant was using its property with a view to profit, regardless which statute Applicant relies upon to support the claimed exemption. In reply, Applicant cited administrative decisions in which the Department granted a charitable exemption to an entity providing child care on property, even where the entity charged fees for such services. Tr. pp. 171-74.

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit.

35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively

that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3rd Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

At hearing, the parties focused primarily on whether Zion used the Property exclusively, and that means primarily, for religious or charitable purposes based on its use of the property to provide daycare, via its ECEC. But before that issue is addressed, it must first be pointed out that the documentary evidence introduced at hearing clearly and convincingly establishes that Zion used certain parts of the Addition that is situated on the Property for its ECEC, but not all of the Addition for that purpose. That evidence further establishes that the Addition, at least that part of it that is situated on the Property, fits into the second type of two situations the Illinois Supreme Court described in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 273 N.E.2d 371 (1971):

We must recognize that it is the primary use of property, rather than its incidental uses, which determines tax exemption status. In the application of this principle, we may encounter two distinct situations. First is the case where the property as a whole, or in unidentifiable portions, is used both for an exempting purpose and a nonexempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations omitted] In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a nonexempting purpose or not used at all. Thus, ‘there may be separate assessments by separating uses, as in the case of First M.E. Church v.

City of Chicago, 26 Ill. 482, where the court held that the first story of the church building, occupied for stores, banking business, and the like, and the second story, used for lawyers' and doctors' offices and other business purposes, were not exempt from taxation, but the main body of the third and fourth stories, used for religious purposes, was exempt.'

Institute of Technology v. Skinner, 49 Ill. 2d at 65-66, 273 N.E.2d at 375-76.

Here, Zion introduced documentary evidence that truly and accurately reflects the actual square footage of that part of the Addition that it used primarily to provide daycare for hire. Applicant Exs. 6-8. It also offered competent and credible testimony, closely associated with that documentary evidence, which showed how Zion used the other parts of the Addition, that is, the portion that Zion did not use primarily for daycare for hire. Applicant Ex. 22, ¶ 11; Tr. pp. 41-49 (Klein), 68-70 (Mueller). The most obvious example is the pastor's office, which is situated on the Property, and which the evidence shows was primarily used by Zion's pastor to perform the administrative functions associated that his management of church affairs. Applicant Exs. 6-7; Tr. pp. 43 (Klein). The record, therefore, allows one to identify the specific areas, as well the square footage of those areas of the Property, that Zion uses primarily to operate its ECEC. That evidence clearly and convincingly corroborates Zion's claim that it used 40% of the Property primarily for religious purposes, which purposes includes teaching Sunday school, holding youth group meetings, Board meetings, bible studies, confirmation classes, devotional meetings, etc., as well as those areas used primarily for the church's administrative offices, and the pastor's office. Applicant Exs. 7-8, 22, ¶ 11; Tr. pp. 41-49 (Klein).

Whether Zion's ECEC is Exempt for Religious Purposes

I now address Applicant's argument that the part of its Property on which it operates its ECEC is exempt pursuant to § 15-40 of the PTC. On this point, the recent appellate court decision in Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037, 882 N.E.2d 1256 (4th Dist. 2008) is determinative. There, Faith Builders, also a church, purchased property at which it began to operate, on one part, a school consisting of kindergarten through eighth grades, and on the other part, a child care center and preschool for infants, toddlers, and pre-kindergarten aged children. Faith Builders, 378 Ill. App. 3d at 1038-39, 882 N.E.2d at 1258-59. The Department denied Faith Builders' exemption application for the property. *Id.*, at 1038, 882 N.E.2d at 1258. At the hearing Faith Builders requested, Faith Builders offered evidence that part of its religious purpose was to provide religious instruction and child care. *Id.* The ALJ determined that Faith Builders was entitled to an exemption authorized by PTC § 15-40 for that part of its property on which it operated its school, but not for the part of the property on which it provided child care and preschool services. *Id.*, at 1041, 882 N.E.2d at 1260.

The court in Faith Builders focused on the scope of the term religious purposes, as used in PTC § 15-40, and the extent to which a church's claim that property being used as a daycare center and preschool may be considered to be used primarily for religious purposes. Faith Builders, 378 Ill. App. 3d at 1043-46, 882 N.E.2d at 1262-64. The court first acknowledged that religious purposes included more than just places used for public worship. *Id.*, 378 Ill. App. 3d at 1043, 882 N.E.2d at 1262. The court acknowledged that the statutory term also embraced property used primarily for Sunday schools, religious instruction, and for religious fellowship and evangelism. *Id.*, at 1044, 882 N.E.2d at 1262

(citing People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession, 249 Ill. 132, 94 N.E. 162 (1911) and Calvary Baptist Church of Tilton v. Department of Revenue, 349 Ill. App. 3d 325, 812 N.E.2d 1 (4th Dist. 2004)).

The facts and arguments in Faith Builders are similar to those here. Faith Builders claimed that it operated its daycare center and preschool to spread the Gospel to them and their parents and, therefore, it used the property primarily for a religious purpose. Here, Zion similarly claims that its ECEC is used primarily for religious purposes because it planned to “build and operate its ECEC “as an integral part of the mission of Zion Lutheran Church ...” (Applicant Ex. 17, p. 2, ¶ 1.0), and as a child-care ministry. Applicant Ex. 22, p. 2, ¶ 9.

When analyzing Faith Builders’ claim that it was providing daycare services only as a means of fulfilling its mission to provide religious instruction, the court likened the argument to one it previously addressed in Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 506 N.E.2d 341 (1987). There, the applicant, a religious organization, opened and operated a nursing home for the elderly. The court in Fairview held:

“... it is not contested that the operation of Fairview provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization. However, operation of the nursing home was not necessary for these religious purposes, which could also have been accomplished through other means. (See generally Yakima First Baptist Homes, Inc. v. Gray (1973), 82 Wash.2d 295, 510 P.2d 243; Christian Retirement Homes, Inc. v. Board of Equalization (1970), 186 Neb. 11, 180 N.W.2d 136.) In Yakima[,] the taxpayer argued that care of the aged was a religious purpose. The court noted that the practice of charity, kindness to other persons and in particular to the aged, and the practice of all virtues are encouraged

by religious organizations; however, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.

Faith Builders, 378 Ill. App. 3d at 1045-46, 882 N.E.2d at 1263-64 (*quoting* Fairview Haven, 153 Ill. App. 3d at 774-75, 506 N.E.2d at 349).

After analogizing the issue before it with the issue in Fairview Haven, the Faith Builders court held as follows:

In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion. A church could open a restaurant, for instance, and because waiters attempted to evangelize customers while taking their orders, the restaurant would be exempt. But the operation of a restaurant is not necessary for evangelism and religious instruction, although, like any other social activity, it can provide the occasion for those religious purposes. The same could be said of a daycare facility. **Day care is simply not a “religious purpose” within the commonly accepted definition of that term.**

Faith Builders, 378 Ill. App. 3d at 1046, 882 N.E.2d at 1264 (emphasis added). Because of the similarities between the facts and issue here and those in Faith Builders, I conclude that Zion’s use of that portion of the Addition that is situated on the Property for its ECEC is not a use that is exempt as being primarily for religious purposes.

Whether Zion’s ECEC is Exempt for Charitable Purposes

Another class of property that the Illinois Constitution permits the legislature to exempt from property taxation is property used exclusively for charitable purposes. Ill. Const. Art. IX, § 6 (1970). Zion claims that the Property on which it operated its ECEC is also exempt pursuant to PTC § 15-65. 35 ILCS 200/15-65. Section 15-65 provides, in pertinent part:

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

35 ILCS 200/15-65.

When considering whether an entity is organized and operated exclusively for charitable purposes, Illinois courts and the Department follow the guidelines announced by the Illinois Supreme Court in Methodist Old Peoples Home, 39 Ill. 2d 149, 233 N.E.2d 537. Those guidelines ask whether:

- (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reduce the burdens on government;
- (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise;
- (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the organization's charter;
- (4) charity is dispensed to all who need and apply for it;
- (5) obstacles are placed in the way of those seeking the benefits; and
- (6) whether the primary purpose for which property is used is charitable, and not merely a secondary or incidental purpose.

Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542.

As to the first guideline, the provision of daycare services is a valuable social good, and the evidence shows Zion's ECEC programs are not limited to Zion's members, or even to Christians. Tr. pp. 118-19 (Farrell). Zion, in other words, tries to make its daycare and preschool services available to all who were willing and able to purchase them. The universe of all people willing and able to pay for preschool and daycare services in a given area, however, is not so much an indefinite number of persons as it is a market. See People ex rel. Nordlund v. Association of Winnebago Home for the Aged,

40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); <http://dictionary.com> (one of the definitions for “market” being, “a body of existing or potential buyers for specific goods or services: *the health-food market.*”) (accessed: June 02, 2008). Thus, I cannot conclude that Zion satisfies the first Methodist Old Peoples’ Home guideline.

Next, Applicant introduced its organizational and financial documents into evidence at hearing, and these help it establish that satisfies the second Methodist Old Peoples’ Home guideline. Applicant Exs. 4, 17.

I have found no Illinois case in which a court has addressed how the third Methodist Old Peoples’ Home guideline might apply to a church’s sources of funding when it is claiming to use some of its property exclusively for charitable purposes. Zion introduced its financial statements into evidence, which detail its sources of funding and the expenses related to all aspects of the church’s operations, and which also detail the revenues and expenses relating to its operation of the ECEC. Applicant Ex. 18. Here, Zion had revenues of \$1,061,431 for 2006, most of which were received in the form of contributions from its congregants, and from tuition from its kindergarten through eighth grade school. *Id.* While the fact that an entity obtained most of its funding from its members does not preclude a finding of exclusive charitable operations, neither does it necessarily evince an exclusively charitable operation. Lutheran General Health Care System v. Department of Revenue, 231 Ill. App. 3d 652, 663-64, 595 N.E.2d 1214, 1222 (1st Dist. 1992). Lacking direct precedent, I am hesitant to view the fact that Zion received most of its revenues from church members as evincing a noncharitable operation. Regarding the third guideline, therefore, I conclude that the evidence neither supports nor militates against a finding of primarily charitable use.

On the other hand, and regarding the fourth and fifth Methodist Old Peoples' Home guidelines, the documentary evidence reflects that Zion receives most of the funding related to its ECEC operations from those purchasing daycare and preschool services. These same fees constitute an obstacle to those receiving the services, but that obstacle is, obviously, one that the purchasers are willing to overcome. Again, daycare is a service that has value to the purchasers, just as the quality of the provider and facilities affects the cost of the services being provided. As was the case in Faith Builders, the ECEC appears to have been run in a business-like manner, and there is nothing to suggest that the tuition and/or fees charged were less than market rate. Department Ex. 3; *see also Faith Builders*, 378 Ill. App. 3d at 1046, 882 N.E.2d at 1264 (Faith Builder's "[p]reschool was businesslike and more characteristic of a commercial daycare than a facility used primarily for religious purposes.").

As the Department noted in its closing argument, the tuition that Zion charged to every family purchasing daycare services could be significant, and, under the fifth Methodist guideline, those fees constituted an institutional obstacle to the receipt of Zion's services. On this point, Zion concedes that it provided no discounts from its advertised daycare rates during 2006, the year for which it seeks the exemption. Tr. pp. 90-94 (Mueller), 133-34, 149 (Farrell). That is because, in 2006, Zion had only just begun to develop a policy for offering tuition discounts for families that wanted to use ECEC's daycare and/or preschool but who were unable to pay the advertised rates. Tr. pp. 90-94 (Mueller). More importantly, Zion did not establish the ECEC Financial Assistance Fund, the pool of funds from which such anticipated tuition discounts would be offset, until March of 2007. Tr. p. 149 (Farrell). Thus, this record is clear that Zion's

ECEC provided no charity during the year at issue, 2006.

The best evidence that Zion could offer of its claimed charitable operations was its witness' testimony that, had families approached Zion to seek financial assistance, a discount would have been considered. Tr. pp. 88-89, 95 (Mueller). But such testimony only highlights the difference between having an intent to provide charity and actually providing charity. As the court held in Methodist Old Peoples Home, "the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used" Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542.

In its closing argument, Zion cites to Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App. 3d 964, 571 N.E.2d 989 (1st Dist. 1991) to support its contention that "it is quite permissible to charge fees, so long as there is no view to profit and all funds received from fees are used to further the organization's exempt purposes." Tr. pp. 174-75. The pertinent holding in Resurrection is that: "A charitable institution does not lose its tax exempt status merely because persons who are unable to pay for its services are required to do so, as long as the institution makes no profit and all the funds are used to further the organization's charitable goals." Resurrection, 212 Ill. App. 3d at 971-72, 571 N.E.2d at 994. The Resurrection court cited for this proposition Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 (1975) and Winnebago Home for the Aged. Resurrection, 212 Ill. App. 3d at 971-72, 571 N.E.2d at 994.

But the Small and Winnebago cases do not support the proposition for which Zion cites Resurrection. Starting with the older case, in Winnebago, the Illinois supreme court

reviewed the Department's denial of an exemption application filed by a nursing home owner. Winnebago Home for the Aged, 40 Ill. 2d at 101, 237 N.E.2d at 539. There, the court "agree[d] with the [nursing home operator/applicant's] contention that charging fees and dispensing benefits to other than those who are poverty stricken does not cause an institution to lose its charitable character." Winnebago Home for the Aged, 40 Ill. 2d at 101, 237 N.E.2d at 539. But the court also distinguished cases in which an applicant for an exemption provided benefits to those who could not pay for them with operations of the Winnebago Home:

Defendant's insistence upon the payment of a sizable admission fee, the assignment by a resident of his assets and the health requirements imposed, constitute an even more serious impediment to the tax exempt status it seeks. We find that these provisions cannot be reconciled with our requirements of the application of benefits to an indefinite number of people, dispensing charity to all who need and apply for it and not appearing to place obstacles of any character in the way of those who need and would avail themselves of the benefits defendant provides.

Id. In other words, where an entity charges fees in exchange for providing benefits to those who can afford them, but also provides benefits to those who can not afford the fees, the entity might still be considered primarily charitable.

Similarly, Small v. Pangle involved another nursing home operator. There, the applicant similarly charged for monthly accommodations, and no one receiving benefits did so without paying for them. As the court held:

... Substantial monthly charges were paid by all of the residents of the home. Unlike the cited cases, an entrance fee was not required. We do not consider this distinction to be significant, particularly in view of the substantial monthly charges imposed and the requirement of a three-month payment at the inception of one's stay at the home. *** The variance of the monthly charges, based upon size or location of a room, smacks of the practices found in the cited cases as being indicative of a noncharitable use. The fact

that during its period of operation, the Heritage House has admitted no one who was apparently unable to pay the monthly charges; and the further fact that it has never had a resident who was unable to pay these substantial monthly charges, indicates that the property is not used for charitable purposes--the benefit of an indefinite number of people, and that financial obstacles are placed in the way of aged persons who may be needing the benefits that the home provides. We conclude that the property in question is not in fact exclusively used for charitable purposes.

Small, 60 Ill. 2d at 517-18, 328 N.E.2d at 289.

Finally, the Resurrection court's holding could easily be misconstrued to mean that where an entity does not realize a profit from using its property primarily to sell either goods or services, the lack of profit is, itself, de facto proof of primarily charitable operations. The more recent decision in Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 821 N.E.2d 240 (2004), however, expressly cautions against treating an entity's particular status — in that case, federal tax exempt status — as satisfying the Illinois Constitution's criteria for granting a charitable property tax exemption, as described in Methodist Old Peoples Home. *See Eden*, 213 Ill. 2d 273, 821 N.E.2d 240 (2004) (“the legislature was free to include in section 15-65(c) of the Property Tax Code a requirement that the facility be exempt from federal income tax. However, a federal income tax exemption does not provide material facts about exclusive charitable use of property required by section 6 of article IX of the Illinois Constitution, and does not determine the constitutional issue.”). Zion's provision of daycare services for hire on the Property at issue, without having any express provision for offering daycare to those unable to pay for them, and without actually providing any such charity during 2006, did not constitute a primarily charitable use of the Property.

Based on the evidence, I conclude that Zion has not satisfied the fourth, fifth, and sixth Methodist Old Peoples' Home guidelines. Zion did not use that part of the Property

on which it operated its ECEC primarily for charitable purposes. Rather, it used that part of its Property primarily to provide daycare services for hire.

Conclusion:

I conclude that the Church has not satisfied its burden to show that the 60% of the Property on which it operated its ECEC was being used primarily for religious or charitable purposes. Therefore, it is not entitled to an exemption for that part of the Property. The evidence does support a conclusion that Zion is entitled to an exemption for the remaining 40% of the Property, because it used that portion primarily for religious purposes. Therefore, I recommend that the Director revise the Department's tentative denial of Zion's application to reflect that 40% of the Addition that is situated on the Property is exempt as being used primarily for religious purposes, and that the remaining portion be considered taxable, and remain on the tax rolls, for 2006.

June 2, 2008
Date

John E. White, Administrative Law Judge