

PT 09-5

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

In re)	Docket No.	07-PT-0017
2006 Exemption)	Docket / PINs	06-16-675 / 31-25-103-065
Applications of)		06-16-676 / 29-15-201-014 to 015
EXCEPTIONAL)		06-16-678 / 29-30-202-016 to 025
DEVELOPMENT)	John E. White,	
INSTITUTE)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Francis X. Speh, Jr. appeared for Exceptional Development Institute; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves the Exceptional Development Institute's (EDI) applications for a non-homestead property tax exemption for thirteen parcels of property, all of which the Illinois Department of Revenue (Department) denied. The issue is whether EDI is entitled to a charitable property tax exemption for that property.

The hearing was held at the Department's offices in Chicago. EDI presented evidence consisting of books and records and other documents, as well as the testimony of its executive director. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the properties remain on the tax rolls for 2006.

Findings of Fact:

Facts Regarding EDI's Organization

1. EDI was incorporated as an Illinois not-for-profit corporation in April 1990. Applicant Ex. 1 (copy of Illinois Secretary of State's Certificate of Incorporation for EDI).
2. Lucy Bibbs (Bibbs) is EDI's executive director, and she also held that office during 2006. Hearing Transcript (Tr.) p. 52.
3. EDI's By-laws provide, in part:

Purposes

A. The corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501(C)(3) of the Internal Revenue Code.

B. To provide social and human service care to children through early intervention programs in disadvantaged areas in Cook County.

C. To provide communities within Cook County quality of life and organizations [*sic*] skills in order to help such communities.

D. To engage in and to receive, maintain and expend funds for benevolent, charitable and educational purposes.

E. To establish and operate educational, recreational, and instructional programs for children and young persons emphasizing emotional and character development consistent with christian principals and ethics.

F. To establish and operate a group day care center or centers and a nursery school or nursery schools for pre-school age children of needy working parents who have insufficient means to provide care for their children during normal working hours.

G. To provide a referral service to maximize the utilization of community resources and governmental agencies.

Applicant Ex. 2.

Facts Regarding the Parcels Included Within EDI's 2006 Exemption Applications

4. EDI filed three separate applications for Non-Homestead Property Tax

Exemption. *See* Department Group Ex. (Department Ex.) 1 (copies of, respectively, the Department's three denials).

5. The application assigned docket number 06-16-675 involves a parcel of real estate having a Property Index Number (PIN) of 31-25-103-065. Department Ex. 1, p. 1. That parcel has a commonly known address on Wildwood Drive, in Park Forest, Illinois (hereafter, the Wildwood property). Department Ex. 1, p. 1; Tr. pp. 49-51 (Bibbs).
6. The application assigned docket number 06-16-676 involves two contiguous parcels having PINs of 29-15-201-014 and 29-15-201-015. Those parcels have a commonly known address on South Park Avenue, in South Holland, Illinois (hereafter, the Park property). Department Ex. 1, p. 2; Tr. pp. 49-51 (Bibbs).
7. The application assigned docket number 06-16-678 involves ten contiguous parcels of real estate having PINs of 29-15-202-016 through 29-15-202-025. Those parcels have a commonly known address on South Wood Street, in Hazel Crest, Illinois (hereafter, the Wood property). Department Ex. 1, p. 3; Tr. pp. 49-51 (Bibbs).

Facts Regarding EDI's Operations Regarding the Properties

8. Bibbs owns the twelve parcels which are the subject of EDI's applications regarding the Wood and Park properties. Applicant Exs. 4-5 (copies of Commercial Leases, for, respectively, the Wood and the Park properties); Tr. pp. 67-77 (Bibbs).
9. As the owner of those properties, Bibbs, as the Lessor, entered into separate Commercial Leases (Lease(s)) with EDI, as the Lessee, for each of the Wood and

- the Park properties. Applicant Exs. 4-5.
10. The term of each Lease commenced on July 1, 1989 and terminates on July 1, 2088. Applicant Exs. 4-5 (p. 1 of each).
 11. Each Lease, as admitted, consists of four type-written pages. Applicant Exs. 4-5. The first three, numbered, pages of each Lease is printed with a different type face than the fourth, unnumbered, page of each Lease. *Id.* (pp. 1-3 of each Lease). The fourth page of each Lease identifies that page as a Lease rider, and each Lease rider reflects that it was signed by the parties on November 22, 2006. *Id.* (p. 4 of each Lease).
 12. One of the Lease rider provisions is, “RENT: Annual rate increase at 3%, and remains constant for the first ten years.” Applicant Exs. 4-5 (p. 4 of each Lease).
 13. The initial monthly rent EDI was to pay to Bibbs for the Wood property was \$5,500. Applicant Ex. 4, pp. 1, 3; Tr. p. 69 (Bibbs); *see also* Applicant Ex. 4A (copy of document reflecting payments Bibbs received from EDI for the Wood property in 2006).
 14. The initial monthly rent EDI was to pay to Bibbs for the Park property was \$6,500. Applicant Ex. 5, pp. 1, 3; Tr. p. 77 (Bibbs); *see also* Applicant Ex. 6 (copy of document reflecting payments Bibbs received from EDI for the Park property in 2006).
 15. Although the initial annual rent called for within the Lease for the Wood property was \$66,000 (Applicant Ex. 4; Tr. p. 69 (Bibbs) (5,500 x 12 = 66,000)), EDI offered into evidence a check ledger which, Bibbs testified, reflected that EDI paid her rent in the amount of \$32,000 for that property in 2006. Applicant Ex.

- 4A; Tr. pp. 69, 71-73 (Bibbs). That ledger also reflects that, in addition to rent, EDI paid Bibbs \$7,000 for maintenance, and another \$7,000 for repairs of that property, in 2006. Applicant Ex. 4A; Tr. pp. 72-73 (Bibbs).
16. Although the initial annual rent called for within the Lease for the Park property was \$78,000 (Applicant Ex. 5; Tr. p. 77 (Bibbs) (6,500 x 12 = 78,000)), EDI offered into evidence a check ledger which, Bibbs testified, reflected that EDI paid her rent in the amount of \$24,000 for that property in 2006. Applicant Ex. 6; Tr. pp. 79-82 (Bibbs). That ledger also reflects that, in addition to rent, EDI paid Bibbs \$6,000 for maintenance, and another \$6,000 for repairs of that property, in 2006. Applicant Ex. 4A; Tr. pp. 81-83 (Bibbs).
17. Each of the Leases contains a provision which states, in pertinent part, “Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition [and that] Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, [and] structural foundations” Applicant Exs. 4-5 (p. 1, ¶ 3 of each Lease).
18. During 2006, EDI employed Robert Fielding (Fielding) to perform maintenance and repairs of EDI’s properties. Tr. pp. 193-200 (Fielding). That maintenance and repair included painting, repairing broken items, including drywall, cutting grass, and shopping for EDI’s day cares centers. Tr. pp. 193-94 (Fielding).
19. Fielding was familiar with EDI’s use of the Wildwood property and, during 2006, he visited that property several times weekly to observe it and to inspect it for vandalism and or theft. Tr. pp. 195-96 (Fielding).
20. EDI has a fiscal year that begins on July 1, and ends on June 30. Applicant Exs.

- 15, 17 (copies of, respectively, EDI's completed 2005 and 2006 federal Forms 990, Return of Organization Exempt From Income Tax (hereafter, Form 990));
- 16, 18 (copies of, respectively, EDI's completed 2005 and 2006 Illinois forms AG990-IL, Illinois Charitable Organization Annual Report (hereafter, Forms AG990-IL)).
21. EDI filed federal Forms 990, and corresponding Illinois Forms AG990-IL, regarding the periods comprising calendar year 2006. Applicant Exs. 15-18. Bibbs signed EDI's federal and Illinois returns. *Id.*
22. On the Forms 990 it filed for 2005 and 2006, EDI reported that it had excess revenues in the amounts of, respectively, \$348,583 and \$500,032. Applicant Exs. 15, 17 (p. 1, Part I, Revenue, Expenses, and Changes in Net Assets or Fund Balances, line 18, of each return).
23. On the Forms 990 it filed for 2005 and 2006, EDI reported that it had expenses for occupancy in the respective amounts of \$263,431 and \$180,000. Applicant Exs. 15, 17 (p. 2, Part II, Statement of Functional Expenses, line 36, of each return).
24. Within Part III, Statements About Activities, of the Schedule A that EDI completed and filed as part of its Forms 990 for 2005 and 2006, EDI was asked the following question:
- During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)

a. Sale, exchange or leasing of property?

- Applicant Exs. 15, 17 (p. 10, Schedule A, Part III, line 2a of each return).
25. In response to each such request, EDI checked the box labeled, “No.” *Id.*
26. On its Form AG990-IL for fiscal year 2006, EDI was asked to report the “Compensation to the highest (3) paid persons during the year:” and to report the names and titles of each such person. Applicant Ex. 16, p. 1, Part IV, lines T-V. In response, EDI reported, “None” and “0” *Id.* On its Form 990 for fiscal year 2006, EDI reported that Bibbs received compensation from EDI in the amount of \$85,000. Applicant Ex. 15, p. 5, Part V-A. EDI’s Form 990 for fiscal year 2006 also reported that Tonya Fielding received compensation from EDI in the amount of \$24,500. *Id.* Tonya Fielding is Bibbs’ daughter. Tr. pp. 94, 171 (Bibb).
27. EDI conducts day care activities on the Wood and Park properties that it leases from Bibbs. Applicant Exs. 4-5, 7-8 (copies of photos of exteriors and interiors of, respectively, the Wood and Park properties); Tr. pp. 111-13 (Bibbs).
28. On May 1, 2001, the Christian Children Center (CCC), as grantor, caused to have prepared a Quit Claim Deed, pursuant to which CCC transferred all of its interest in the Wildwood property to EDI. Applicant Ex. 3. Bibbs signed that Quit Claim Deed as CCC’s president. Applicant Ex. 3. That Quit Claim Deed was recorded with the Cook County Recorder of Deeds on May 21, 2004. *Id.*
29. EDI does not conduct any day care activities on the Wildwood property. Applicant Ex. 13 (copies of photos of equipment stored at Wildwood property); Tr. pp. 124-28 (Bibbs). The only actual use to which EDI put that property during 2006 was to store movable property and equipment. Applicant Ex. 13; Tr. pp.

124-25 (Bibbs), 196-98 (Fielding).

Conclusions of Law:

Issues and Arguments

The Department denied EDI's exemption applications after determining that the property was not in exempt ownership, and was not in exempt use. Department Ex. 1. Additionally, on the denials issued regarding the Wood and Park properties, the Department also noted that, "Applicant is not the owner of the property. Applicant is lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made." Department Group Ex. 1, pp. 2-3.

EDI argues that the evidence shows that it is organized and operated exclusively for charitable purposes. EDI's Written Closing Argument (EDI's Brief), pp. 2-4. The evidence it cites includes: its Illinois not-for profit corporate charter; its Bylaws; the IRS's recognition of it as an exempt organization, and the Department's own, prior grant of property tax exemptions to properties where EDI conducts day care centers. *Id.* It contends that the Wildwood property, which is currently being used for storage, should be deemed to be used exclusively for charitable purposes during 2006, because the Department has previously granted it a partial exemption for the same property during a prior year, based on the same use. *Id.*, pp. 3, 6. EDI argues that Bibbs' uncontradicted testimony supports a conclusion that the properties at issue are being used exclusively for charitable purposes, and that EDI "does not provide gain or profit to any connected person." *Id.*, p. 5. Finally, EDI asserts that, because each of the Leases between Bibbs and EDI has a term of 99 years, EDI, and not Bibbs, should be considered the equitable owner of such properties. *Id.*, pp. 7-8.

In response, the Department first argues that none of the parcels which are owned by Bibbs can be exempt under the plain terms of PTC § 15-65, because they are not owned by a charitable organization. Department's Brief, p. 4 (*citing* Coles-Cumberland Professional Development Corp. v. Department of Revenue, 284 Ill. App. 3d 351, 672 N.E.2d 391 (4th Dist. 1994)). The Department further contends that the evidence does not show that EDI satisfies the constitutional requirements for exemption, as set forth by the Illinois Supreme Court in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 155, 233 N.E.2d 537, 540 (1968) and in Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290, 821 N.E.2d 240, 250 (2004). Department's Brief, pp. 5-9. The Department concedes, however, that if EDI were organized and operated exclusively for charitable purposes, the Wildwood property would qualify for exemption. *Id.*, p. 4.

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc., 213 Ill. 2d at 285, 821 N.E.2d at 247. Article IX, § 6 of the Illinois Constitution permits the Illinois General Assembly 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 charitable purposes. Ill. Const. Art. IX, § 6 (1970); Eden Retirement Center, Inc., 213 Ill. 2d at 286-87, 821 N.E.2d at 248. When considering whether property is exempt pursuant to PTC § 15-65(a), an applicant must establish that it satisfies both the statutory requirements as well as the Illinois constitutional requirements, which the Illinois Supreme Court has described and adopted in Methodist

Old Peoples Home, and, more recently, in Eden. Eden Retirement Center, Inc., 213 Ill. 2d at 290, 821 N.E.2d at 250.

Section 15-65 of the PTC provides, in relevant 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.

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 convincingly that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 467, 654 N.E.2d 240, 244 (2d Dist. 1995); 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.”).

This analysis is divided into three parts: (1) whether the Wood and Park properties are exempt; (2) whether EDI’s organization and operations satisfy the Illinois Constitution’s requirements for property tax exemption; (3) whether the Wildwood property is exempt.

Part 1: Whether the Wood and Park Properties are Exempt

In Chicago Patrolmen’s Assoc. v. Department of Revenue, 171 Ill. 2d 263, 664 N.E.2d 52 (1996), the Illinois Supreme Court held that under the plain text of PTC § 15-

65, the Illinois General Assembly “requir[ed] two things to qualify property for a charitable tax exemption: (1) charitable use and (2) ownership by a charitable organization.” Chicago Patrolmen’s Assoc., 171 Ill. 2d at 270, 664 N.E.2d at 55-56. On this initial issue, the evidence is clear and not in dispute. During 2006, Bibbs, and not EDI, owned such properties. Applicant Exs. 4-5. Thus, EDI cannot meet one of the two express requirements for the statutory exemption. 35 **ILCS** 200/15-65(a); Chicago Patrolmen’s Assoc., 171 Ill. 2d at 270, 664 N.E.2d at 55-56.

With regard to EDI’s argument that it, and not Bibbs, should be treated as the equitable owners of the property, the Illinois Supreme Court has recognized certain situations in which a charitable organization may not enjoy complete title to property but would still meet § 15-65(a)’s ownership requirement. First, the Court has held that a charitable entity that purchased property via a contract for deed may be considered the owner of the property, as would a purchaser via a purchase money mortgage. Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51, 61-63, 383 N.E.2d 958, 963-64 (1978). Second, the Court has held that a charitable organization that owns an equal and undivided share of property with another, non-charitable, entity, is entitled to an exemption for 50% of the property is actually used exclusively for charitable purposes. Chicago Patrolmen’s Assoc., 171 Ill. 2d at 270, 664 N.E.2d at 55-56. Here, EDI meets neither situation.

Of course, there is another reason why the properties do not meet the plain text of the statutory exemption. That is because, by leasing the properties, Bibbs was using them with a view to profit. Coles-Cumberland Professional Development Corp., 284 Ill. App.

3d at 354, 672 N.E.2d at 394. On this question of law, Coles-Cumberland is precisely on point.

In *Springfield Marine Bank v. Property Tax Appeal Board*, 44 Ill.2d 428, 429-30, 256 N.E.2d 334, 335-36 (1970), the Supreme Court of Illinois stated that, although a nonexempt lessee could be taxed where there was an exempt lessor, a nonexempt lessor may be taxed on the full value of the property even when the right to the use of the property was transferred under a 99-year lease to a charitable organization. Property “leased or otherwise used with a view to profit” is not exempt. Ill. Rev. Stat. 1989, ch. 120, par. 500.2. As a result, the appellate court has ruled that property leased from a nonexempt owner and used for religious purposes is not tax exempt. *Victory Christian Church v. Department of Revenue*, 264 Ill. App. 3d 919, 922-23, 201 Ill.Dec. 874, 876, 637 N.E.2d 463, 465 (1994); *American National Bank & Trust Co. v. Department of Revenue*, 242 Ill. App. 3d 716, 724, 183 Ill.Dec. 179, 184-85, 611 N.E.2d 32, 37-38 (1993). Both decisions stated that the question of whether the property is being used for profit depends on the intent of the owner.

In *Victory Christian Church*, the court indicated that it would be inappropriate to allow “any private property not entitled to exemption to become tax exempt merely by leasing it to” an exempt organization. *Victory Christian Church*, 264 Ill.App.3d at 923, 201 Ill.Dec. at 876, 637 N.E.2d at 465. ***

Coles-Cumberland Professional Development Corp., 284 Ill. App. 3d at 354, 672 N.E.2d at 394.

The Leases’ express terms are especially probative on the questions of Bibbs’ intent when leasing the properties. The Leases called for Bibbs to receive annual rents in the amounts of, respectively, \$66,000 and \$78,000. Applicant Exs. 4-5. Those rents provide a significant amount of income to Bibbs, personally, each and every year those Leases were, and continue to be, executory. Further, each Lease commenced on July 1, 1989, and was to terminate in 2088. Applicant Exs. 4-5. During the first six months of the Leases’ terms, from July through December, 1989, Bibbs was to receive income of

\$33,000 from renting the Wood property, and \$39,000 from renting the Park property. From the date of the Leases' inception through 2005, therefore, Bibbs intended to receive personal income in the amount of \$1,089,000 for renting the Wood property, and \$1,287,000 for renting the Park property, for a total of \$2,376,000, from EDI, the ostensibly charitable organization for which she acted as executive director. Applicant Exs. 4 ($33,000 + (16 * 66,000) = 1,089,000$), 5 ($39,000 + (16 * 78,000) = 1,287,000$). And of course, since the Leases' terms are for 99 years, Bibbs intended that she, or her heirs, would receive income in the amount of \$6,534,000 for renting the Wood property, and \$7,722,000 for renting the Park property, for a total of \$14,256,000. Applicant Exs. 4 ($99 * 66,000 = 6,534,000$), 5 ($99 * 78,000 = 7,722,000$).

Notwithstanding the plainly expressed statements of Bibbs' intended income from the Leases, Bibbs testified, and EDI offered documentary evidence to attempt to show, that she did not receive from EDI all the rent that was due to her under the Leases during 2006. Specifically, Bibbs identified Applicant's Exhibits 4A and 6 as rent ledgers for the respective Wood and Park properties. Tr. pp. 70-73, 79-82 (Bibbs). Bibbs testified that the ledger for the Wood property was kept in the ordinary course of business, by "the bookkeeping clerk." Tr. p. 71 (Bibbs). She said that the ledger showed "the date of the rent and when it was received and a check number and amount." *Id.* Those exhibits were admitted without objection. Tr. p. 106. Upon review, the ledgers evince more than just what Bibbs described in her testimony, and what they evince, again, reflects that Bibbs was using the properties with a view toward profit.

To begin, the record is not clear whether the ledgers were EDI's business records, or whether they were Bibbs' business records. At the very least, there was no direct

testimony on that point. Tr. pp. 71-73, 79-82 (Bibbs). The content of the ledgers certainly allow an inference that they were being made and kept by Bibbs. The ledgers reflect the date on which rent and/or other payments by EDI were received, the number of the check issued to make such payments, and the amount of the payments received. But it was Bibbs, and not EDI, who received rent payments for the properties. If the ledgers were being made and kept by EDI, I would expect them to reflect the dates on which EDI *made* the lease and other payments, not the date on which the lessor *received* such payments. But even if they were prepared and kept by EDI, they reflect that EDI operated so as to keep track of its executive director's own, personal, business interests in the operations of the corporation.

The ledgers also reflect a course of dealing between Bibbs and EDI. That is, they provide a glimpse of how the parties actually carried out the Leases' terms. Specifically, the Leases' express terms provide that, "Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition [and that] Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, [and] structural foundations" Applicant Exs. 4-5 (p. 1, ¶ 3 of each Lease). This provision assigns to the lessee the financial burden of maintaining the properties, and performing any required and specified repairs. Fielding testified that he worked for EDI, as EDI's maintenance man, and that his duties included repairing and maintaining EDI's properties. Tr. pp. 194-96 (Fielding).

The ledgers, however, show that, rather than having its own maintenance employee perform the maintenance and repairs to the properties it leased from Bibbs, EDI instead chose to pay Bibbs more than the rent that was due under the Leases, and to

denominate such additional payments as being for maintenance and repair. Applicant Exs. 4A, 6. Since Bibbs was EDI's executive director, moreover, I presume that she had some active agency in arranging to receive more income from EDI than just the rent expressly due to her under the Leases. Thus — and again, even if I were to believe that Bibbs did not receive all of the annual rent to which she was due under the Leases — the ledgers show that Bibbs received direct payments from EDI that were in addition to the rent that was due to her under the Leases. Applicant Exs. 4A, 6. Even if Bibbs received less rent than expressly provided for under the Leases, I would still conclude that Bibbs was — and had been, since 1989 — using those properties with a view toward increasing her own, personal, income. In this regard, the ledgers do not prove that Bibbs was not profiting from her lease of the properties to EDI. Without any competent, documentary evidence to show what Bibbs' own obligations regarding the properties might have been during 2006, or the market value for a leasehold of similar properties in the area, it is just as reasonable to conclude that Bibbs' acceptance of less rent from EDI was a sound business decision, based on the realities of the then-current market.

Related to this point, EDI asserted in its brief that “[e]vidence was presented that EDI was to pay \$6,000 and \$8,000 per month [*sic*] in rent which was a reduced rent for such properties.” EDI's Brief, p. 7. But there was no competent evidence offered to show that the Leases' rental rates were less than market value. Under basic Illinois corporations law, moreover, since Bibbs was EDI's executive director, she had a fiduciary relationship with EDI. Mile-O-Mo Fishing Club, Inc. v. Noble, 62 Ill. App. 3d 50, 56-57, 210 N.E.2d 12, 15 (5th Dist. 1965) (“the rule is well established in Illinois that directors of a corporation occupy a fiduciary relation to the corporation.”). Duties

imposed upon a corporate director as a fiduciary require him to manage the corporation with undivided and unqualified loyalty, and prohibit him from profiting personally at corporate expense or permitting his private interests to clash with those of his corporation. Weiss Medical Complex, Ltd. v. Kim, 87 Ill. App. 3d 111, 115, 408 N.E.2d 959, 963 (1st Dist. 1980); 805 **ILCS** 105/108.60 (Director conflict of interest). Where the existence of a fiduciary relation is established, Illinois law presumes that any transaction between the parties by which the fiduciary has profited, is fraudulent. Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16. The burden rests on the fiduciary to overcome the presumption by clear and convincing proof that he has exercised good faith. *Id.*

Moreover, as a fiduciary of an Illinois non-profit corporation, Illinois' General Not-for-Profit Corporation Act of 1986 (NFPCA) precluded Bibbs from even voting to accept the Leases, on EDI's behalf, since she was an interested party to that transaction. 805 **ILCS** 105/108.60 (Director conflict of interest). Neither she nor EDI offered any evidence to show, by any standard of proof, that: the Leases were fair to EDI when those contracts became executory; the material facts of the Leases and Bibbs' interest were disclosed or known to the board of directors or a committee consisting entirely of disinterested directors; or that there was quorum of disinterested directors that actually voted to accept her Leases of property to EDI. 805 **ILCS** 105/108.60(b)(1)-(2). Where a director enters into a self-interested transaction with a non-profit corporation, the fraud that Illinois law presumes to have occurred is that the fiduciary has depleted the corporation's funds available to conduct the operations for which it was organized by directing that those funds be used to provide a private benefit to himself. *See* Mile-O-Mo

Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16. Absent any evidence by Bibbs or EDI to show that the Leases were in any way fair to EDI, or even that they were accepted by EDI in the manner required by the NFPCA, Illinois law presumes that her income from those Leases was in derogation of EDI's claimed charitable purposes. 805 **ILCS** 105/108.60; Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16.

In sum, the documentary evidence shows that Bibbs owned the Wood and Park properties. Applicant Exs. 4-5. Bibbs is not an institution of public charity. 35 **ILCS** 200/15-65(a). Further, by leasing the properties to EDI, Bibbs used those properties with a view toward profit. Applicant Exs. 4, 4A, 5-6; Coles-Cumberland Professional Development Corp., 284 Ill. App. 3d at 354, 672 N.E.2d at 394. I recommend that the Director finalize the Department's denials of EDI's exemptions for those parcels of property.

Part 2: Whether EDI's Organization And Operations Satisfy The Constitutional Requirements For Property Tax Exemption

When considering whether an entity is exempt from Illinois' tax laws because it 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. Eden Retirement Center, Inc., 213 Ill. 2d at 286-87, 821 N.E.2d at 248; Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 654 N.E.2d 608 (2d Dist. 1995) (applying Methodist Old Peoples Home guidelines to exemptions authorized by Illinois' Retailers' Occupation Tax Act (ROTA) and by the Use Tax Act (UTA) for sales of property to exclusively charitable organizations); 86 Ill. Admin. Code § 130.2005(h)-(k) (pertinent subsections of the ROTA regulation describing the characteristics of organizations which are exempt from Illinois retailers'

occupation and use taxes). 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 provide gain or profit in a private sense to any person connected with it,
- (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. For purposes of Article IX, § 6 of the Illinois Constitution and Illinois' tax statutes, the term "exclusively" means "primarily." People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1st Dist. 1987).

The initial Methodist Old Peoples Home guidelines assist in determining whether an exemption applicant or claimant is organized and operated primarily for charitable purposes. *E.g.*, Wyndemere Retirement Community, 274 Ill. App. 3d at 455, 654 N.E.2d 608; Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145. When a substantial purpose or activity of an exemption claimant is not charitable, it cannot be said to be organized and operated exclusively for charitable purposes. Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145 (*citing* 86 Ill. Admin. Code § 130.2005(n)(2)). Here, the evidence offered regarding the second Methodist Old Peoples Home guideline, alone, provides facts sufficient to conclude that EDI is not being operated exclusively for charitable purposes, and therefore, cannot be entitled to any

exemption authorized by PTC § 15-65(a).

EDI offered documentary evidence showing that, during 2006, it paid Bibbs a total of \$82,000 for renting property to EDI. Applicant Ex. 4A, 6. This accounts for over 23% of EDI's fiscal year 2005 excess revenues, and over 16% of EDI's excess revenues for fiscal year 2006. Applicant Exs. 15, 17 (p. 1, line 19 of each return). This income is in addition to the compensation that EDI paid Bibbs for services rendered. *Compare* Applicant Exs. 4A, 6 *with* Applicant Exs. 15, 17 (p. 5, Part V-A, of each return). For the following reasons, I conclude that, during 2006, one of EDI's substantial functions was — and since 1989, one of its functions had been — to provide a significant amount of personal income to its executive director.

One of the essential characteristics of a charitable organization is that it does not provide profit in a private sense to anyone connected with the organization. Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542. Both federal and Illinois courts recognize this essential characteristic as the inurement test. For example, the United States Tax Court has written that:

Section 501(c)(3) requires, among other things, that an organization be operated exclusively for one or more specified purposes and that no part of the net earnings of the organization “inures to the benefit of any private shareholder or individual.” See also sec. 1.501(c)(3)-1(c)(1), Income Tax Regs. An organization is not operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Sec. 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Sec. 1.501(c)(3)-1(c)(2), Income Tax Regs. The words “private shareholder or individual” refer to persons having a personal and private interest in the activities of the organization. Sec. 1.501(a)-1(c), Income Tax Regs.

The presence of a single substantial nonexempt purpose destroys the exemption regardless of the number or importance of

the exempt purposes. *Better Bus. Bureau v. United States*, 326 U.S. 279, 283, 66 S.Ct. 112, 90 L.Ed. 67 (1945); *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1065, 1989 WL 49678 (1989). When an organization operates for the benefit of private interests, the organization by definition does not operate exclusively for exempt purposes. *American Campaign Academy v. Commissioner*, *supra* at 1065. Prohibited benefits may include advantage, profit, or gain. *Id.* at 1065- 1066.

Anclote Psychiatric Center, Inc. v. Commissioner, T.C. Memo 1998-273 (July 27, 1998).

When reviewing another Tax Court decision involving inurement, Justice Posner of the Seventh Circuit Court of Appeals held that:

The term “any private shareholder or individual” in the inurement clause of section 501(c)(3) of the Internal Revenue Code has been interpreted to mean an insider of the charity. *Orange County Agricultural Society, Inc. v. Commissioner*, 893 F.2d 529, 534 (2d Cir.1990); *Church of Scientology v. Commissioner*, *supra*, 823 F.2d at 1316-19; *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387, 1392 (9th Cir.1985); *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1066, 1989 WL 49678 (1989). A charity is not to siphon its earnings to its founder, or the members of its board, or their families, or anyone else fairly to be described as an insider, that is, as the equivalent of an owner or manager.

*** The [inurement] provision is designed to prevent the siphoning of charitable receipts to insiders of the charity ***

United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173, 1176 (7th Cir. 1999).

Illinois law reflects a similar concern that, before a corporation or organization be considered exclusively charitable, or even not-for-profit, there be no inurement of the entity’s assets to private interests. For example, § 106.05 of Illinois’ NFPCA provides, in pertinent part:

*** No dividend shall be paid and no part of the money, property or other assets of a corporation shall be distributed to its members, directors or officers; provided, however, that a corporation may pay compensation in a reasonable amount to members, officers or directors for services rendered, including for service as a director

only, and may make distributions pursuant to Section 109.10 of this Act or upon dissolution or final liquidation as permitted by Article 12 of this Act.

805 ILCS 105/106.05 (Shares and dividends prohibited).

With specific regard to corporations seeking benefit of exemptions authorized by Illinois' tax laws, Illinois courts have recognized that the determining feature of profit with respect to a charitable institution is whether there is inurement of benefit to a private individual. DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 470, 654 N.E.2d 240, 246 (2d Dist. 1995). Profit has been found not only where there is a direct pecuniary benefit to an insider of the organization, but even where the members of an organization obtain some non-pecuniary benefit which non-members cannot obtain. DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901-02, 532 N.E.2d 1116, 1120 (2d Dist. 1988) (primary purpose of organization was to benefit its members, and was, therefore, not entitled to the statutory exemption).

In People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 264 N.E.2d 4, 11 (1970), the Illinois Supreme Court upheld the denial of a charitable tax exemption for property owned and used by a non-profit medical foundation, where the organization's operations materially benefited the organization's principle manager. Specifically, the Court held:

*** the following factors demonstrate to our satisfaction that the Foundation was operated at least in part for the professional and financial benefit of Dr. Rossi and his associates. Although there was a change in the ownership and organizational structure of the medical complex, Dr. Rossi retained complete control of the Foundation after the sale of the assets of his sole proprietorship, and he continued to use the facilities of the complex in the same manner as before the reorganization. He derived a substantial

salary from the Foundation for the performance of managerial services and specialized medical functions, and he had a large continuing claim against the assets of the Foundation in the form of installment notes payable at the rate of \$5,000 per year plus interest. In addition, Dr. Rossi benefited, at least indirectly, from the private practice of medicine on Foundation property and from the use of Foundation facilities as an adjunct to his various business pursuits. He derived direct financial benefits from the receipt of fees for a consulting service he carried on with the aid of Foundation personnel and property, and from the operation of a private out-patient pharmacy that supplied drugs to the hospital on a cost-plus basis.

The defendant relies heavily on the fact that it has been granted a letter of exemption from Federal income taxes under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. sec. 501(c)(3)), and that it is exempt from Illinois sales and use taxes. But these exemptions do not ‘furnish material facts about exclusive charitable use of property under our constitution’ (*Willows v. Munson*, 43 Ill. 2d 203, 251 N.E.2d 249; see, also, *Coyne Electrical School v. Paschen*, 12 Ill. 2d 387, 396, 146 N.E.2d 73), and the existence of such exemptions is not determinative of the issue before us.

Hopedale Medical Foundation, 46 Ill. 2d at 463-64, 264 N.E.2d at 11.

Here, too, EDI supports its claim that it an exclusively charitable organization, in part, because it has been granted that status by the Internal Revenue Service (IRS). EDI’s Brief, p. 2. This case, however, presents a perfect illustration of why an applicant’s status as a § 503(c)(3) organization does not resolve the issue of whether the applicant is entitled to an exemption for purposes of Illinois’ tax acts. Eden Retirement Center, Inc., 213 Ill. 2d at 290-91, 821 N.E.2d at 250; 86 Ill. Admin. Code § 130.2005(h)-(k).

EDI filed returns with the IRS on which it was required to report the facts regarding its financial operations. Applicant Exs. 15, 17. Bibbs signed those federal returns as EDI’s executive director. *Id.* (Part XI of each return). She signed those returns under the proviso which stated, “Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best

of my knowledge and belief, it is true, correct, and complete.” *Id.* On each of the federal returns EDI offered into evidence at hearing, EDI was asked whether, “[d]uring the year, [it] either directly or indirectly, engaged in [the Sale, exchange or leasing of property] with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families” Applicant Exs. 15, 17 (p. 10, Schedule A, Part III, line 2a of each return). In response, EDI checked the box labeled “No,” on each return. *Id.*

At least one commentator has opined that an honest, affirmative, answer to Form 990’s questions concerning self-dealing — where there actually is self-dealing between the organization and one or more of its insiders — would constitute an admission of private inurement sufficient to revoke the organization’s exempt status, or to trigger the tax imposed by § 4958 of the Internal Revenue Code on the persons involved in an express benefit transaction with an organization previously granted exempt status by the IRS. Peter Swords, *The Form 990 as an Accountability Tool for 501(c)(3) Nonprofits*, 51 *Tax Lawyer* 571, 595 (Spring 1998);¹ 26 U.S.C. §§ 501, 4958. Whether EDI’s rent

¹ Swords writes:

On the face of it, this [Schedule A, Part III, lines 2a-4g] would be the place for the deepest searching for evidence of negative accountability, self-dealing being perhaps the paradigmatic instance of negative accountability abuses. This question appears to pick up all transfers of value to key employees, etc., including such things as sales of property to the organization by a board member, loans to board members or key employees and the like. If the answer to any of the questions is "Yes," the question calls for the attachment of a detailed statement explaining the transactions. [footnote omitted]

Of course, if there were any self-dealing transactions during the year covered, it is not very likely that the preparer of the form would answer any part of Line 2 "Yes" and then attach a detailed statement explaining the transactions. To do so would be in effect to confess to such things as prohibited inurement or excess benefit transactions under the new Intermediate Sanctions law. Therefore, the answers to these questions may very likely be "No," and this will frustrate any intensive search for wrong-doing. However, there is always the possibility that someone examining the 990 will know of some act of self-dealing that occurred

payments to Bibbs were excess benefit transactions sufficient to trigger the tax imposed by § 4958 of the IRC, or whether they were sufficient to cause the IRS to revoke EDI's 501(c)(3) status, are not at issue here, nor is the Department the agency authorized to make such determinations. But the Department *is* the agency that is authorized and permitted, at least initially, to determine whether EDI is, in fact, an institution of public charity as that phrase is used in PTC § 15-65(a), and, if so, whether, in fact, it used a particular parcel of property exclusively for charitable purposes for a given year. 35 ILCS 200/8-5(8); 35 ILCS 200/15-65(a); Eden Retirement Center, Inc., 213 Ill. 2d at 290, 821 N.E.2d at 250 (“It is for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose.”); Wyndemere Retirement Community, 274 Ill. App. 3d at 459, 654 N.E.2d at 611 (“It is well settled that the findings and conclusions of an administrative agency on questions of fact are *prima facie* true and correct.”).

In any event, the evidence shows that EDI did not answer that particular Form 990 question accurately on either of the federal returns admitted into evidence in this matter. Applicant Exs. 15, 17. When Bibbs signed those returns for EDI, moreover, she knew that she was leasing the Wood and Park properties to EDI. Applicant Ex. 4-5, 15, 17. Both EDI and Bibbs concede that, during 2006, and in addition to the compensation EDI paid to Bibbs for performing services as its executive director, EDI paid Bibbs \$82,000 for rent and other charges. Applicant Ex. 4A, 6. Again, this represents a direct distribution from EDI to Bibbs of over 23% of EDI's reported excess revenues for fiscal

during the period covered and will then know that Line 2 was improperly filled out and that it is likely that this was done so intentionally. This would give rise to the possibility of further action.

51 Tax Lawyer at 595.

year 2005, or over 16% of EDI's reported excess revenues for fiscal year 2006. Applicant Ex. 4A, 6; Applicant Exs. 15, 17 (p. 1, line 19 of teach return). Regardless whether it was done intentionally or negligently, both EDI and Bibbs misrepresented to and concealed from the IRS the fact that Bibbs, an EDI insider, was, to use Justice Posner's words, siphoning off a significant percentage of EDI's charitable receipts to use as her own, personal income. United Cancer Council, Inc., 165 F.3d at 1176. Since both EDI and Bibbs have concealed this information from the IRS, I do not consider it significant that EDI had previously been granted exempt status by that agency.

Nor do the ledgers EDI admitted into evidence show that Bibbs did not personally and improperly profit from her directorship of EDI. The ledgers are sufficient to show that, during 2006, Bibbs received only \$46,000 of the \$66,000 she was due under the Lease for the Wood property, and only \$36,000 of the \$78,000 she was due under the Lease for the Park property. Applicant Exs. 4, 4A, 5-6. This accounts for approximately 57% of the rent due under the express terms of the Leases. Applicant Ex. 4-5 ($66,000 + 78,000 = 144,000$, $82,000/144,000 \approx 0.569444$). At best, the ledgers show that Bibbs' direct inurement from EDI's operations was less than she had intended during 2006, not that she did not profit at all. Moreover, even if I were to assume that, during all of the prior years the Leases were executory, Bibbs received only the same percentage of rent that she testified she received in 2006, by the beginning of 2006, the evidence still reflects that Bibbs would have siphoned off more than 1.3 million dollars of EDI's excess receipts for her own, personal benefit. Applicant Exs. 4, 4A, 5-6 ($2,376,000 * 0.569444 = 1,352,998.94$).

Although the evidence of Bibb's direct inurement from EDI's operations is so

substantial, I am hesitant to base a conclusion regarding the primary purpose underlying EDI's operations after considering only one of the Methodist Old Peoples Home guidelines. *See Joint Comm. on Accreditation of Healthcare Organizations*, 274 Ill. App. 3d at 468-69, 654 N.E.2d at 245. Therefore, I will also address the evidence relevant to the other guidelines.

The first guideline asks whether the benefits the organization provides are a gift for an indefinite number of persons for their general welfare or which in some way reduce the burdens on government — in essence, whether the organization's operations actually constitute charity. Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 541. EDI provides day care services for hire. Applicant Ex. 9 (copy of chart comparing EDI's rates for day care services with those of other providers); Tr. pp. 113-15 (Bibbs). EDI receives payment for its day care services from one primary source, the State of Illinois, through the Department of Human Services and/or the Department of Children and Family Services. *See* Applicant Ex. 19; Tr. pp. 140-43 (Bibbs). It is not clear from the evidence whether EDI charges or collects any monies from the parents or families of the children to whom it provides day care services. *See* Applicant Exs. 15, 17, 19-20. EDI asserts it provides charity by reducing its tuition and other fees to families that are unable to pay all that they are supposed to pay to EDI for day care services. *See* Applicant's Brief, p. 4; Applicant Exs. 19-20; Tr. pp. 114-17, 140-43 (Bibbs).

The documentary evidence EDI offered on this point includes, as Applicant's Exhibit 19, a packet of twenty-one pieces of paper, nineteen of which are copies of forms bearing the heading, Student Funding List With Pending End Dates. Applicant Ex. 19. Graphically, the nineteen forms in the exhibit appear substantively as follows, with italics

reflecting hand-written entries:

STUDENT FUNDING LIST WITH PENDING END DATES						
<u>March 2006</u> Month		<i>Rate</i>	<i>Day Care Cost</i>	<i>Days Claimed</i>	<i>DCFS Paid</i>	<i>Waived Scholarship</i>
End Date	Name	Foster	C.C. Init	Agency	Notified	School
	<i>M... P ...</i>	<i>24.34</i>	<i>145.00wkly/monthly</i>	<i>12</i>	<i>292.08</i>	<i>69.90</i>
	<i>D... N...</i>	<i>12.17</i>	<i>145.00/580.00</i>	<i>20</i>	<i>243.40</i>	<i>336.60</i>
	<i>J... J...</i>	<i>12.17</i>	<i>145.00/580.00</i>	<i>20</i>	<i>243.40</i>	<i>336.60</i>
	<i>R... V...</i>	<i>12.17</i>	<i>145.00/580.00</i>	<i>20</i>	<i>243.40</i>	<i>336.60</i>
	<i>T... E...</i>	<i>12.17</i>	<i>145.00/580.00</i>	<i>20</i>	<i>243.40</i>	<i>336.60</i>
	<i>A... C...</i>	<i>12.17</i>	<i>145.00/580.00</i>	<i>20</i>	<i>243.40</i>	<i>336.60</i>
					<i>DCFS Paid</i>	<i>Scholarship</i>
			<i>\$ 3488.00</i>		<i>\$ 1509.08</i>	<i>\$ 1752.90</i>

Applicant Ex. 19, p. 3 (initials used instead of the full names of the day care enrollees).

The first page of Applicant Exhibit 19 consists of a copy of a piece of paper bearing the following handwritten words:

<i>Log of Foster Charity Report for 2006</i>			
			<i>168,125.72</i>
<i>Total Cost</i>	—	—	<i>\$ 0000</i>
			<i>121,855.04</i>
<i>Total Paid [by DCFS]</i>	—	—	<i>\$ 0000</i>
			<i>52,045.78</i>
<i>Total Charity</i>	—	—	<i>\$ 0000</i>
<i>Foster Children Only</i>			

Applicant Ex. 19, p. 1. The second page of the exhibit consists of a copy of handwritten entries in three columns, with the headings and totals of each column corresponding to the amounts set forth on the first page, that is, Cost, Paid [by DCFS], and Charity. *Id.*, p.

2. The numerical entries on each row on the second page of the exhibit, in turn,

correspond to the total Cost, Paid, and Charity or Scholarship amounts that are reported on the bottom of each of the nineteen forms that are included within the exhibit. *Id.*, pp. 2-21. Bibbs testified that she supplied the information that was included within Applicant Exhibit 19. Tr. pp. 140-41 (Bibbs).

The documentary evidence EDI offered to show that its operations were charity also included, as Applicant Exhibit 20, a document titled, Annual Charity Report 2006. Applicant Ex. 20. That exhibit consists of a copy of a table made up, substantively, of twenty-one columns and eight rows. *Id.* The columns bear the following headings: School, Enrollment, Capacity, Tuition, Program, Tee-Shirt, Fieldtrip, Pictures, Weekly Tuition, Weekly CCI, Weekly Overage, Monthly Co-pay, Annual Reg., Annual Curr., Annual T-shirt, Annual Sum Camp, Annual Grad, Annual Hol. Act, Tutoring, Nutrition Program, and Waived Debts. *Id.* The only column that did not report any amounts under the heading was the column for Waived Debts. *Id.*, p. 3. Because the table was printed in portrait format, the single table is spread out over three pages. *Id.* The rows under the heading School, are titled, respectively, EDI Hazel Crest, EDI South Holland, IAD South Holland, IAD Park Forest, ICC, ECA, and Total. *Id.* The bottom row of the table shows the totals for each school for each heading. *Id.* Bibbs testified that she prepared the format for Applicant Exhibit 20. Tr. pp. 140-41 (Bibbs). Bibbs testified that the exhibit reflects all of the money that EDI would have collected if it had forced parents to pay fees and had not granted scholarships, reduced fees, or waivers. Tr. p. 148 (Bibbs).

I do not conclude that Applicant Exhibits 19 and 20 show that EDI spent or forgave the amounts set forth in those documents. Initially, I note that, while those documents were admitted without objection (Tr. pp. 161-62), EDI did not lay a proper

foundation for their admission as business records. Tr. pp. 139-41, 144-48 (Bibbs). Hearsay admitted without objection is to be considered and given its natural probative effect, and the fact-finder may give such evidence whatever weight he deems proper. Jackson v. Department of Labor, 105 Ill. 2d 501, 508-09, 475 N.E.2d 879, 883-84 (1985). For the following reasons, I do not give Applicant Exhibits 19 and 20 any weight on the question of whether EDI's operations were, in fact, charitable.

Taking the latter exhibit first, I do not give any weight to EDI's claim that Applicant Exhibit 20 shows that it provided charity in the amount of approximately \$300,000 in the form of reduced tuition and/or fees to those to whom it provided day care services. *See* Tr. pp. 146-47 (Bibbs). Primarily, that is because neither the exhibit itself nor the foundation testimony Bibbs offered for the exhibit describes what each column heading means or includes. Applicant Ex. 20; Tr. pp. 144-48 (Bibbs). I have no idea what the headings Program, Annual Reg., Annual Curr. mean, or what the amounts set forth under those headings are supposed to include.

Further, the headings themselves reflect a redundancy of charges. That is, Applicant's Exhibit 20 includes charges under the headings of Tuition, Weekly Tuition, and Monthly Co-Pay. Applicant Ex. 20. But nothing within this record shows why the amounts reported under the headings Tuition and Weekly Tuition were separated, why the totals reported under Weekly Tuition are so much greater than the totals reported under Tuition, or what Monthly Co-pay was supposed to include that Weekly Tuition or Tuition did not also include. *See* Applicant Ex. 20.

Rather than reflecting the amount of charity that EDI said it provided to families for whom it provided day care services, I conclude that the table reflects expenses that

EDI assigned to the various activities that were part of its provision of day care services. To take the heading, Pictures, as the first example, it is possible to view the amounts reported under that heading as reflecting that EDI actually paid a photographer one particular price to photograph each child in attendance at a particular day care location (in this instance, \$12 per enrollee), and that it then gave the photos taken by the photographer to each enrollee's family, without asking for or receiving anything from those families. That is, one could accept as true the proposition that EDI, itself, incurred an expense for providing that service, and that none of the families chose to pay the photographer, or EDI, themselves. But EDI produced no source documents to show that it incurred expenses in the amounts reported in Applicant Exhibit 20 under the headings Pictures, or Tee-Shirt, or Field Trip, or Annual T-Shirt, etc. And, of course, if just one family chose to pay the photographer, or if it paid EDI the photographer's fee, then EDI did not, in fact, donate \$12 to the family of each and every day care enrollee, or incur such an equivalent expense, for Pictures.

It is the regularity and conformity of the amounts reported on Applicant Exhibit 20, and how those amounts correspond to the number of EDI's enrollees for each row in that table, which lead me to conclude that the table reflects expenses that EDI assigned to the various activities that were part of its provision of day care services. For example, the amount reported under each row of the heading, Tee-Shirt, equals the number of enrollees times twelve. Applicant Ex. 20, p. 1. The amounts reported under the heading Annual T-Shirt are precisely double the amounts reported under the heading Tee-Shirt, so that the cost or amount attributable to Annual T-Shirt was \$24 per enrollee, whereas the cost or amount attributable to T-Shirt was \$12 per enrollee. Similarly, the amount

reported under each row of the following column, Field Trip, for the EDI day care centers equals the number of enrollees times 95, and the number of the enrollees in the other day care centers times 115. The amounts reported on each row under the headings of Annual Reg., Annual Hol. Act, and Tutoring are identical. *Id.*

Related to this point, Bibbs testified that EDI charged fees for meals, that it was paid by some Illinois agency for some part of its fee for such meals, and that some families chose not to pay EDI to provide meals to their children. Tr. pp. 119-20 (Bibbs). But if families chose not to pay for additional services, like Pictures, T-shirt, Annual T-shirt, Nutritional Program[s] or Tutoring, I do not understand why their decision means that EDI provided charity in the amount of fees EDI did not receive from them. On the other hand, it is not unreasonable to imply from Bibbs' answer that some families made the opposite choice — that is, it is not unreasonable to conclude that some families chose to pay for a full meal program offered by EDI. Again, if just one family of an enrollee paid for a t-shirt, or a field trip, or for a full meal program, then EDI would not, in fact, have donated the same, exact amounts for each and every enrollee at a particular day care center. In short, I give no weight to Applicant Ex. 20 because the amounts reported on it are inconsistent with ordinary human experience. See Fillichio v. Department of Revenue, 15 Ill. 2d 327, 155 N.E.2d 3 (1958) (when disregarding the evidentiary value of handwritten records offered to show a taxpayer's monthly gross sales, Court held that "... the sameness and roundness of the totals for each month are in themselves incredulous").

Similarly, I give no weight to EDI's claim that Applicant Exhibit 19 shows that it provided charity in the amount of approximately \$52,000 to families of foster children.

Applicant Ex. 19, p. 1; Tr. pp. 142-43 (Bibbs). First, the amounts reported on Applicant Exhibit 19 reflect nothing more than a tally of the difference between the amounts EDI reported as being its weekly cost or charge for providing day care services, and the amounts of weekly or monthly receipts it realized from DCFS for providing day care services to foster children. Applicant Ex. 19, *passim*; *see also* Applicant Ex. 9. But again, there was no attempt to produce the source documents from which the entries handwritten on the forms within that exhibit were derived. More importantly, when asked how EDI calculated its cost of providing day care services, which amounts were reported within the fourth column of the forms included within Applicant Exhibit 19, Bibbs was unable to explain how EDI arrived at such amounts. Tr. pp. 176-77, 181-82 (Bibbs). Instead, Bibbs said that EDI set the rates reported on Applicant Exhibits 19 and 20 because DCFS required day care centers to publish rates for services. Tr. p. 182 (Bibbs).

As a final note on this first guideline, the Department cites Willows v. Munson, 43 Ill. 2d 203, 208 251 N.E.2d 249, 252 (1949) for the proposition that “services extended ... for value received ... do not relieve the State of its burden.” Bibbs testified at hearing that EDI never dismissed any day care enrollee because his parents or family were unable to pay for services. Tr. pp. 148-52 (Bibbs). Bibbs also testified, however, that EDI had dismissed enrollees whose parents or families has misrepresented their income in a way that caused EDI to be unable to collect an amount from an agency of the State of Illinois. Tr. pp. 151-52 (Bibbs). The evidence, therefore, shows that EDI provided day care services to anyone who could arrange to obtain funding to be provided to EDI for such services, and would not provide services to those who could not. *Id.* I

agree that the evidence does not support EDI's claim that its provision of day care services for hire constitutes charity. EDI, therefore, does not satisfy the first Methodist Old Peoples Home guideline.

The third Methodist Old Peoples Home guideline asks whether the organization's funds are derived mainly from private and public charity, and whether the funds are held in trust for the objects and purposes expressed in the organization's charter. Here, EDI offered no regularly kept financial business records which detail all of the sources of its funding, or the whole of its expenditures. In this regard, EDI's Forms 990 are not the type of financial books and records that reveal the sources of EDI's funding, or the persons to whom EDI gave such funds. A filer must keep and maintain books and records which support the entries reported on a tax return. 35 **ILCS** 5/913; 35 **ILCS** 120/7. In other words, while a copy of a person's filed tax returns might well be admitted as a business record of what the person reported to a certain tax authority, the entries made on such returns are not, themselves, evidence that a particular entry is true and correct. Bohannon v. Commissioner, T.C. Memo. 1997-153 (March 26, 1997) ("A tax return does not establish the correctness of the facts stated in it.") (*citing* Seaboard Commercial Corp. v. Commissioner, 28 T.C. 1034, 1051 (1957)). And of course, here, the evidence is clear that EDI's Forms 990 did not correctly and fully report how EDI operated, or how it spent its funds. *Compare* Applicant Exs. 4, 4A, 5-6 *with* Applicant Exs 15, 17.

Perhaps most importantly, the documentary evidence that EDI did admit shows that EDI did *not* hold the funds it received in trust for the objects and purposes expressed in its charter. *Compare* Applicant Exs. 1-2 *with* Applicant Exs. 4, 4A, 5-6. Instead, that

evidence shows that EDI distributed a significant amount of its funds directly to Bibbs, its executive director, in the form of rent and other payments. Applicant Exs. 4, 4A, 5-6. Therefore, EDI did not satisfy the third Methodist Old Peoples Home guideline.

The fourth and fifth Methodist Old Peoples Home guidelines are related, and ask whether charity is dispensed to all who need and apply for it, and whether the organization places any obstacles before those seeking its benefits. On these related points, the evidence shows that EDI provided day care services to children whose families could obtain funding for such services from Illinois, but that it would dismiss children whose families could not. Tr. pp. 151-52 (Bibbs). In other words, and at least based on Bibbs' testimony, the evidence shows that if a family desired day care services but was unable to pay for them, and the family did not meet the State's definition of being needy, or destitute, or low-income, that family would not be able to obtain day care services from EDI. *Id.* Such evidence shows that EDI provided day care services in situations where it could obtain payment by the State of Illinois. But again, services extended for value received do not relieve the State of any burden. Munson, 43 Ill. 2d at 208, 251 N.E.2d at 252. I conclude that EDI has not satisfied the fourth and fifth Methodist Old Peoples Home guidelines.

Finally, the last Methodist Old Peoples Home guideline asks whether the primary purpose for which property is used is charitable, and not merely a secondary or incidental purpose. During 2006, Bibbs, the owner of twelve of the thirteen parcels at issue, was using those parcels, herself, by leasing them to EDI. Applicant Exs. 4, 4A, 5-6. Because Bibbs was using those properties with a view toward profit, the primary use of those properties was not charitable. Coles-Cumberland Professional Development Corp., 284

Ill. App. 3d at 354, 672 N.E.2d at 394. EDI has not satisfied the final Methodist Old Peoples Home guideline regarding those properties.

Based on the evidence, I conclude that one of EDI's substantial functions during 2006, and before, was to distribute a significant portion of its excess revenues directly to Bibbs, its executive director. Applicant Exs. 4, 4A, 5-6; Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145; 86 Ill. Admin. Code § 130.2005(n) ("if a substantial purpose or activity of the [taxpayer] is not charitable, ... the Department will not consider the [taxpayer] to be organized and operated exclusively for charitable ... purposes"). Since one of EDI's substantial functions was to provide a direct inurement of personal income, in excess of compensation, to its executive director, EDI was not operated exclusively, or primarily, for charitable purposes during 2006. Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145; 805 ILCS 105/106.05; 86 Ill. Admin. Code § 130.2005(h) ("a [taxpayer] cannot qualify as being organized and operated exclusively for charitable purposes unless it is organized and conducted on a not-for-profit basis, with no personal profit inuring to anyone as a result of the [taxpayer's] operation."); 86 Ill. Admin. Code § 130.2005(n). Finally, the evidence also shows that EDI satisfies none of the first five Methodist Old Peoples Home guidelines. EDI was not, in fact, being operated as an institution of public charity. 35 ILCS 200/15-65(a).

Part 3: EDI's Use of the Wildwood Property

Since EDI was not being operated as an institution of public charity, the property the Department concedes EDI owns here (Department's Brief, p. 4), the Wildwood property, was not entitled to the exemption authorized by PTC § 15-65(a). Chicago Patrolmen's Assoc., 171 Ill. 2d at 270, 664 N.E.2d at 55-56.

Conclusion:

The evidence shows that Bibbs owned the Wood and Park properties, and that she used those properties with a view toward profit. Applicant Exs. 4, 4A, 5-6; 35 **ILCS** 200/15-65(a); Coles-Cumberland Professional Development Corp., 284 Ill. App. 3d at 354, 672 N.E.2d at 394. The evidence also shows that EDI was not being operated primarily for charitable purposes during 2006, because one of EDI's substantial functions was to provide a direct inurement of personal income, in excess of compensation, to its executive director. 35 **ILCS** 200/15-65(a); Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145; 86 Ill. Admin. Code § 130.2005(n). Further, the record shows that EDI was paid by the State of Illinois for the day care services it provided. Applicant Exs. 19-20; Tr. pp. 151-52 (Bibbs). Based on this record, EDI has not satisfied any of the first five Methodist Old Peoples Home guidelines. See Hopedale Medical Foundation, 46 Ill. 2d at 463-64, 264 N.E.2d at 11; Gas Research Institute, 154 Ill. App. 3d at 435, 507 N.E.2d at 145. Since EDI was not, in fact, being operated as an institution of public charity, the Wildwood property is not entitled to the exemption authorized by PTC § 15-65(a). Chicago Patrolmen's Assoc., 171 Ill. 2d at 270, 664 N.E.2d at 55-56.

I recommend, therefore, that the Director finalize the Department's tentative denials of EDI's applications for a property tax exemption, and that those properties remain taxable for all of 2006.

February 17, 2009
Date

John E. White, Administrative Law Judge