

PT 04-43
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**IMMANUEL LUTHERAN
CHURCH OF DIXON,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 04-PT-0005
(03-52-0034)**
P.I.N.: 07-08-04-251-008

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter raises the limited issue of whether real estate identified by Lee County Parcel Index Number 07-08-04-251-008 (the “subject property”) was “used exclusively for religious purposes,” as required by 35 ILCS 200/15-40 during the 2003 tax year. The underlying controversy arises as follows:

The Immanuel Lutheran Church of Dixon (the “applicant”) filed a *pro se* Real Estate Tax Exemption Complaint with the Lee County Board of Review (the “Board”), which, after its review of this matter, recommended that the requested exemption be granted. The Department then issued its initial determination in this matter on November 26, 2003, denying that exemption *in toto* on grounds that the subject property is not in exempt use.

The applicant filed a *pro-se* appeal as to this denial and later, appearing *pro-se*, presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt use. *Id.*
3. The subject property is located in Dixon, IL and improved with a one story day care facility and a separate storage garage. *Id.*
4. The applicant, an affiliate of the Evangelical Lutheran Church of America, obtained ownership of the subject property on December 4, 2002. *Id.*; Applicant Ex. No. 2; Tr. p. 25.
5. The applicant purchased the subject property with the intention of having it serve as the location for the "Bright Beginnings Christian Preschool and Day Care Center." ("Bright Beginnings"). Applicant Ex. No. 5.
6. Bright Beginnings is an Illinois not-for-profit corporation that, per its by-laws, is organized for the following purposes: (a) providing a safe environment for the care of children of employed parents; (b) providing different experiences for children in a Christian environment; (c) helping children develop self esteem and self-expression through responsibility, creativity and group interaction; (d) helping children develop physically, emotionally, intellectually and socially in a warm and nurturing

environment through art, music, large and small motor skills activities, language, pre-reading, field trips and center visitors. Applicant Ex. No. 5; Tr. p. 25.

7. Bright Beginnings' by-laws further state, *inter alia*, that it is to be "a program of the Immanuel Lutheran Church, Dixon, Illinois..." and that its governing board is to consist of eight voting members, four of which must be members of the applicant's church. Applicant Ex. No. 5.
8. The "Bright Beginnings Parent Handbook" (the "Parent Handbook"), which Bright Beginnings distributes to the parents of all children attending Bright Beginnings, sets forth various details concerning Bright Beginnings' operations, which include its tuition fee schedules. Applicant Ex. No. 6.
9. Bright Beginnings' governing board determined its tuition fee schedules by reference to the rates charged by comparable child care centers in the surrounding community. Tr. p. 27.
10. Bright Beginnings' tuition fee schedule ranges from a maximum of \$115.00 for five full days of day care for infants, toddlers and two year olds to a minimum of \$12.00 for two days of day care for school age children before or after school time hours. Applicant Ex. No. 6.
11. Bright Beginnings also charges: (a) a separate "summer activity fee" of \$75.00; and, (b) a non-refundable registration fee of \$25.00 per child, or \$60.00 for families with three or more children enrolled at Bright Beginnings, that is payable at the time the child is enrolled; and, (c) a late pickup fee of \$5.00 for every 15 minutes that a child is picked up after the designated closing time of 6:00 p.m. *Id.*

12. The Parent Handbook also contains the following fee payment policies: (a) tuition fee payments must be made no later than the first day of each week on which the child attends Bright Beginnings; (b) a late fee of \$5.00 will be charged for any tuition payment that is more than one week late; (c) a fee of \$25.00 will be charged for any check that is returned; (d) in the event that any tuition payment remains delinquent for a period of two weeks, “your child will be unable to attend until late payments are made[;]” and, (e) if delinquent fees are not remitted within one week of the time that the child becomes ineligible to attend by reason of non-payment, then that child’s name will be placed on a waiting list. *Id.*
13. The Parent Handbook also states that Bright Beginnings offers multiple child discounts and a fee assistance program. *Id.*
14. The terms and conditions of this fee assistance program, as set forth in the Parent Handbook, are as follows: (a) fee assistance will be provided only to those with demonstrated need, such as those who are willing to fill out an application form and willing to apply to other community, State and federal assistance programs that Bright Beginnings’ management may suggest; (b) those seeking financial assistance from Bright Beginnings must provide appropriate documentation, such as current tax returns or pay stubs, to verify their need; (c) fee assistance will be granted on a first come, first served basis, subject to budget and space restrictions identified by management; and, (d) “waiver of fees will be for a maximum of two weeks, and subsidy of fees for a maximum of one month, with extensions possible while waiting for approval of community or State assistance programs.” *Id.*
15. Bright Beginnings opened for business on May 5, 2003. Applicant Ex. No. 5.

16. The applicant did not submit any financial statements or other documentation describing Bright Beginnings' financial structure, in terms of the revenues it received or the expenses it incurred, from May 5, 2003 through the end of the tax year currently in question, December 31, 2003.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-40 and 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, which provide, in relevant part, as follows:

Sec. 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.

200/15-65. Charitable Purposes

§ 15-65. 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(a).

In this case, the applicant elected to proceed *pro-se* throughout all phases of the exemption process, including the administrative hearing on its complaint, even though its authorized representative was repeatedly advised that the applicant was entitled to avail itself of the assistance of counsel at any time during the proceedings. Tr. p. 4. As such, it appears that the applicant's representative may not have appreciated the following relevant legal technicalities:

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, Sections 15-40, 15-60 and all other statutes conferring property tax exemptions are to be strictly construed, with all doubts and evidentiary deficiencies resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, it is the applicant that bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. *Id.*

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, "clear and convincing evidence is 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." In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

The word "exclusively" when used in Sections 15-40, 15-65(a) and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v.

Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

“Charitable or beneficent purposes” are, by definition, those that benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They also are carried out by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in its charter; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

The “religious purposes” and “charitable” exemptions can become intertwined in contexts like the one presented herein, where a *bona fide* religious institution, such as this applicant, engages in endeavors that are not conventionally associated with the practice of religion. *See, e.g. Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) (publication and distribution of books used for religious instruction); *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2nd Dist. 1978) (publication, distribution and sale of materials used in Christian missionary work); *Cook Communications Ministries v. Illinois Department Of Revenue*, 345 Ill. App.3d 753, 758 (2nd Dist. 2004) (publication, storage and other activities related to the distribution of printed materials having Christian-oriented themes).

Such endeavors involve uses of real estate that are either: (1) primarily “religious” with incidental commercial nuances (*Inter-Varsity Christian Fellowship v. Hoffman, supra*); or, (2) “primarily commercial with religious overtones.” (*Cook Communications Ministries v. Illinois Department Of Revenue, supra*).

Here, Bright Beginnings by-laws do state that the day care and preschool facility presently at issue is to function as one of the applicant’s programs. However, the mere wording of or statements made in an entity’s organizational documents are not determinative for present purposes. *Morton Temple Association v. Department of Revenue*, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Rather, it is the facts relative to the underlying business realities of the entity’s actual operations that are decisive herein. *Id.* After carefully reviewing the record, I conclude that the day care and preschool facility presently at issue operates more like a commercial enterprise than a “charitable” or “religious” institution.

As an initial matter, the entity that actually operates this facility, Bright Beginnings, is not the applicant in this case. Bright Beginnings is a separately incorporated Illinois not-for-profit corporation, and therefore, enjoys a legal identity that

is separate and distinct from the entity that is the sole applicant herein, the Immanuel Lutheran Church of Dixon.

The applicant's pastor, Rev. Ronald Ferrell, testified that Bright Beginnings was separately incorporated from the applicant at the recommendation of the applicant's governing body, the Evangelical Lutheran Church of America, in order to insulate the applicant from any lawsuits that might arise against Bright Beginnings. Tr. p. 25. The applicant's decision to abide by this recommendation certainly served legitimate business purposes. However, these purposes do not constitute the types of legal necessity or financial hardships that our courts have found necessary to equate Bright Beginnings' use of the subject property with that of the applicant.

For instance, in People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) the courts held in favor of exempting properties that were purchased by the respective Foundations for the benefit of public universities solely because these universities were subject to statutory debt limitations that made it legally impossible for them to purchase the properties in its own name. Goodman, *supra* at 366, 368; Booker, *supra* at 1067.

Furthermore, in Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 61 (1978), the court held that property purchased under a contract for deed, rather than conventional purchase money mortgage, qualified for exemption under circumstances where the applicant-Ministry did not have the credit necessary to obtain such a mortgage. Christian Action Ministries, *supra* at 61-62. Finally, in Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983), the court granted an exemption to property held under a conveyance and lease-back arrangement, where the applicant employed such arrangement strictly because State revenue bonds were not available to facilitate a more conventional means of purchase and

its troubled financial history prevented the Hospital from obtaining an appropriate mortgage. Cole Hospital, *supra* at 98.

Here, the facility's day-to-day operations are controlled by an entity, Bright Beginnings, whose status as an Illinois not-for-profit corporation provides it with a legal identity that is separate and distinct from the entity that is the applicant in this case, the Immanuel Lutheran Church of Dixon. Furthermore, the record discloses that several of the practices by which Bright Beginnings operates this facility are patently inconsistent with the dispensation of "charity."

For instance, the Parent Handbook (Applicant Ex. No. 6) states, in no uncertain terms, that Bright Beginnings imposes a late fee for untimely tuition payments and, more importantly, will suspend or remove a child whose parents fail to remit tuition payments in a timely manner. Such practices are, in effect, penalties for non-payment that lack the warmth and spontaneity generally associated with "charitable" impulse. Methodist Old People's Home v. Korzen, *supra* at 158.

Furthermore, many of the other practices that the facility follows, including setting market-based tuition rates, offering family discounts, and/or imposing late pickup, summer activity and other similar-type fees, are no different in substance than practices followed at commercial day care centers.

More importantly, the record does not contain any financial statements or other documents describing the facility's financial structure. Once again, it is that applicant, and no other party, that bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Accordingly, amidst the total absence of financial statements from this record, the only conclusion I can reach is that the applicant failed to sustain a central element of its evidentiary burden, namely, proving that the facility's

financial structure, in fact, conforms to that of an entity whose primary objective is to dispense “charity.”

This failure of proof, standing alone, constitutes legally sufficient grounds to affirm the Department’s initial determination finding that the subject property is not in exempt use. However, the instant application also fails because of other evidentiary deficiencies, the most important of which is the total absence of any business records or other documents demonstrating the precise extent to which the applicant actually employed its fee waiver policy during 2003.

Granting fees waivers or otherwise accommodating those who demonstrate a legitimate inability to pay is essential to the dispensation of “charity” under Illinois law. Small v. Pangle, 60 Ill.2d 510, 518 (1975). However, in evaluating whether, or to what extent, the subject property was used for qualifying purposes during 2003, I am required to compare the extent to which that property was actually used for taxable and tax exempt purposes during that tax year. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill. App.3d 463 (1st Dist. 2000), *leave to appeal denied*, October 4, 2000.

This record does not contain any documents that provide an appropriate basis for that comparison. Instead, it contains Rev. Ferrell’s testimony, offering that the facility had a census of 35 children when it opened in May of 1985, and that “some” of these children received fee subsidies administered under auspices of the Illinois Department of Children and Family Services (“DCFS”). Tr. p. 16. However, Rev. Ferrell could not recall the specific number of children that received such subsidies. *Id.*

Nor does the document on which Rev. Ferrell based this testimony, Applicant Ex. No. 10, reveal such specifics. Rather, it also sets forth the unacceptably conclusory statement that “some” of the 35 children received DCFS subsidies. Moreover, while both Applicant Ex. No. 10 and Rev. Ferrell’s testimony indicate that the facility had a census

of 80 children as of August 4, 2004, and set forth some conclusory statistics¹ concerning the numbers of children that had received subsidies or other assistance as of this date, all of this evidence is irrelevant to this proceeding because each tax year constitutes a separate cause of action for exemption purposes (People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987)) and the only tax year currently in question is 2003.

Moreover, in the absence of appropriate financial statements, I am unable to discern what, if any, specific portion of its *own* resources the applicant, or more properly, Bright Beginnings, devoted to providing financial assistance during 2003. Furthermore, whatever fee waivers Bright Beginnings may offer are, according to its own by-laws, available only until such time as a child's family obtains financial assistance from other resources. Therefore, any "charity" that Bright Beginnings may dispense by providing such waivers is self-limiting and not based upon its own financial capabilities. Thus, for all these reasons, the record is ultimately inconclusive as to whether the subject property was, in fact, *primarily* used for qualifying purposes during 2003. Because all such inconclusive matters must be resolved against the applicant as a matter of law (People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*), the overall conclusion I must make is that it was not.

Concerning the adjacent storage garage, such facilities qualify for exemption only if their use is "reasonably necessary" to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4th Dist. 1992); Evangelical Hospital Ass'n. v. Novak, 125 Ill. App.3d 439 (2nd Dist. 1984); Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231

1. These statistics were not supported by appropriate business records or other documentation.

(2nd Dist. 1992). The day care facility, itself, does not satisfy the statutory use requirements necessary to qualify it for exemption under Sections 15-40 and/or 15-65(a) of the Property Tax Code. Therefore, the storage garage that is located adjacent thereto is likewise not in exempt use.

Based on the above, I conclude that the subject property was not used for the narrow set of purposes necessary to exempt it from 2003 real estate taxes under Sections 15-40 and/or 15-65(a) of the Property Tax Code. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, I recommend that real estate identified by Lee County Parcel Index Number 07-08-04-251-008 not be exempt from 2003 real estate taxes.

Date: 10/1/2004

Alan I. Marcus
Administrative Law Judge