

PT 05-5

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

FAITH BUILDERS CHURCH, INC.

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

A.H. Docket #

03-PT-0012

P. I. #

06-0-04764-000

Docket #

02-15-07

Barbara S. Rowe

Administrative law judge

RECOMMENDATION FOR DISPOSITION

Appearances: Randall A. Meade of Drake, Narup & Meade for Faith Builders Church, Inc.; Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Coles County Parcel Index No. 06-0-04764-000 qualified for exemption during the 2002 assessment year. Steve McCann, Senior Pastor of Faith Builders Church (hereinafter referred to as "Faith Builders" or the "Applicant") and Patricia Yow, Superintendent of Heartland Schools, were present and testified on behalf of Faith Builders.

The issue in this matter is whether the subject parcel was used for school or religious purposes during the 2002 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied, except for the four hundred twenty square foot kindergarten room, the seven hundred square foot school-age

playroom, and the Academy room, which is twenty-five feet eleven and seven-eighths inches by twenty-nine feet six and one-eighth inches. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Coles County Parcel Index No. 06-0-04764-000 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. The Department received the application for exemption of the subject parcel from the Coles County Board of Review. The board recommended granting a partial year exemption from May 10, 2002 through December 31, 2002. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. Applicant acquired the property by a warranty deed dated May 10, 2002. Located on the land is an 8,730 square foot one story building. The previous owner operated the building as “Building Blocks Daycare.” (Dept. Ex. No. 1; Tr. p. 40)

4. Applicant operates Heartland Childcare Center, Heartland Preschool and Kindergarten, Heartland Academy and Camp Heartland in the building on the subject property. The daycare and schools are run by the Applicant under the direction of the Superintendent, who has been appointed by the pastor. (Dept. Ex. No. 2)

5. The building on the property at issue is separate from Applicant’s church building. (Dept. Ex. No. 2)

6. The building on the subject property is divided into 12 areas: (1) the kitchen is 330 square feet; (2) the office is 12' x 19'; (3) the infant room is 466 square feet; (4) the toddler room is 559 square feet; (5) the pre-toddler area is 461 square feet; (6) the two year old room is 562 square feet; (7) the three and four year old room is 711 square feet; (8) the five year old room is 728 square feet; (9) the kindergarten/library and computer room is 420 square feet; (10) the school age playroom is 700 square feet; (11) the academy area is 25'11⁷/₈" by 29'6¹/₈"; and (12) the four year old room is 29'6¹/₈" by 25'11³/₄". (Dept. Ex. No. 2)

7. The building is open from 6:00 a.m. to 6:00 p.m. (Tr. p. 37)

8. Faith Builders "Bylaws Governing The Operation Of Christian Schools" states its purpose is:

. . . to promote Christian education of high academic quality and childcare services in conformity with ARTICLE II¹ by providing facilities for and supplementing the financial needs of Heartland Schools comprised of Heartland Childcare Center, Heartland Preschool and Kindergarten, Heartland Academy, and Camp Heartland. The teaching of the Christian faith from God's Word is not just a separate subject in the curriculum, but is incorporated into every aspect of the total education and childcare program. It is our goal to prepare students and daycare children, spiritually, mentally, physically, and morally to take their place in the home, church, state, and their vocations or professions. The CORPORATION will endeavor to make quality Christian education and childcare available to all those from different churches and the community who desire it and qualify for it. (Dept. Ex. No. 2)

9. The "Statement of Purpose" for Heartland Childcare Center, Heartland Preschool and Kindergarten is:

Heartland Childcare Center and Heartland Preschool and Kindergarten are educational and childcare ministries for infants, toddlers, preschoolers, and kindergarteners. It is our purpose to train children in the highest principles of Christian behavior using age-appropriate activities in a warm

¹ ARTICLE II is entitled "Basis" and states that the basis of the corporation is the Word of God. Scripture passages from the Bible are cited within the article.

and loving atmosphere conducive to their social, emotional, mental, physical, and spiritual development. (Dept. Ex. No. 2)

10. Heartland Academy for grades 1-12, and Camp Heartland, a summer school and daycare program for children ages 6-12, were established for the purpose of promoting education of high academic standards and quality childcare services. The goal is to prepare students and daycare children spiritually, mentally, physically and morally to achieve their highest goals in life. (Dept. Ex. No. 2; Applicant's Ex. No. 3)

11. Applicant has guidelines regarding financial policies of the center. Weekly tuition is due and payable on the first day of the week that a child is in the center. A \$5 late fee is imposed each day tuition is late. If late fees and tuition are not paid in full by pick-up time on Friday the child is asked to be withdrawn from the center. (Dept. Ex. No. 2)

12. Faith Builders derives a weekly fee of \$75 per child for the children enrolled in its Christian childcare program. Tuition is based upon reserving a space in the childcare center and not on daily attendance. There is a \$5 charge for each 15-minute period after 6:00 p.m. for each child that is not picked up on time. The facility is staffed according to State of Illinois criteria. (Dept. Ex. Nos. 1, 2)

13. For babies aged 6 weeks to 15 months, Applicant's employees use the "Lulla·Bible." The book and audio collection contain an illustrated Bible storybook and two compact discs of songs. For the toddlers class, ages 15-24 months, the book is "The Beginner's Bible for Toddlers." The employee in the 2-year-old room uses "My Very First Devotional Bible" and "My Favorite Bible Storybook for Toddlers." The three, four and five-year-olds stories' come from "Jesus Loves Me Bible Storybook and Devotional." The four-year-old room also uses "The Beginners Bible, Timeless Children's Stories." The five-year-old, pre-

kindergarten class also uses “The Word and Song Bible.” A daily schedule is posted outside each room door. The daily schedule is given to each parent when they sign up their child. The schedule lists the daily stories and activities including saying the pledges to the American flag, the Christian flag and the Bible. (Applicant’s Ex. Nos. 6-9; Tr. pp. 64-73)

14. For children ages three to five, Applicant uses the “Scope and Sequence of the School of Tomorrow Curriculum.” The Bible stories are included in the curriculum. (Applicant’s Ex. No. 4; Tr. pp. 56-58)

15. Camp Heartland is a “Summer Day Camp That’s Close to Home.” It is for children kindergarten to 12 years of age. It starts on June 2nd and ends August 22nd. Children work for two hours in the morning on math and English. The students do activities that relate to the Bible and go on field trips. (Applicant’s Ex. No. 10; Tr. pp. 74 –76)

16. Applicant’s employees that take care of children in the building on the property at issue must sign “The Teacher/School Ministry Agreement” before being employed. The agreement affirms that the teacher will abide by Applicant’s rules and procedures. (Applicant’s Ex. No. 2; Tr. pp. 41, 54-55)

17. Parents of children in Applicant’s programs must sign an authorization form that allows photographs to be taken, religious training and enrichment program participation. (Applicant’s Ex. No. 5; Tr. pp. 61-63)

18. The “Heartland Schools Profit and Loss Statement” for January through December 2002 shows income for the Academy of \$21,229.19; for Camp Heartland - \$41,899.11; for the childcare center - \$115,800.08; for kindergarten and first grade - \$11,707.50; for the four-year-old area - \$40,621.18; for the pre-kindergarten area - \$54,219.80; and for the

² It is unclear exactly what rooms in the building are used by Camp Heartland. The testimony was that “it uses some of the rooms at the facility that are otherwise used for the pre-kindergarten students.” (Tr. p. 76)

three-year-old area - \$53,954.76. Total income is \$339,431.62. The net income for that period was \$6,397.59. (Dept. Ex. No. 2)

19. The Illinois Department of Children and Family Services licensed Heartland Childcare Center for fulltime childcare from March 29, 2002 through March 29, 2005 for 42 children. The license is for the first two classrooms to the West and the first three rooms to the East including the kitchen. The rooms are for children ages 6 weeks to 3 years. Heartland complies with the standards established for all Illinois day care centers. (Dept. Ex. No. 2 pp. 37, 85; Tr. pp. 79-80)

20. Of the twelve rooms in the building on the property in question, the Academy occupies rooms 9, 10 and 11. The Academy provides a curriculum of study that corresponds to public school instruction for children of the same ages. The curriculum comes from Accelerated Christian Education of Texas. There are 9,000 schools of that nature in 110 countries. When a child is placed in the program they are given a diagnostic test and placed at their ability level. English, math, social studies, science, typing, computer, and electives comprise the course of study. A minimum number of 22 credits are required to graduate. (Dept. Ex. No. 2; Tr. pp. 33, 36)

21. Heartland Schools is governed by Faith Builders. Families from many church backgrounds and denominations have children enrolled in the childcare center, preschool, kindergarten and elementary, junior high and high school. Although governed by Faith Builders, the ministry is considered to be a multi-church affiliation that welcomes families from all denominations. The doctrine of one church is not promoted over another. (Dept. Ex. No. 2)

22. Faith Builders is one branch of the parent corporation, Heartland International Ministries. Heartland Schools is the other branch. (Tr. p. 15)

23. Faith Builders is exempt from the payment of Federal Income Tax pursuant to a finding by the Internal Revenue Service that it is a 501(c)(3) organization under the Internal Revenue Code. (Dept. Ex. No. 2)

24. Faith Builders is exempt from the payment of Illinois Retailers' Occupation and related taxes pursuant to a finding that it is a religious organization. (Dept. Ex. No. 2)

25. The Department stipulates that Faith Builders is a religious organization and is a church. The stipulation does not include Heartland Daycare and Schools. (Tr. p. 15)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 **ILCS** 200/15-40. In 2002, a portion of the statute stated:

- (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.

The pertinent statute specifically does not allow an exemption for property used for school and religious purposes if the property is used with a view to profit. Therefore, under the

best-case scenario, even if Faith Builders' use of the subject property was found to be strictly religious, or Faith Builders was found to be giving religious instruction, the property in question still would not qualify for exemption if it were operated with a view to profit. Faith Builders charges fees if a parent is late picking up its child and for late payment of weekly tuition. The \$75 weekly tuition is based upon reserving a place for the child, rather than the child's actual attendance, an indication of a business-like profit motive. If late fees and tuition are not paid in full by pick-up time on Friday, the child is asked to be withdrawn from the center. If you fail to pay, you leave.

Faith Builders cannot argue that its curriculum is similar to Sunday School run five days a week because (1) the program is operated with a view to profit as evidenced by the fees charged, the punitive late payments, and the severe penalties for picking up a child after the 6:00 closing time, and (2) as evidenced by the record, the primary purpose of the use of the property is for daycare, particularly for young children. As Faith Builders' policies regarding late payments and fees are punitive, I must conclude that Faith Builders intends to and does operate its daycare/childcare programs on the subject property with a view to profit.

Illinois courts have consistently held that the use of property to produce income is not an exempt use, even though the income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), *leave to appeal denied*. It should be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln", v. The Board of Appeals, 358 Ill. 135 (1934). In this regard, *see also* Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1983).

Applicant contends that because it has a religious curriculum, it is different from other daycare settings and therefore qualifies for exemption as a religious school. Applicant sees a Christian school as an extension of the Christian home in training young people in a Christian environment. (Applicant's Ex. No. 2) Applicant's religious argument fails because the term religious purpose as used in the Illinois constitution exempting property used for religious purposes, means the use of the property by a religious society or body of persons as a place for public worship. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). For purposes of the statute allowing property tax exemptions, if property is used exclusively for religious purposes, "exclusively" refers to the primary purpose for which the property is used. Cook Communications Ministries v. Department of Revenue, 345 Ill.App.3d 753 (2nd Dist. 2004, *reh'g denied* February 10, 2004). Faith Builders uses the subject primarily as a day care center for young children where fees are charged, rather than a religious school.

Further, Faith Builders requires a \$75 weekly fee for the children enrolled in the Christian childcare program. A \$5.00 late fee is imposed each day tuition is late. If a parent is late picking up a child, a \$5.00 fee is imposed for every fifteen minutes that the parent is late. If late fees and tuition are not paid in full by pick-up time on Friday, the child is asked to be withdrawn from the center. The government is mandated to provide free education to children of a certain age in the State of Illinois. Faith Builders provides educational instruction for a fee. Applicant had income from the Academy in 2002 of \$21,229.19; Camp Heartland earned \$41,899.11; the Childcare Center - \$115,800.08; Kindergarten and First Grade - \$11,707.50; the four-year-old area - \$40,621.18; the Pre-Kindergarten area - \$54,219.80; and the three-year-old area - \$53,954.76. Applicant's total school income in 2002 was \$339,431.62. The net income for that period was \$6,397.59.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

Faith Builders asserts that because it has a curriculum involved in every classroom, it is running a school rather than a daycare in every room of the building on the property at issue. (Tr. pp. 41-42). Applicant believes that daycare is different than what takes place on the property. Applicant, throughout the hearing, attempted to distinguish its use of the property from a child or daycare center. One witness described a daycare center as a “place where a parent would drop off their child for babysitting services, would go home and at the end of the day or the time period, the parent would pick up the child.” (Tr. p. 27). Applicant asserts that while this function may happen at the property, evangelism and education also take place, and therefore the property is not used as a daycare center but rather as a religious school. Applicant asserts, “Heartland is in no way, shape or form a daycare center.” (Applicant’s Brief p. 10).

However, in Applicant’s documents submitted to the Department, in conjunction with the application for exemption, the word daycare is repeatedly used. (Dept. Ex. No. 2: “daycare and school are run by the church”; “daycare is a separate building from the church”; “daycare’s DCFS license”; “daycare’s 501(c)(3) exemption”.) Applicant cannot now refuse to admit that its operation includes daycare for children.

Although Applicant insists that Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957) and Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill.App.3d 765 (1st Dist. 2000) “are so factually dissimilar as to be unpersuasive and certainly not mandatory authority in this case” (Applicant’s Brief p. 9), I cannot agree. In fact, I find that the circumstances in Rogy's New Generation, Inc. v. Department of Revenue, *supra*, in particular, to be very similar to the facts at issue herein.

Rogy's New Generation, Inc. v. Department of Revenue, involved licensed daycare facilities operated by a for-profit entity that requested an exemption from Retailers’ Occupation and related taxes. Just as Applicant herein, Rogy’s argued that the properties were organized exclusively for educational purposes and therefore were entitled to an exemption. In denying the requested exemption, the court stated that:

Case law provides that to qualify for an educational exemption, a private entity must meet two prerequisites: (1) it must “offer a course of study which fits into the general scheme of education established by the State”; and (2) “the course of instruction must lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State.” Yale Club v. Department of Revenue, 214 Ill.App.3d 468, 474, 158 Ill.Dec. 237, 574 N.E.2d 31 (1991). This-two prong test was first articulated by the Illinois Supreme Court in a number of property tax exemption cases (see Coyne Electrical School v. Paschen, 12 Ill.2d 387, 393, 146 N.E.2d 73 (1957); Illinois College of Optometry v. Lorenz, 21 Ill.2d 219, 171 N.E.2d 620 (1961)), and is applicable to the sales tax exemption. See Yale Club, 214 Ill.App.3d at 476, 158 Ill.Dec.237, 574 N.E.2d 31.

Under the facts presented, we find that Rogy cannot meet either prong of the two-part test. As noted by the circuit court, the fundamental flaw in Rogy’s case is that the State does not provide, nor mandate, education for children under the age of five. See 105 ILCS 5/10-20.12 (West 1998). As a result, Rogy cannot prove that its program fits into the “general scheme of education founded by the State” because similar programs do not exist. Nor can Rogy prove that its programs “lessen the tax burden of the public by providing an education which would otherwise have to be

furnished by the State.” Because education is not required for children under the age of five, there is no governmental obligation to educate these children and therefore, no corresponding public tax burden to bear. See, e.g., Chicago & Northeast Illinois District Council of Carpenters Apprentice & Trainee Program v. Department of Revenue, 293 Ill.App.3d 600, 611 228 Ill. Dec. 23, 688 N.E.2d 721 (1997) (carpentry program not entitled to tax exemption because the state is not required to fund or offer such a program); American College of Chest Physicians v. Department of Revenue, 202 Ill.App.3d 59, 61, 147 Ill.Dec. 434, 559 N.E.2d 774 (1990) (no exemption because no Illinois requirement for continuing medical education); Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542, 546, 98 Ill.Dec. 363, 494 N.E.2d 48 (1986) (no exemption because no Illinois requirement for certification of “safety professionals”). Rogy’s New Generation, Inc. v. Department of Revenue, *supra* at 771-2.

Rogy operated a daycare with a curriculum. Applicant also operates a daycare with a curriculum, albeit with religious overtones rather than strictly educational. However, Applicant has cited no law that provides that education for children under kindergarten age is mandated by the State of Illinois. Applicant simply asserts that:

Rogy’s is nearly 100% dissimilar to the instant case, for three principal reasons. First Rogy was a for profit day care, Heartland is not-for profit. Further *Rogy* dealt with sales and use tax, not property tax. Had Rogy been not-for-profit it still would have won due to a specific exemption for such entities. Second, there was a failure of evidence in *Rogy* as to the curriculum it offered. Here the evidence was massive and unchallenged. And third, *Rogy* assumed the State does not offer pre-k school itself, but it does. *Rogy* is bad law. (Applicant’s Brief p. 11)

I cannot agree. First, there is no law that states that simply being a not-for-profit entity would qualify that organization for exemption in the state of Illinois for Retailers’ Occupation taxes and related taxes or for property tax. Second, case law provides that it is instructional to look at other types of tax decisions when analyzing exemption requests³. There was no failure of evidence in Rogy’s New Generation, Inc. v. Department of Revenue, *supra*. Rather the expert in early

childhood education testified that the educational materials and instructional materials were very appropriate for the age group of the children. Rogy's New Generation, Inc. v. Department of Revenue, at 769. Third, Applicant has not shown that the State of Illinois offers pre-kindergarten school. As there is no course of study mandated for pre-kindergarten children, Applicant cannot do so.

Instead, Applicant asserts that pre-school programs such as project Help and Head–Start are offered to children under six years of age and those programs are funded by tax dollars. (Applicant's Brief pp. 11-12). Because pre-kindergarten children also enter Faith Builder's programs, Applicant asserts it is saving the state tax dollars and relieving a governmental burden. (Tr. pp. 43-44; Applicant's Brief pp. 10-11) However, Applicant failed to establish that its program adheres to the mandates of the Head Start Act (42 U.S.C. 9840) or that its clients qualify for the income eligibility for the Head Start Program. The Head Start Program references the official poverty line. The Head Start Regulations, Title 45 of the Code of Federal Regulations, Parts 1301 through 1311, state the required operating procedures and services Head Start programs are to provide to the children and families they serve. Applicant has provided no evidence that it is a grantee of the Head Start Program or that it adheres to the federal regulations necessary to be part of the Head Start Program. I therefore find the assertion that Applicant is relieving a governmental burden with its pre-kindergarten programs, to be unsubstantiated.

However, Faith Builders has established that Heartland Academy and the kindergarten program provide a curriculum of study that corresponds to public school instruction for children of the same ages. The curriculum comes from Accelerated Christian Education of Texas. There are 9,000 schools of that nature in 110 countries. When a child is placed in the program, the child is given a diagnostic test and placed at his/her ability level. English, math, social studies,

³ See quote from Rogy's New Generation, Inc. v. Department of Revenue, *supra*, on page 11 of this decision.

science, typing, computer, and electives comprise the course of study. A minimum number of 22 credits are required to graduate. Heartland Academy and Accelerated Christian Education have chosen not to be accredited by state government agencies. State government accreditation is not necessary for a graduate who wishes to enroll in a college or university. (Dept. Ex. No. 2)

The Academy students use the kindergarten/library and computer room, which is 420 square feet, the school age playroom, which is 700 square feet, and the academy area, which is 25' 11⁷/₈" by 29' 6¹/₈", for educational purposes. The Revenue Act allows different portions of real property to be taxed and exempted on the basis of the relevant test for exemption. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Where property is used for two purposes, one of which would exempt it from taxation and the other would not, it is proper to assess and levy tax against that part of the property that is devoted to a use not exempt from taxation and not to tax the portion that qualifies for exemption. City of Mattoon v. Graham, 386 Ill. 180 (1944), City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955), People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957)

Based upon the foregoing, I recommend that Coles County Parcel Index No. 06-0-04764-00 remain on the tax rolls for the 2002 assessment year, except for the portion used by the Academy and kindergarten. I recommend that those areas be granted an exemption from May 10, 2002 through December 31, 2002 or for 65% of the 2002 assessment year, the period of time that Faith Builders owned the subject property.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: February 15, 2005