

**PT 06-14**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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<b>TIMOTHY CHRISTIAN SCHOOLS,</b>  Applicant  v. <b>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS</b>	}	Docket Nos. 04-PT-0065 03-16-1329  PINs 15-22-107-003, 004, 005  John E. White, Administrative Law Judge
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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Bruce Van Heukelem, Hoogendoorn & Talbot, LLP, appeared for Timothy Christian Schools; Shepard Smith, Special Assistant Attorney General, appeared for the Illinois Department of Revenue

**Synopsis:**

This matter arose after Timothy Christian Schools (“TCS”) protested the Illinois Department of Revenue (“Department”) denial of its application for a non-homestead property tax exemption for property TCS owned during part of calendar year 2003, and which is situated in Cook County, Illinois. The issue is whether taxpayer is entitled to a charitable property tax exemption for that property for the period from 2/17/03 to 12/31/03.

The hearing was held at the Department’s offices in Chicago. TCS presented documentary evidence consisting of books and records and other documents, as well as the testimony of witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the issue be

resolved in favor of the Department.

**Findings of Fact:**

1. TCS is an Illinois not-for profit corporation. Applicant Ex. 2 (copy of TCS's Constitution & Bylaws).
2. On May 26, 2000, the Department issued exemption identification number E 9991-2465-04 to TCS, after concluding that TCS was organized and operated exclusively for educational purposes. Applicant Group Ex. 1.
3. TCS's mission is to provide Christian education for students. Applicant Ex. 2, Art. X, § A; Hearing Transcript (Tr.), pp. 9-12 (testimony of David Larsen (Larsen), TCS's Director of Development).
4. TCS operates a religious school serving approximately 1,100 students in kindergarten through twelfth grades, in Elmhurst, Illinois. Tr. pp. 10, 23 (Larsen); Applicant Ex. 2.
5. In approximately 1999, TCS's board of directors and parent support groups began to discuss the possibility of starting a resale shop to aid TCS in its religious and charitable mission of supporting parents in pursuing Christian day school education primarily through financial aid tuition assistance being provided by the shop's revenues. Tr. p. 16 (Larsen).
6. Later, in 2001 and 2002, TCS included within these discussions three Chicago-based Christian religious schools: Day Star Christian School in the South Loop neighborhood; Kimball Community Christian School in the Humboldt Park neighborhood; and Chicago West Side Christian School in the Lawndale

neighborhood. Tr. pp. 16-17 (Larsen); *see also* Applicant Exs. 7-9 (respectively, copies of brochures and other materials (for example, Articles of Incorporation, Illinois Secretary of State documents, by-laws, IRS letters notifying corporation regarding exempt status pursuant to Internal Revenue Code § 501(c)(3)) describing, respectively: Daystar School (Daystar); Humboldt Community Christian School (Humboldt); and Chicago West Side Christian School (West Side)).

7. TCS, Daystar, Humboldt and West Side are all members of an umbrella organization called Christian Schools International (Tr. pp. 35-36 (Larsen)), and are, themselves, organizations having exempt status pursuant to 26 U.S.C. § 501(c)(3). Applicant Exs. 7-9; IRS Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986 (available online at <http://apps.irs.gov/app/pub78>).
8. On or about December 17, 2002, Larsen met with others assigned to a thrift store task force to discuss issues regarding TCS's proposed thrift store. Applicant Ex. 5 (memo by Larson to TCS's Finance Committee). The task force made the three following three recommendations to TCS's Finance Committee: (1) "that the [TCS] share of the proceeds from the thrift shop be used to offer an across-the-board tuition reduction granted to each student. At the same time, all families will be given the option of applying their grant(s) toward the [TCS] tuition assistance fund for the benefit of the neediest [TCS] families and students"; (2) "that the revenue [of the thrift store], after operating expenses, be divided among the four schools according to this formula: 50% to [TCS] and 16.666% to each of the other

three partner schools”; (3) “that the operation employ a professional manager, preferably someone with retail management experience.” Applicant Ex. 5.

9. On February 3, 2003, TCS’s Executive Committee approved a resolution that provided:

RESOLVED, that the corporation has properly entered into a real estate contract for the purchase of the land and building located at 1700 W. Roosevelt Road, Broadview, Illinois and the closing on the purchase thereof. Mr. Dan Van Prooyen, Superintendent, is authorized to execute any closing documents necessary to effectuate the real estate transaction. The purpose of this real estate transaction is to obtain a site to establish a thrift shop to raise funds to further the religious educational and charitable mission of [TCS]. The intent of [TCS] is that the subject real estate will be used for the stated purpose starting immediately upon TCS’s purchase of the real estate after any necessary rehab and set-up. The subject real estate is identified for Cook County, Illinois real estate tax purposes as permanent tax index numbers: 15-22-107-003-000, 15-22-107-004-000, and 15-22-107-005-000.

Applicant Group Ex. 1; Applicant Ex. 3 (July 2, 2004 Affidavit of Larsen, which TCS submitted with its exemption application).

10. In March 2003, on the recommendation of TCS’s finance committee, TCS’s board of directors adopted the TCS thrift store task force’s three recommendations. Tr. p. 29 (Larsen).
11. On February 17, 2003, TCS purchased the property commonly known as 1700 Roosevelt Road, which is the subject of this matter. Applicant Ex. 3; Department Ex. 1.
12. The New to You thrift store opened and began operating on June 14, 2003. Applicant Ex. 4 (article, originally published in the Elmhurst Independent newspaper, reprinted in the Winter 2004 edition of the Reflector, a quarterly TCS

- publication); Tr. pp. 27-28 (Larsen), 66-67 (testimony of Colette Valrie (Valrie), New to You Thrift Store's manager).
13. According to Larsen's estimate, TCS distributed approximately \$200,000 in total revenues from the time the thrift store began to operate until the hearing date. Tr. p. 23 (Larsen).
  14. New To You Thrift Center NFP (New to You) is an Illinois not-for profit corporation. Department Ex. 2 (copy of New to You's articles of incorporation), pp. 1-2.
  15. New To You's Articles of Incorporation set out the following corporate purposes:

Article 4. The purpose for which this corporation is organized are:  
The purpose or purposes for which the corporation is organized are exclusively for educational, charitable, and religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code"), or corresponding provisions of any subsequent federal tax laws, including the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code, provided that such activities are permissible under the Illinois General Not-for-Profit Act of 1986, as amended from time to time.

Department Ex. 2, p. 1 (art. 4).
  16. New to You has three directors on its board. Department Ex. 2, p. 1.
  17. Each New to You director is chosen by TCS's board of directors, and each serves at the behest of TCS's board. Tr. pp. 37-38, 41 (Larsen).
  18. Larsen considered New To You's board of directors as a management arm of TCS's board. Tr. p. 37 (Larsen).
  19. New to You's board manages the funds received by New to You's thrift store operations, then notifies TCS of the amount of disbursements that will be made to

- TCS. Department Ex. 2, p. 9 (copy of minutes from New to You's board meeting of (10/9/03)) (report from New to You's finance & legal committee, recommending that New to You make its first payouts to TCS and to Daystar, Humboldt and West Side); Tr. pp. 37 (Larsen), 53-55 (testimony of one of New to You's Directors, in 2003, George Hoekstra (Hoekstra)).
20. New to You makes quarterly payments of its net income to TCS and to Daystar, Humboldt and West Side. Tr. pp. 60 (Hoekstra), 77 (testimony of Gene Potoka (Potoka), Daystar employee), 87 (testimony of Debra Flores (Flores), Humboldt's principal), 95-96 (testimony of Mary Post (Post), a West Side employee and member of its administrative team).
  21. Colette Valrie is the only paid employee working at the New to You thrift store. Tr. pp. 50, 52 (Hoekstra); *see also* Applicant Ex. 5, p. 2.
  22. Valrie is a TCS employee, and New to You reimburses TCS for the salary TCS pays her for her services at the New to You thrift store. Tr. p. 50 (Hoekstra).

### **Facts Regarding New to You Thrift Store's Operations**

23. The store opens at 10:00 a.m., Mondays through Saturdays. It closes at 4:00 p.m. on Mondays through Wednesdays and Fridays, at 8:00 p.m. on Thursdays, and at 3:00 p.m. on Saturdays. It is closed on Sundays. Tr. pp. 56-57 (Hoekstra).
24. Colette Valrie is the only paid employee working at the New to You thrift store. Tr. pp. 50, 52 (Hoekstra), 61-62 (Valrie); *see also* Applicant Ex. 5, p. 2. Valrie's annual salary is approximately \$45,000. Tr. p. 62 (Valrie).
25. Valrie's duties include, *inter alia*, scheduling and directing volunteers who work at the store, performing the daily and weekly accounting for the store,

- communicating with the store's accountant, ordering supplies, scheduling pick-ups and deliveries of furniture, and determining the prices at which goods should be sold. Tr. pp. 62-64 (Valrie). Valrie also leads prayers at the beginning of each day for volunteers at the store. Tr. pp. 64-65, 68 (Valrie).
26. Volunteers who work at the New to You thrift store include parents, teachers and students at TCS's school, and parents, teachers and others from Daystar, Humboldt and West Side. Tr. pp. 65-66 (Valrie), 74, 79 (Potoka), 90-91 (Flores), 99-100 (Post).
27. Valrie attends New to You board meetings, to report to the board regarding operations at the store. Department Ex. 2, pp. 7-10; Tr. pp. 67-68 (Valrie).
28. All goods sold at the store are donated. Tr. p. 64 (Valrie).
29. Valrie receives direction from TCS, through Hoekstra, regarding how it wants the store managed. Tr. pp. 69-71 (Valrie).

**Facts Regarding the Use of Fund Received by TCS, Daystar, Humboldt and West Side From the New to You Thrift Store**

30. TCS uses the funds received from New to You's operations as credits to be used by parents for each child attending TCS's school. The parents do not actually receive money from TCS; rather, the credit is applied to reduce the parents' cost of tuition for the student(s) attending the school. Tr. pp. 19-20 (Larsen).
31. DayStar uses the funds received from New to You's operations for its financial aid program, to make up the difference between Daystar's tuition, and a parent's ability to pay that amount. Tr. pp. 80-81 (Potoka).
32. Humboldt uses the funds received from New to You's operations for its general fund, which is used to pay teachers' salaries, buildings costs, etc. Tr. p. 87

(Flores).

33. West Side uses the funds received from New to You's operations as part of the donations it receives to fund the school. Tr. p. 92 (Post).

**Conclusions of Law:**

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970).<sup>1</sup> 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, 213 Ill. 2d at 286-87, 821 N.E.2d at 248.

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-65 of the Property Tax Code (PTC), which 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:

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- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the

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<sup>1</sup> Article IX, § 6 of the Illinois Constitution of 1970 provides:

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.

Ill. Const. Art. IX, § 6 (1970).

income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

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35 ILCS 200/15-65.

When analyzing the relationship between Article IX § 6 of the Illinois Constitution and property tax exemption statutes such as PTC § 15-65, in Eden, the Illinois Supreme Court reaffirmed what it had held years ago, in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 155, 233 N.E.2d 537, 540 (1968):

Since the terms of article IX of the constitution subject all property generally to taxation, the courts have strictly construed statutes granting tax exemptions and have insisted that they keep clearly within the boundaries set forth in the constitution. [citations omitted] The burden of proving the right to exemption is upon the party seeking it, and in determining whether property is included within the scope of an exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. [citations omitted] Plaintiffs must show that its organization and the use of its property came within the provisions of the statute *and the constitution*.

Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248 (*quoting* Methodist Old Peoples Home, 39 Ill. 2d at 155, 233 N.E.2d at 540) (emphasis added by Eden court).

The Department denied an exemption for the property at issue after determining that the property was not in exempt use. Department Ex. 1. Thus, and pursuant to PTC § 15-65(b), TCS has the burden to show, *inter alia*, that the property was actually and exclusively used for charitable purposes during the period at issue. 35 ILCS 200/15-65(b); Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248.

### **Arguments and Analysis**

The Department sets forth three issues in its brief: (1) whether TCS qualifies for

the exemption under the applicable statutory provision; (2) whether that statutory section preempts the guidelines articulated by the Illinois Supreme Court in Methodist Old Peoples Home v. Korzen;<sup>2</sup> and (3) whether TCS satisfies the Korzen guidelines. The Department argues that TCS does not qualify under 35 ILCS 200/15-65(b) because TCS is not the entity that is using the property to conduct thrift shop activities. Department's Brief, p. 3. Going further, the Department asserts that certain documents of record establish that New To You owns the thrift shop, and that New to You uses the income from the thrift shop for its own benefit. The documents the Department cites to support these two separate factual propositions consist of a copy of the application completed to obtain a village business license for the thrift shop, and a copy of minutes from a New to You board meeting. Department Ex. 2.

The application for a business license itself is a pre-printed form document, with lines, boxes and spaces where an applicant is to provide the requested information. Department Ex. 2, p. 4. Section 1 of that form document asks the applicant to provide the business name, the "D/B/A" (doing business as) name, and, *inter alia*, the address and telephone number(s) for the business. *Id.* On the places provided for, the business name was listed as "'New to You' Upscale Resale Shop." *Id.* In the place for the D/B/A name, which is directly underneath the business name, the following words appear: "owner: Timothy Christian Schools, Elmhurst[.]" There is a single line drawn through those words, indicating that someone intended to, and did, strike out those words. *Id.* Section 1 of the form also sought information regarding the form of the business, in response to which the applicant provided New to You's corporate information. *Id.* Section 2 of the

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<sup>2</sup> I do not address this second argument within the recommendation because TCS has never asserted that it does not have to satisfy the Illinois Constitution's requirements for exemption.

form sought information regarding the owners/partners/officers of the business, and the applicant provided the names and addresses of New to You's president, vice-president, secretary and treasurer. *Id.*

Section 3 of the form sought information regarding the nature and a brief description of the business, to which the applicant responded: "Retail Store & Upscale Resale" and "The resale shop will be run by a professional manager and a staff of volunteers, selling clothing, furniture, jewelry, housewares, appliances and electronics. The revenue provided by the store will benefit Timothy Christian Schools in Elmhurst and three urban Christian Schools in Chicago: West Side in Lawndale, Humboldt in Humboldt Park and Daystar in the South Loop. The benefit will be in tuition assistance. The shop will also benefit the Village by providing a service to the community, sales tax revenue, and a class operation." Department Ex. 2, p. 4. Section 3 of the form further sought the identity of the name, address and telephone numbers of the applicant for the license. *Id.* In response, the applicant was identified as "David Larsen, Director of Advancement, Timothy Christian Schools."

Section 4 of the form sought information regarding the business profile, including the names of the president, vice-president and treasurer, three business contacts, as well as the business' hours of operation, number of employees, seating capacity, number of company vehicles, and whether there was vending equipment and/or hazardous materials on the premises. *Id.* Section 5 of the form sought information regarding the property itself, including whether it was owned or leased, the size of any buildings and/or parking facilities on the property, and, if the property was leased, the property owner's name and address. *Id.*

I cannot agree that this document establishes that New to You, and not TCS, owned the thrift shop. It certainly establishes that New to You has a property interest in the business license issued for the shop. *See Balmoral Racing Club, Inc. v. Illinois Racing Board*, 151 Ill. 2d 367, 405-06, 603 N.E.2d 489, 505-06 (1992) (occupational license constitutes property right, for due process purposes). The completed form does not, however, establish that New to You owns the shop itself. Rather, the questions and responses on the form just as easily lead to a conclusion that while New to You operates the shop, it operates it for TCS, whose officer applied for that license. In that way, the license application corroborates the testimonial evidence offered by TCS's witnesses. That conclusion, moreover, is consistent with other documentary evidence of record. Applicant Ex. 1 (TCS's February 3, 2003 executive committee resolution).

I now review the minutes of New to You's board meeting, to determine whether it establishes that New to You's receipt of income from the store means that it profits from the thrift shop's operations. The minutes start with a heading and the date and time of the meeting, as well as a list of the members present for the meeting. Department Ex. 2, p. 7. The next entry reflects that the minutes of the last meeting were approved, with a correction of the spelling of a board member's name. *Id.* The next entry reflects the substance of the manager's report, by Colette Valrie. *Id.* That entry begins with the following statements: "The store has reached the \$100,000 mark. We are making about \$8000 per week. Customers are increasing, but the volunteer base remains the same. Everything is selling; there is a steady flow of furniture in and out of the store. There is a story in the Broadview Bulletin — word is spreading about the store." *Id.* Further entries include summaries from reports from board members involved with the following listed

committees: operations and facilities (*id.*, p. 8); finance and legal (*id.* p. 9) volunteer management (*id.*); and marketing and promotions (*id.*). Finally, the minutes reflect a summary of the new business discussed, and the ending time of the meeting. *Id.* p. 10.

Clearly, the minutes indicate that New to You receives income from operating the store, but the mere receipt of income does not constitute profit, as that term is understood for purposes of the Korzen guidelines. *E.g.*, Randolph St. Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068, 735 N.E.2d 100, 107 (1<sup>st</sup>. Dist. 2000). But the minutes are also consistent with TCS's position at hearing — that New to You turned over to TCS the net income from New to You's operation of the thrift store, part of which TCS would then use to provide tuition credits for parents of its own students, and the rest of which it gave to three other religious schools. Department Ex. 2, pp. 7-9. The Department, therefore, has not persuaded me that the minutes establish that New to You obtains some profit from its operations that is inconsistent with TCS's claimed charitable purpose.

The final statement in this section of the Department's brief is, "Accordingly, [TCS] will not meet the first part of b) as *it* is not using the property for thrift shop activities." Thus, the Department asserts that the record clearly shows that a person other than TCS — New to You — is "us[ing] the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner," whereas the clear text of the statute reflects that the exemption ought to be granted only where the "owner [of the property], *and no other person*, uses the property exclusively for [such purposes] ...." 35 **ILCS** 200/15-65(b) (emphasis added). This is a critical point that is directly related to the scope of the statutory exemption. New to You is a person

that is distinct from TCS.

In its reply, TCS argues that the record shows that it is using the property for the purposes required by PTC § 15-65(b). TCS's Reply, pp. 1-4. That argument is certainly supported by considerable evidence in the record, but it misses the point of the Department's argument. The statute does not, as TCS suggests, "state[ ] *only* that to qualify for an exemption from tax, the owner of the property 'use' it exclusively for resale shop purposes." *Id.*, p. 2 (emphasis added). Rather, the statute provides an exemption for "[b]eneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, *and no other person*, uses the property exclusively ... [for exempt purposes]." 35 **ILCS** 200/15-65(b) (emphasis added).

What TCS would have me do, then, is to read PTC 15-65(b) in one of three ways: (1) to read the words "and no other person" out of PTC § 15-65(b); (2) to understand the phrase "owner, and no other person, uses the property ..." to mean that a person, other than the beneficent or charitable organization/property owner, that operates a thrift store on behalf of the owner (for example, an agent), was not intended to be included within the class of "no other person ...[;]" or (3) to understand the phrase "owner, and no other person, uses the property ..." to mean that a person, other than the beneficent or charitable organization/property owner, that operates a thrift store on behalf of the owner need not be considered a "use[r]" of such property.

Each of these approaches involves a question of statutory interpretation. The primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language. Swank v. Department of Revenue, 336 Ill. App. 3d

851, 857, 785 N.E.2d 204, 209 (2d Dist. 2003) (*citing* Davis v. Toshiba Machine Company, America, 186 Ill. 2d 181, 184-85, 710 N.E.2d 399 (1999)). In addition, where the language of a statute is clear and unambiguous, a court must give it effect as written, without reading into it exception, limitations or conditions that the legislature did not express. *Id.* Within the plain text of PTC 165-65(b), the words “and no other person”, coming immediately after the word “owner,” plainly refer to *any* person other than the owner.

If the Illinois General Assembly intended the words “owner, and no other person,” to reflect that to be exempt, only the property owner may use the property for such purposes, then the statute must be read to give effect to that intent. Kraft v. Edgar, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990). That is how I construe the plain and clear text of PTC § 15-65(b). More graphically, the plain text of PTC 15-65(b) reflects that, for property to be exempt pursuant to that provision:

- the property must be actually and exclusively used for charitable or beneficial purposes, and not leased or otherwise used with a view to profit; **and**
- the property must be owned by a beneficial or charitable organization that is incorporated in any state of the United States; **and**
  - **if** the property is used exclusively for the distribution, sale, or resale of donated goods and related activities, **then**
    - the beneficial or charitable organization/property owner, and no other person, must be the one that uses the property for such purposes, **and**
    - all the income from those activities must be used to support the charitable, religious or beneficial activities of the owner, regardless whether such activities occur on the property.

35 **ILCS** 200/15-65; *see also* Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248. This bullet-point graphic reflects that property owned by a beneficial or charitable organization incorporated in any state of the United States does not have to be used as a thrift store to be exempt, so long as such property is actually and exclusively used for charitable or

beneficent purposes, and not leased or otherwise used with a view to profit. *E.g.* Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 606, 795 N.E.2d 361, 364 (3d Dist. 2003). If, however, the property *is* used exclusively for the distribution, sale, or resale of donated goods and related activities, the more specific criteria set forth in PTC § 15-65(b) must also be met, in addition to the criteria set forth in the opening paragraph of PTC § 15-65. *See Eden*, 213 Ill. 2d at 287, 821 N.E.2d at 248. Here, the conditions of PTC § 15-65(b) are not met because New to You, a legally distinct person other than the property owner, is using the property. Department Ex. 2, pp. 1-2, 4-10.

In another part of its reply brief, TCS notes that the predecessor statute to PTC § 15-65(b) was amended by the legislature in response to the decision in Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 524 N.E.2d 628 (2d Dist. 1988). That is certainly correct, but that does not help TCS on this point. After the court's decision in Salvation Army, the Illinois General Assembly added the following language to then § 19.7 of the PTC:

\*\*\* For purposes of this Section, beginning with assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of the property.  
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35 ILCS 205/19.7 (Smith Hurd 1993) (Historical and Statutory Notes) (P.A. 86-264, § 1, eff. January 1, 1990)). Thus, in both the prior amendment to former § 19.7 of the PTC and in current § 15-65(b), the legislature made its intent clear that, for property to be

exempt under each particular provision, it must be used by the “owner, and no other person ...” 35 ILCS 200/15-65(b); 35 ILCS 205/19.7 (Smith Hurd 1993). I cannot read the Illinois General Assembly’s persistent use of that phrase as though it were not there, or as though the words the legislature repeatedly chose to use in those successive provisions do not mean what they say.

Finally on this point, I conclude that even if New to You only operates the thrift store as an agent of TCS, I would still agree that its operation of the store, and its occupancy of the property, mean that it “uses” the property, as that term is used in PTC § 15-65(b). When making this conclusion, I rely on the ordinary and popularly understood meaning of the word. Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill. 2d 262, 270, 695 N.E.2d 481, 485 (1998) (“Each undefined word in the statute must be ascribed its ordinary and popularly understood meaning.”). When used as a verb, the word “uses,” means, “To put into service or apply for a purpose; employ.” The American Heritage Dictionary of the English Language Houghton Mifflin Company (4<sup>th</sup> Ed. 2000) (online version via dictionary.com). As a noun, the meanings of the word “use” include, “Law. [a] Enjoyment of property, as by occupying or exercising it; [b] The benefit or profit of lands and tenements of which the legal title and possession are vested in another; [c] The arrangement establishing the equitable right to such benefits and profits.” *Id.* Thus, the ordinary meaning of the word “uses,” when the object of the verb is property, include the acts of operating something on the property, or occupying the property.

Illinois law further confirms that when a person occupies property, or operates an activity on a particular parcel of property, regardless whether the activity is for profit or not for profit, the person is using that property. *E.g.* DuPage Co. Airport Authority v.

Department of Revenue, 358 Ill. App. 3d 476, 479, 831 N.E.2d 30, 34 (2d Dist. 2005) (“A portion of the Flight Center building was occupied in 1999 by Alumax Extrusion Company, but that tenancy expired in July 1999 and the space is now used by plaintiff [DuPage Co. Airport Authority] for its office and incidental uses. All of the lessees occupying the nonexempt space in the Flight Center building (other than plaintiff) are private, for-profit commercial entities. Except according to the terms of the leases, plaintiff did not operate or maintain any of the nonexempt space in the Flight Center building other than the space it occupied.”). In another context, the Illinois Supreme Court has held that, “the phrase ‘use of the public right of way’ refers to the physical occupation of those rights-of-way by a telecommunication provider’s infrastructure.” Primeco Personal Communications v. Illinois Commerce Comm., 196 Ill. 2d 70, 95, 750 N.E.2d 202, 216 (2001) (interpreting the text of the Telecommunications Municipal Infrastructure Maintenance Fee Act, 35 **ILCS** 635/1 *et seq.*). Here, New to You occupies and operates a thrift store on TCS’s property; therefore it uses that property. 35 **ILCS** 200/15-65(b).

Since TCS and New to You are separate persons, and since New to You “uses the property ...,” the property does not meet the statutory criteria for exemption. 35 **ILCS** 200/15-65(b). This is true even if “all the income from [New to You’s] activities [were] used to support the charitable, religious or beneficent activities of the owner ....” *Id.*

I now address the parties’ arguments regarding whether TCS uses the property exclusively for charitable purposes. When considering whether property is used exclusively for charitable purposes, Illinois courts and the Department follow the guidelines first enunciated by the Illinois Supreme Court in Methodist Old Peoples

Home, and which were more recently upheld in Eden. Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248. Those guidelines ask whether:

- (1) the organization applies benefits for an indefinite number of persons for their general welfare or which benefits in some way reduce the burdens on government;
- (2) the organization has any capital, capital stock, or shareholders that profit from the enterprise;
- (3) the organization derives its funds mainly from private and public charity, and holds those funds 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) the primary purpose for which property is used is charitable or beneficent, and not any secondary or incidental purpose.

Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248 (*citing* Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d 537). Each separate Korzen guideline constitutes a fact question on which the taxpayer bears the burdens of proof and production. *See id.*

There are two points to make before I begin this discussion. First, the Illinois Supreme Court has reaffirmed that an owner must meet the Korzen guidelines to satisfy the Illinois Constitution's requirements that property be used exclusively for charitable and beneficent purposes. Eden, 213 Ill. 2d at 290, 821 N.E.2d at 250. Second, most of the Department's arguments regarding the different Korzen factors concern TCS's failure to introduce financial books and records to document the nature and extent of its financial activities regarding the property at issue, and to document the use to which it put such funds. Instead of offering such regularly kept books and records, the Department contends that TCS merely offered witnesses' testimony to establish, for example, that it received no profit from operating the thrift store, and that all of the funds were dedicated

to the purposes claimed. Department's Brief, pp. 5-8. TCS responded to the Department's argument that a case decided under the Retailers' Occupation Tax Act (ROTA), Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 242 N.E.2d 205 (1968), should not be used as support for the Department's argument that a property tax applicant must introduce financial records to support its claim that it uses property for exclusively charitable purposes. TCS's Reply, pp. 5-6.

I cannot agree with TCS's argument regarding Copilevitz. What Korzen and Copilevitz share in common is that they are both tax cases — different types of tax, to be sure — but tax cases nevertheless. The state's traditional and long-standing requirement that, in tax cases, taxpayers be required to prove any claim of deduction, exemption, or other claim of nontaxability with regularly-kept financial books and records is based on the commonsense acknowledgement that taxpayers, and not the state, are in the best position to know, document and prove the facts regarding their own actions and operations. The Court in Korzen, for example, made clear that “the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used ....” Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542.

The Korzen Court's acknowledgement that a organization claiming a charitable exemption for property must be able to document that the property is actually being used exclusively for charitable purposes is entirely consistent with the Copilevitz Court's acknowledgement that a retailer must prove its claim that certain receipts were exempt from taxation with regularly kept books and records. Similarly consistent with this

approach, persons recognized by the Internal Revenue Service as tax-exempt organizations under the Internal Revenue Code are required to keep regular financial books and records (IRS Pub. 4221, Compliance Guide for 501(e)(3) Tax-Exempt Organizations, Catalog No. 37054E (September 2003), pp. 4-8; IRS Pub. 1828, Tax Guide for Churches and Religious Organizations, Benefits and Responsibilities Under the Federal Tax Law, Catalogue No. 21096G (September 2003), p. 17),<sup>3</sup> and the same is true for Illinois not-for-profit corporations. 805 ILCS 105/107.75. Further, TCS's own by-laws require it to keep and maintain regular financial books and records. Applicant Ex. 2 (By-laws), Art. 10. Thus, when TCS argues, for example, that neither New to You nor it has received any profit from its use of the property, it is not improper for me to conclude that TCS has not supported that argument with regularly kept books and records that document the facts required to support such a conclusion. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542.

The first guideline asks whether TCS's use of the property provides benefits for an indefinite number of persons for their general welfare or which benefits in some way reduce the burdens on government. Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248. The Department contends that since the benefits from the thrift shop are used to reduce the cost of tuition for students at TCS's school, and at the three urban religious schools, such benefits are targeted to a defined group of persons, and thus, TCS cannot satisfy the first factor. Taxpayer counters that TCS's students, and the students at the other three inner-city religious schools, constitute an ever-changing group of persons. TCS also argues that it meets the first Korzen guideline since its activities on the property "in some way

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<sup>3</sup> Publication 4221 is viewable online at <http://www.irs.gov/pub/irs-pdf/p4221.pdf>.  
Publication 1828 is viewable online at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

reduce the burdens of government.’ ” TCS’s Reply, pp. 4-5. TCS argues that by directly reducing the costs of tuition at its religious school, TCS’s activities help to prevent the State of Illinois from being required to educate those students, who might otherwise be required to attend government schools. *Id.*, p. 5.

TCS is organized and operated as a religious educational organization. Those benefited by TCS’s activities include not just the universe of those students actually attending (more properly, the parents of students actually attending) TCS’s and the other religious schools, but, as TCS’s argument implies, the universe of parents who might choose to send their children to TCS’s religious school. While I am hesitant to characterize this group of potential beneficiaries as indefinite, I agree that the activities conducted on the property directly reduce parents’ cost of having their children attend TCS’s religious schools. The State of Illinois has the primary responsibility to fund public education in free public elementary and high schools. Ill. Const. 1970, art. X, § 1; Comm. For Educational Rights v. Edgar, 174 Ill. 2d 1, 10, 672 N.E.2d 1178, 1183 (1996). Logically, every elementary or secondary student enrolled in a religious day (i.e., full time) school eliminates the State’s burden to provide free education *for that student*. Similarly rational, reducing the cost of attending a religious school helps parents to keep a child enrolled in a non-governmental school. In this way, TCS’s activities on the property help to reduce the burdens on the State. Thus, I conclude that TCS has satisfied the first Korzen guideline.

I discuss the second and third guidelines together. The second Korzen guideline asks whether the organization has any capital, capital stock, or shareholders that profit from the enterprise. Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248. The third Korzen

guideline asks whether the organization derives its funds mainly from private and public charity, and holds those funds in trust for the objects and purposes expressed in the organization's charter. *Id.* The Department argues that TCS has failed to satisfy the second and third Korzen guidelines because it has offered no financial records as evidence to show its sources and disbursements of its funding, or whether anyone profits from its organization. Department's Brief, pp. 4-5.

The Department views the tuition reductions given here as a form of profit that TCS primarily intended to benefit — and which actually benefited — the families attending TCS's school. Department's Brief, p. 5. Profit, as used in the Korzen guidelines, refers to whether a benefit inures to any private individual associated with the organization, or whether members of an organization obtain some benefit that is not available to nonmembers. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470, 654 N.E.2d at 276. Part of TCS's by-laws provide that it will establish a fund to provide “financial assistance for the benefit of students whose parents are not financially able to pay the full tuition ...” (Applicant Ex. 2 (Timothy Foundation by laws)), and one of its witnesses testified that parents could disclaim the tuition reductions offered to them, and such amounts would then be included within that “neediest students” fund. Tr. p. 20 (Larsen). Those facts may be true, but TCS failed to offer any financial books and records to establish, in fact, that it provided financial assistance to students whose parents were unable to pay full tuition. Without such evidence, I have no proper, evidentiary basis upon which to dispute the Department's argument that half of the net profits derived from TCS's operations on the property were used to provide a direct benefit to persons who are analogous to fully-paid members of

TCS. *See* Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470, 654 N.E.2d at 276; DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 900-01, 532 N.E.2d 1116, 1119-20 (2d Dist. 1988).

This record establishes that half of the net profits of the thrift store are intended primarily to benefit only the parents who pay to have their children attend TCS's school. Therefore, I must agree with the Department's argument that TCS has not established that it satisfies the second Korzen guideline. For the same reason, TCS has not satisfied the third Korzen guideline. I can discern from this record neither the sources of TCS's funding, nor the facts regarding its use of such funds.

The fourth and fifth Korzen guidelines ask, respectively, whether charity is dispensed to all who need and apply for it, and whether obstacles are placed in the way of those seeking benefits. Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248. Regarding the fourth factor, the Department asserts that granting tuition reductions to all students at TCS's religious school does not constitute charity, because the beneficiaries are too closely related to TCS itself. Department's Brief, p. 6. The Department contends that the tuition credits especially do not constitute charity, since taxpayer TCS failed to establish that any such monies were given to TCS's Special Needs Fund because some parents chose not to take advantage of the tuition credits TCS distributed to all students. The Department further urges that TCS's distribution of monies to the three inner-city religious schools does not constitute charity because TCS failed to establish that each such school meets all of the Korzen guidelines. *Id.* Regarding the fifth Korzen guideline, the Department argues that TCS has placed obstacles in front of persons it does not serve by failing to notify such persons of the benefits it makes available to others. Department's Brief, p. 7.

I have already concluded that TCS has not borne its burden of producing competent, documentary evidence to prove that its tuition reductions to parents otherwise able to pay full tuition at its school constitutes charity, because such reductions are more akin to a benefit given to a fully-paid member of an organization that is not available to someone not able to pay for such membership. This conclusion, again, is based on the state of the record before me. Thus, I conclude that TCS has not satisfied the fourth Korzen guideline.<sup>4</sup>

I must further conclude that TCS has not clearly and conclusively established that it does not place obstacles before those who receive tuition reductions from TCS's activities at its thrift shop. Without documentary evidence showing that TCS, in fact, reduces or eliminates tuition for those unable to pay, the obvious impediment faced by those entitled to receive the reductions is that they must first be able to pay full tuition before they might actually receive such a benefit. Thus, TCS has not satisfied the fifth Korzen guideline.

Finally, I address the sixth Korzen guideline, which asks whether the organization uses the property exclusively for charitable purposes. As TCS notes, after the Illinois appellate court decided the Salvation Army case, the Illinois General Assembly amended the PTC to provide that "it is a charitable or beneficent purpose and not a use with a view

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<sup>4</sup> I do not, however, agree with the Department's argument that TCS's distributions to the three other religious schools do not constitute charity. Donating money to a § 501(c)(3) organization is an act of charity. *E.g.*, IRS Publication 526, Charitable Contributions, Catalogue No. 15050A (December 2003), p. 2. Each religious school that receives such distributions from TCS is such an organization (Applicant Exs. 7-9; IRS Publication 78, Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986 (available online at <http://apps.irs.gov/app/pub78>), and the Department does not cite any authority for the proposition that TCS must prove that each religious school satisfies the Korzen guidelines before its gifts to such organizations may be considered charity.

to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of the property. 35 **ILCS** 205/19.7 (1993). This record includes no such regularly kept financial books and records showing, for example, the amount of income New to You realized from its use of the property, its expenses, and the net amount of funds that were actually distributed to TCS. Similarly, TCS failed to introduce regularly kept financial books and records to show: the amount of New to You's net income used by parents to offset their children's tuition at TCS's school; the amount transferred to TCS that was not used as a credit by parents at TCS's school, and which was then transferred into TCS's Special Needs fund; the amount transferred by TCS to the three other religious schools. In other words, for the year at issue, TCS has not offered documentary evidence, closely associated with its regularly kept financial books and records, to clearly and convincingly establish that "all the income from those activities [were used] to support the charitable, religious or beneficent activities of the owner ..." (35 **ILCS** 200/15-65(b)), or to clearly and convincingly establish that it satisfies the Illinois Constitution's requirement that property be used exclusively for charitable and beneficent purposes. Eden, 213 Ill. 2d at 290, 821 N.E.2d at 250. Thus, I conclude that TCS has not satisfied this final guideline.

In sum, the evidence of record establishes that TCS has satisfied only the first Korzen guideline. TCS has not satisfied the remaining guidelines because of a failure of proof; it failed to introduce regularly kept financial books and records to document its financial activities — and New to You's financial activities — regarding their use of the

property.

**Conclusion:**

I conclude that New to You, a person other than TCS, operates and occupies and, therefore, uses the subject property. Since a person other than TCS uses the property, the property does not meet the criteria required for exemption under PTC § 15-65(b). Additionally, I conclude that TCS has not established that, during the period at issue, it used the property exclusively for charitable and beneficent purposes. Therefore, I recommend that the Director finalize the Department's tentative denial of TCS's application for a partial year property tax exemption, and that the property remain taxable for all of 2003.

Date: 1/13/2006

John E. White  
Administrative Law Judge