

PT 06-25

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.

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

No. 04 PT 0005

Real Estate Tax Exemption

**For 2003 Tax Year
P.I.N. 07-08-04-251-008**

Lee County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Timothy B. Zollinger, Ward, Murray, Pace & Johnson, P.C., on behalf of Immanuel Lutheran Church of Dixon; Mr. Gary Stutland, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether a childcare center located on Lee County Parcel Index Number 07-08-04-251-008 (hereinafter the “subject property”) qualifies for exemption from 2003 real estate taxes under either 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes and not leased or used with a view to profit is exempt from real estate taxation, or 35 ILCS 200/15-65, wherein all property actually and exclusively used for charitable or beneficent purposes and not

leased or used with a view to profit is exempt from real estate taxation. The controversy arose as follows: On August 22, 2003, Immanuel Lutheran Church of Dixon (hereinafter “Immanuel” or “applicant”) filed an Application for Property Tax Exemption for tax year 2003 with the Lee County Board of Review (hereinafter the “Board”). Dept. Ex. No. 1. The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that Immanuel be granted an exemption for the 2003 assessment year. The Department rejected the Board’s recommendation in a determination dated November 26, 2003, finding that the subject property was not in exempt use in 2003. Dept. Ex. No. 2.

On January 20, 2004, the applicant filed a request for a hearing as to the denial. An evidentiary hearing was held on August 5, 2004 before Administrative Law Judge Alan Marcus. In a “Recommendation for Disposition” dated and accepted by the Director of the Department on October 1, 2004, ALJ Marcus recommended that the subject property not be exempt from 2003 real estate taxes. On November 4, 2004, Immanuel filed a Complaint for Administrative Review of the Department’s Recommendation for Disposition. On August 19, 2005, Judge David Fritts, Circuit Court for the Fifteenth Judicial Circuit, issued an “Agreed Order” remanding the case to the Department of Revenue “for the purpose of conducting a new hearing.”

A new hearing was conducted on April 4, 2006, with Ronald B. Ferrell, pastor of Immanuel, and Scott Johnson, a member of the Immanuel congregation, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination, which denied an exemption for

assessment year 2003 for the childcare center located on the subject property, be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 2 establishes the Department's jurisdiction over this matter and its position that the childcare center located on the subject property was not in exempt use in 2003. Tr. pp. 11-12; Dept Ex. No. 2.
2. Immanuel, founded 115 years ago, is a member of the Evangelical Lutheran Church of America. Immanuel's mission is to "proclaim the gospel by providing opportunities to grow in faith and love and promote healing and wholeness in our church, community and world." Tr. pp. 17-21; App. Ex. No. 1.
3. In a "Congregational Profile" dated October 24, 1997, the Immanuel congregation was asked to "[L]ist three trends in your community which should be addressed by the congregation during the next five years." The trends listed were a growing need for childcare, limited community youth activities and Dixon Correctional Facility expansion. Tr. pp. 22-24; App. Ex. No. 2.
4. The subject property is adjacent to and east of Immanuel. The front door of Immanuel is 250 yards from the front door of the childcare center known as "Bright Beginnings Christian Daycare and Preschool" ("Bright"), located on the subject property. The property became available in 2002 when a childcare center, known as "ABC University," then located on the property closed. On September 29, 2002, a special meeting of the Immanuel congregation was called to vote on a recommendation from the Congregation Council as to whether to acquire the subject property. The

recommendation was approved by a vote of 67 “yes” to 49 “no” votes. Tr. pp. 29-30, 35-36, 81-83; App. Ex. No. 3.

5. Immanuel purchased the property on December 4, 2002. The purchase price was \$525,000. Tr. pp. 30-33, 81; App. Ex. No. 4.
6. Bright opened on May 5, 2003 with 22 students and grew to 62 students by the end of 2003. Tr. pp. 33-40, 45, 84, 87-88, 96, 119-120, 123; App. Ex. Nos. 5, 21, and 23.
7. Bright is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 40-45; App. Ex. Nos. 6 and 7.
8. Bright was licensed by the State of Illinois’ Department of Children and Family Services as a “day care center” with a capacity for 95 children effective April 29, 2003. Tr. pp. 118-119; App. Ex. No. 20.
9. Bright’s “Mission Statement” and “Parent Handbook” state that it is a “Christian preschool and day care center. We will pray with the children before meals and at the opening of the day and follow basic Christian values. At various times during the year basic Bible stories will be introduced to the children.” Tr. pp. 45-48, 56; App. Ex. Nos. 8 and 14.
10. Bright and Immanuel had a “Property and Facility Agreement” to clarify the responsibilities of each with regard to the property. Bright was responsible for everyday maintenance, and costs thereof including lawn care, snow removal, building cleaning, trash removal, testing and inspection of all building systems, minor repairs, and replacing ceiling tiles. Immanuel was responsible for capital related improvements or projects, including new construction, renovation, or replacement of

utility systems, windows, doors and roof cover. Costs of these projects “may be negotiated to determine if they will be shared.” Tr. pp. 53-56; App. Ex. No. 11.

11. There was also an oral agreement between Bright and Immanuel in which Bright agreed to make a “suggested” monthly payment to Immanuel, if possible. This payment would help offset the mortgage on the property held by Immanuel. Immanuel would financially subsidize Bright, if needed. Tr. pp. 53-54, 92-93.
12. Bright charges tuition based on the age of the child and the number of staff people required per room. Fee for infants, toddlers and two-year olds are as follows: 5 full days \$115, 5 half days \$58; 4 full days \$95, 4 half days \$48; 3 full days \$75, 3 half days \$38; 2 full days \$50, 2 half days \$25. There are lower fees for preschool children and higher fees for school age children, depending on whether they attend Bright after school during the school year or during the summer. There is a non-refundable registration fee of \$25. Tr. pp. 58-59, 89-90; App. Ex. No. 12.
13. The fee schedule was set by evaluating the general fee scale for childcare centers in Lee County. Also, Bright looked at the reimbursement provisions of the “4-C Program,” a county run program that subsidizes children in childcare centers so that parents can work. Parents fill out a form for 4-C which assists the organization in determining the parent’s ability to pay for childcare. It is the responsibility of the parent to pay the difference between the tuition charged by Bright and the amount reimbursed by 4-C. Bright submits a report of attendance of the family’s children in 4-C and Bright is reimbursed for that amount. Tr. pp. 91-92, 103-104, 134-136.
14. In 2003, Bright distributed a brochure throughout the community with the following Mission Statement: “Our mission is to provide parents with a safe, nurturing,

educational, and loving environment in which to entrust their most precious gifts—their children” The brochure states that “Bright Beginnings offers a Fee Assistance Program to families in need of tuition help.” Bright is described as a “Christian Daycare and Preschool.” Tr. pp. 60-62; App. Ex. No. 13.

15. Bright’s “Parent Handbook” contains a description of the “Fee Assistance Program.” Waiver or reduction of fees is available subject to facility and program capacity and demonstrated need. Bright seeks to serve “deserving and needy families by providing fee assistance and by linking the families to other community and federal programs that provide assistance to families.” Fee assistance will be granted on a first come, first served basis subject to budget and space restrictions identified by the Director. “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.” Fee assistance is “negotiated” with the Director of Bright. Tr. pp. 64-68, 101-104; App. Ex. No. 14.
16. Immanuel wrote checks, each for \$3,560 to Community State Bank for “daycare mortgage payment” in 2003 on January 8, February 6, March 15, April 15, May 15 and June 15. Immanuel wrote checks to Bright for “start up costs” on the following dates in 2003: January 24 (\$5,000); March 1 (\$5,000); March 18 (\$5,000); April 16 (\$5,000); April 23 (\$2,000); May 15 (\$2,450); May 27 (\$1,500); and May 10, 2003 (\$2,450). Tr. pp. 70-78, 111-114; App. Ex. No. 16.
17. On August 12, 2003, Bright borrowed \$50,000 from The First National Bank in Amboy. This loan was guaranteed by Immanuel. On August 28, 2003, Bright wrote a check to Immanuel for \$29,721.34. Tr. pp. 70-78; App. Ex. No. 17.

18. Immanuel did not submit any financial statements or other documentation, for either itself or Bright, for the year 2003, the year at issue in this matter.

CONCLUSIONS OF LAW:

An examination of the record establishes that Immanuel has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the childcare center for the 2003 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Religious Exemption: In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property

used exclusively for religious purposes ... and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

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), (hereinafter “McCullough”). Property satisfies the exclusive-use requirement of the statute if it is primarily used for an exempted purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983). Based on the evidence and testimony presented at the evidentiary hearing, I conclude that the primary use of the property at issue in this case is as a childcare center and that this use does not further any exempt religious purpose of Immanuel. I reach this conclusion for several reasons.

In a “Congregational Profile” dated October 24, 1997, Immanuel’s congregation was asked to “[L]ist three trends in your community which should be addressed by the congregation during the next five years.” The responses were a growing need for childcare, limited community youth activities and Dixon Correctional Facility expansion. App. Ex. No. 2. Pastor Ferrell testified that this document indicated what the Immanuel congregation intended or was looking for in terms of “ministry in the future.” Tr. pp. 22-24.

However, no action was taken on what Pastor Ferrell referred to as “ministry in the future,” but which the Congregational Profile referred to as a “trend,” from 1997 until 2002, when an existing childcare center, known as “ABC University” then located

on the subject property closed because of allegations of child abuse. Tr. pp. 34-36. ABC University was adjacent to and east of Immanuel. The front door of Immanuel is approximately 250 yards from the childcare center. Tr. pp. 81-83. On September 29, 2002, a special meeting of the Immanuel congregation was called to vote on a recommendation from the Congregation Council to acquire the subject property. The recommendation was approved by a vote of 67 “yes” to 49 “no” votes. App. Ex. No. 3.

According to Pastor Ferrell, the “no” votes were concerned that Immanuel had been debt-free for 20 years and these voters objected to Immanuel going into debt for \$525,000. Tr. pp. 29-30, 35-36, 82-83. Pastor Ferrell was asked on cross-examination if it would be “fair to say that the ‘no’ votes were based on a business decision, as opposed to a religious concern?” He responded: “Financial stewardship decision, yes.” Tr. p. 83.

It is difficult to view the childcare center as “ministry” when approximately half of Immanuel’s congregation was against acquiring the subject property and entering into this “ministry” for financial reasons. It is also difficult to view the childcare center as “ministry” when the Immanuel congregation did not act on the “trend” listed in its Profile until, gratuitously, a childcare center became available adjacent to Immanuel. It appears from the testimony that the purchase of the subject property was a business decision rather than an extension of Immanuel’s ministry. Immanuel purchased the property on December 4, 2002. The purchase price was \$525,000. Tr. pp. 30-33, 81; App. Ex. No. 4.

Pastor Ferrell testified that Immanuel then set up a separate corporation called “Bright Beginnings Christian Daycare and Preschool” to operate the childcare center. He testified that Bright was incorporated under the Illinois “General Not For Profit Corporation Act.” Bright’s Articles of Incorporation under this Act, admitted into

evidence, are not signed by any incorporators and are not stamped by the Secretary of State. App. Ex. No. 5. According to Pastor Ferrell, the separate corporation was set up “to provide a buffer to the congregation” for liability issues that might arise based on supervision or care of children. Tr. pp. 33-40, 45, 84, 87-88, 96, 119-120, 123. If Bright is, in fact, separately incorporated from Immanuel as Pastor Ferrell testified, it must be noted that the childcare center then has a legal identity that is separate and distinct from Immanuel, the sole applicant in this case. Immanuel may have separately incorporated Bright for sound financial and business reasons, but it is unreasonable to conclude that a separate and distinct corporation which provides a “buffer” to the church, constitutes religious ministry. The use of the word “buffer” by Pastor Ferrell itself indicates that there is a level of detachment between the ministry of Immanuel and the childcare center.

Pastor Ferrell also testified that Bright set its tuition rates by evaluating the “general fee scale in the county.” Bright’s Board of Directors also looked at the reimbursement available from the 4-C Program, “a county-wide assistance program.” 4-C “kind of give(s) us a sense of the norm.” “You can always charge more than that, if you would like, set a higher fee than that. But that tends to be counterproductive.” Pastor Ferrell was asked if “it would be fair to say that your fee schedule was similar to analysis of the community with – like daycare centers.” He responded “yes.” Tr. pp. 90-91.

It is difficult to equate the childcare center with religious “ministry” when the ministry charges tuition that was determined after an analysis of what the community will pay for the service, recognizing that fees higher than 4-C reimbursements are “counterproductive.” The testimony on this issue again indicates that Immanuel’s

purchase of the property, the opening of Bright, and the setting of Bright's tuition schedule were business decisions, but not extensions of Immanuel's ministry.

In addition, I conclude that the subject property is "leased or otherwise used with a view to profit" which is sufficient to deny an exemption under the religious exemption statute. 35 ILCS 5/15-40. Bright and Immanuel have a written "Property and Facility Agreement" to clarify the responsibilities of each with regard to the property. Bright is responsible for everyday maintenance and costs thereof including lawn care, snow removal, building cleaning, trash removal, testing and inspection of all building systems, minor repairs, and replacing ceiling tiles. Immanuel is responsible for capital related improvements or projects, including new construction, renovation, or replacement of utility systems, windows, doors and roof cover. Costs of these projects "may be negotiated to determine if they will be shared." Tr. pp. 53-56; App. Ex. No. 11.

There was also an oral agreement between Bright and Immanuel for Bright to pay Immanuel a "suggested figure if it were possible for them to pay that." Tr. pp. 53-54. It must be noted that Immanuel holds the mortgage on the subject property. Tr. p. 92. The oral agreement was that Bright would "support occupancy costs," and "help offset the mortgage costs of the property." Immanuel would also financially subsidize Bright, if needed. Tr. pp. 53-54, 92-93. Immanuel wrote 6 checks, each for \$3,560 to Community State Bank for the "daycare mortgage payment" in 2003. Immanuel also wrote checks to Bright for "start up costs" totaling \$28,400 in 2003. Tr. pp. 70-78, 111-114; App. Ex. No. 16.

On August 12, 2003, Bright borrowed \$50,000 from The First National Bank in Amboy. This loan was guaranteed by Immanuel. On August 28, 2003, Bright wrote a

check to Immanuel for \$29,721. According to Pastor Ferrell, Immanuel was having some cash flow issues and the \$29,721 from Bright covered the funds that had been loaned to Bright to help with start up expenses. Tr. pp. 70-78; App. Ex. No. 17. Pastor Ferrell also testified that none of the monies generated by Bright's tuition were turned over to Immanuel. Tr. p. 98. Pastor Ferrell was asked if he recalled how much income was generated by Bright during 2003. His response: "Not without looking at the balance sheet." Tr. p. 98. No financial statements were admitted into evidence for either Immanuel or Bright so the record only contains Pastor Ferrell's testimony on this issue. Bright's balance sheet, referred to by Pastor Ferrell, was not admitted into evidence. Pastor Ferrell testified that the oral agreement between Bright and Immanuel was not put together with an "eye" for Immanuel to make a profit. Tr. p. 54.

The religious exemption statute does not require that Immanuel make a profit from the use of the property in order to deny the exemption. Use of the property with a "view to profit" is sufficient to destroy a religious exemption. 35 ILCS 200/15-40. In Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), the First Presbyterian Church leased its parking lot to the Village of Oak Park as a municipal parking lot. The court in Oak Park stated that where property is leased with a view to profit, it is immaterial whether the income derived is used for religious purposes; in fact it is irrelevant whether the lease actually generates a profit or a loss, or the revenues are totally offset by operational or maintenance costs. *Id.* at 500.

I conclude that the property at issue in this case, mortgaged and owned by Immanuel and used by Bright under the terms of an oral agreement, was used with a "view to profit." Immanuel's and Bright's oral agreement for a "suggested figure" "to

help offset mortgage costs” must be considered use of the subject property by Immanuel with a “view to profit.” The anticipated “profit” for Immanuel is that Bright, a separately incorporated organization, is helping to offset mortgage costs on property owned by Immanuel. Bright’s offsetting of Immanuel’s mortgage costs also increases Immanuel’s equity interest in the property. Because no financial statements were admitted into evidence for either Immanuel or Bright, I am unable to reach a conclusion as to whether Bright actually offset Immanuel’s mortgage payments in 2003. I am able to conclude, however, that the oral agreement between Immanuel and Bright is evidence of use of the property with a “view” to profit by Immanuel in 2003, and this use is sufficient to deny an exemption under 35 ILCS 200/15-40.

Pastor Ferrell also testified that it was “a vision” that Bright would be wholly self-sufficient from Immanuel. Tr. p. 70. In fact, Bright opened with 22 students and grew to 62 students by the end of 2003. Tr. p. 45; App. Ex. No. 23. Bright was licensed by the State of Illinois’ Department of Children and Family Services for a capacity of 95 children. Tr. pp. 118-119; App. Ex. No. 20. It is reasonable to conclude that at some level of student capacity, Bright will earn enough to be able to pay Immanuel the “suggested figure” to “help offset mortgage costs.” Bright may have earned enough in 2003 to cover Immanuel’s mortgage costs if it had not been for Bright’s “start up costs,” such costs being inherent in any new business venture. The evidence and testimony force me to conclude that the subject property was used with a view to profit by Immanuel in 2003.

Bright distributed a brochure throughout the community before opening the childcare center with the following “Mission Statement:” “Our mission is to provide

parents with a safe, nurturing, educational, and loving environment in which to entrust their most precious gifts—their children.” “We at Bright Beginnings want you to feel confident that you have found the best child care for your child.” App. Ex. No. 13. These statements do not indicate a religious purpose since the environment described in the brochure would be one that non-Christian and even non-religious parents would be seeking for their children in a childcare center.

In the section of Bright’s “Parent Handbook” entitled “Christian Practices,” it states that Bright is a “Christian preschool and day care center. We will pray with the children before meals and at the opening of the day and follow basic Christian values. At various times during the year basic Bible stories will be introduced to the children.” Tr. pp. 45-48, 56; App. Ex. No. 8. Pastor Ferrell was asked if “teachers in the daycare with the older kids [were] encouraged and actually did instruct on any religious material?” He replied: “Some. Some. They had a set curriculum, but they augmented from time to time.” Tr. p. 57.

Bright’s application for Section 501(c)(3) status with the Internal Revenue Service required that Bright list each activity in the childcare center, in order of importance and the percentage of time for each activity. No religious activities or percentages of time for religious activities are described in the application for the four categories of students, infants, toddlers, pre-school or school age children, mentioned in the application. App. Ex. No. 6. The activities described in the application, including “play on the floor,” “exploring the environment,” “diapering,” “reading books,” “free-play,” are activities that any parent would expect to find in any childcare center and have no connection to religious ministry. The “Job Description” for the Director of Bright

does not require any religious affiliation as a qualification for the position and no religious activities are mentioned in the Job Description. App. Ex. No. 26.

“Religious purpose” according to the Supreme Court’s definition in McCullough, includes the use of property for public worship, Sunday school, and religious instruction. Based on the evidence and testimony, I must conclude that if there is religious instruction at Bright, it is an incidental part of the curriculum. The subject property is primarily used as a childcare center. Whereas following Christian values in childcare may be a worthy endeavor, it is incidental to the primary use of the property as a childcare center and is not, in itself, a basis for a property tax exemption.

In Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987), four congregations of the Apostolic Christian Church of America organized and supported a not-for-profit corporation that operated a retirement home. The court noted that it was not contested that the operation of the retirement home “provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization.” *Id.* at 773. The court stated however that the operation of the nursing home was not necessary for these religious purposes because they could be accomplished through other means. *Id.* The court added that religious organizations encourage the practice of all virtues, including charity and kindness to others, but these are not religious purposes within the commonly accepted definitions of the word. *Id.*

This reasoning applies to the present case. Immanuel has an oral agreement with Bright which allows Bright to operate a childcare center on the subject property. The operation of the childcare center may allow Immanuel an opportunity to evangelize its

religion in the context of caring for children. The oral agreement and the operation of the childcare center are not, however, necessary for Immanuel to promote its religion because this certainly can be accomplished through other means.

The oral agreement between Immanuel and Bright allows Immanuel to use the subject property with a “view to profit.” The primary use of the property is as a childcare center, which is not a religious purpose within the commonly accepted use of the term. For these reasons, I conclude that Immanuel has not established that the primary use of the property is for religious ministry, and Immanuel is not entitled to an exemption under 35 ILCS 200/15-40.

Charitable Exemption: Immanuel is also seeking an exemption under section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by “institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65. Bright does not own the subject property. Immanuel purchased the subject property on December 4, 2002. Tr. pp. 30-33, 81; App. Ex. No. 4. Accordingly, the property is owned by the applicant, a religious institution, not “an institution of public charity” as 35 ILCS 200/15-65 requires.

In the case of Children’s Development Center v. Olson, 52 Ill. 2d 320 (1972), the property at issue was owned by the School Sisters of St. Francis, a religious corporation, and was leased to the Children’s Development Center, a not for profit corporation providing programs for educationally handicapped children. The Court stated that “it is not questioned that the activities conducted by Children’s Development Center are charitable and that if the property were owned by the Center and these activities

conducted thereon, it would be tax exempt. Also if Sisters were to conduct a similar operation on the property instead of Center, it appears that the property would be tax exempt.” *Id.* at 334-335. The Court noted that it is “the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues.” *Id.* at 336. As Children’s indicates, under circumstances similar to those at issue in the instant case, ownership by a religious organization of property used for charitable purposes does not preclude exemption under Section 15-65 of the Property Tax Code.

The problem with the instant case and what distinguishes it from Children’s Development is that I am unable to conclude that Bright is a charitable organization or that Bright’s operation of the childcare center on the subject property constitutes charitable use of the property. In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does 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; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen, *supra* at 157.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

I conclude, without any hesitation, that Immanuel did not prove by clear and convincing evidence that Bright is a charitable organization or that Bright's operation of the childcare center on the subject property constitutes charitable use of the property. It must be noted again that no financial statements for Bright or Immanuel were admitted into evidence at the hearing. It is virtually impossible to evaluate any organization or the use of any property in relation to the Korzen factors mentioned above without financial documents admitted into evidence for both the owner and the user of the property.

The charitable exemption statute contains the same language as the religious exemption statute, *i.e.*, that the subject property cannot be leased or otherwise used with a view to profit. I hereby incorporate the arguments included under the "Religious Exemption" section of this Recommendation that the subject property is used by Immanuel with a view to profit. In looking at the Korzen factors, I am unable to conclude that Bright has no capital, capital stock or shareholders because Bright's Articles of Incorporation, which according to Pastor Ferrell were filed under the Illinois General Not For Profit Corporation Act, are not signed by the incorporators and are not

stamped by the Secretary of State. App. Ex. No. 5. Pastor Ferrell testified that Bright received \$500 from the United Way in 2003. Tr. p. 71. Mr. Johnson testified that Bright collected \$91,409.64 in tuition in 2003. Tr. p. 126. Without financial statements for Bright, I must conclude from the above testimony that Bright does not derive its funds from public and private charity and hold the funds in trust for charitable purposes. Pastor Ferrell did not “recall” how much Bright’s teachers, aides and cook were paid. Tr. p. 87. He did not know how much the Director of Bright earned in 2003. Tr. p. 102. Without information on salaries, I am unable to conclude that Bright does not provide gain or profit in a private sense to any person connected with it.

Immanuel did not produce any document at the evidentiary hearing showing that either Bright or Immanuel provided charitable assistance to families for childcare in 2003, and accordingly I am unable to conclude that charity is dispensed to all who need and apply for it. Frankly, I am unable to conclude that any charity was dispensed at all by either Bright or Immanuel in 2003. Pastor Ferrell testified that 17 families, for a total of 15 to 20 children, were helped with assistance from the 4-C Program. Tr. p. 100. Pastor Ferrell was then asked this question: “The church is not paying the tuition of the children in those 17 families?” Pastor Ferrell’s response: “Correct.” Tr. pp. 103-104. Once a family is accepted into the 4-C Program, “the congregation is reimbursed for that tuition up to the amount set by 4-C’s.” The family is asked to pay a co-pay amount based on their ability. If the co-pay and the 4-C reimbursement do not add up to the tuition charged, the difference “is made up from other sources, albeit either private donors or the church.” Tr. pp. 107-108.

Pastor Ferrell was asked the following questions. “And to your knowledge, was there a financial document prepared by the church that would indicate the amount of money that the church reimbursed the daycare center for the difference between the co-pay and the 4-C payment?” His response: “No.” Tr. pp. 109-110. “Pastor, would it be fair to say that ... if the daycare needed money because of the shortfall in 4-C’s, or whatever reason, the church would simply write a check?” The Pastor’s response: “Correct.” “You weren’t tracking it, per se, specific to individuals on the church’s side?” The Pastor’s response: “Correct.” Tr. pp. 109-110.

The Pastor was then asked to identify the checks included in Applicant’s Exhibit No. 16 that Immanuel had written to Bright to cover the shortfall between 4-C reimbursement and co-pay and the tuition charged. He identified certain checks, all notated as “start up costs” in the memorandum section of the checks. Tr. pp. 112-114; App. Ex. No. 16. As discussed previously, Immanuel wrote checks to Bright notated as “start up costs” totaling \$28,400 in 2003. Tr. pp. 70-78, 111-114; App. Ex. No. 16. On August 12, 2003, Bright borrowed \$50,000 from The First National Bank in Amboy and on August 28, 2003, Bright wrote a check to Immanuel for \$29,721. I can only conclude from this testimony and the checks that if Immanuel did make charitable contributions to Bright in 2003 in the form of checks notated as “start up costs,” Bright repaid Immanuel for the “charity” with the \$29,721 check written from Bright to Immanuel.

Mr. Scott Johnson, a member of the Immanuel Congregation and “genesis of the idea for Bright Beginnings” testified that he reviewed Bright’s records for 2003 and made notes in preparation for the evidentiary hearing. Tr. p. 114. Mr. Johnson kept the notes

in his lap during his testimony and the notes were not admitted into evidence. The following testimony was provided by Mr. Johnson, on direct examination: ¹

- Q. Would it be fair to say that, for 2003, without pulling an individual child's record, there wouldn't be a specific financial document that was ordinarily kept by the daycare showing the [charitable] assistance?
- A. Correct.
- Q. Getting the daycare off and going and starting was more important, at least in 2003, that being fastidious at record-keeping; would that be a fair statement?
- A. That's correct.
- Q. If we were to admit those types of records, they would have private information, the names of those children, potentially social security numbers of their parents, addresses, phone numbers, information commonly deemed as private? ²
- A. That is correct.
Tr. pp. 124-125.

According to Mr. Johnson's testimony and presumably the notes kept in his lap, Bright collected \$91,409.64 in tuition in 2003 and there was \$6,657.65 in "assistance provided to families" which was co-pay that "parents could not come up with." Mr. Johnson could not identify specifically how Bright made up the \$6,657.65 in assistance but suggested it came either from fundraisers, Thrivent Financial for Lutherans or American Association of Lutherans. Tr. pp. 125-128. Although Immanuel is a member of the Evangelical Lutheran Church, there was no testimony as to how the organizations mentioned are related to Immanuel. No document was admitted into evidence showing that these organizations made any contribution to Bright in 2003. If these organizations

¹ Mr. Johnson's testimony must be contrasted with Pastor Ferrell's testimony that he could not recall how much income was generated by Bright "without looking at the balance sheet." When asked if the balance sheet was with him, he responded "I have not seen all the documents, so I don't know if we have that or not." Tr. p. 98. No balance sheet was admitted into evidence.

² Financial documents are frequently admitted into evidence in exemption hearings with confidential information redacted.

did provide “charity” to Bright by making up the shortfall from co-pays in 2003, I have no idea how this makes Immanuel a charitable organization, how it makes Bright’s use of the property charitable or how it entitled either Immanuel or Bright to a charitable exemption for 2003. Mr. Johnson’s testimony appears to contradict Pastor Ferrell’s testimony, discussed previously, that Immanuel made up Bright’s shortfall in 2003.

Furthermore, Mr. Johnson’s testimony about the “\$91,409.64” in tuition and “\$6,657.65” in assistance provided to families is troubling in light of the comment that being “fastidious” at record keeping was not important to Bright in 2003. The calculations strongly indicate that Bright was “fastidious” at record keeping. Calculations with this specificity can only be considered reliable if the source documents used to arrive at them are admitted into evidence. Mr. Johnson was asked repeatedly in cross-examination about the source documents for the calculations:

- Q. Then how did you make that determination that the [\$6657.65] was assistance, if you don’t have records?
- A. We went back in and showed what the co-pay was, what the money that the parents had the ability to pay, and what the difference – and the difference between the full –
- Q. What were the records you looked at to make that determination?
- A. There was a spreadsheet. Again, when you go back to go do that from three years ago, you have to go back and look at each individual person’s payment schedule...
- Q. Well, when you stated that you didn’t have the records. What records – what records are you referring to that you didn’t have that the recordkeeping wasn’t good, and in what category weren’t those records good, applying to what category?
- A. When you look through month-end numbers, when we went to go through there, we didn’t have anything – we didn’t – if we got monies from the church, it wasn’t itemized. If we got \$5,000, it wasn’t itemized that \$453 went to help pay the light bill and such-and-such down the line. That money was just collected as a group money to help pay our – to help pay the shortfalls of the daycare.
- Q. And the shortfalls could have been operating expenses?
- A. They could have been, yes.
- Tr. pp. 142-144.

This testimony leads to the same conclusion inescapably reached after Pastor Ferrell's testimony. If Immanuel did make charitable contributions to Bright in 2003 in the form of checks marked "start up costs," the \$29,721 check written from Bright to Immanuel repaid Immanuel for the "charity." The total absence of financial documents in the record, including the balance sheet referred to by Pastor Ferrell, the spreadsheet, "individual person's payment schedule," and "month-end numbers" used by Mr. Johnson to arrive at his calculations, force me to conclude that Immanuel and Bright have failed to prove that any "charity" was dispensed in 2003 or that Bright used the subject property in a charitable manner.

Bright's "Fee Assistance Program," which is included in the "Parent Handbook," states that "[W]aiver of fees will be for a maximum of two weeks, and subsidy of fees for a maximum of one month, with extensions possible while awaiting for approval of community or State assistance programs." App. Ex. No. 14. The two-week waiver limit and one-month subsidy limit are obstacles in the way of those who need and would avail themselves of the benefits dispensed by Bright, if, in fact, any charitable benefits are dispensed. Bright charges a \$5 late fee for tuition payments that are one week late. There is a \$5 charge for each 15 minutes that a parent is late picking up their child. If parents are 2 weeks late with tuition, the child is unable to attend until late payments are made. During a holiday week, regular tuition is due. There may be sound business reasons for having these policies. However, the policies are "lacking in the warmth and spontaneity indicative of charitable impulse" and instead appear to be "related to the bargaining of the commercial market place." Korzen at 158.

WHEREFORE, for the reasons stated above, I recommend that the Department's determination which denied an exemption to Lee County Parcel, P.I.N. 07-08-04-251-008 should be affirmed and the subject property should not be exempt from 2003 real estate taxes.

July 22, 2006

Kenneth J. Galvin
Administrative Law Judge