

**PT 06-5**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 04-PT-0002</b>
<b>v.</b>	)	<b>PIN 28-22-14-226-008</b>
	)	<b>PIN 28-22-14-226-009</b>
<b>PRINCE OF PEACE LUTHERAN</b>	)	<b>Tax Year 2003</b>
<b>CHURCH OF ST. JOSEPH</b>	)	
<b>Applicant</b>	)	<b>Dept. No. 03-10-44, 45</b>

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Alan R. Singleton of Singleton Law Firm for Prince of Peace Lutheran Church of St. Joseph.

Synopsis:

This case concerns whether two parcels of property that are owned by Prince of Peace Lutheran Church (hereinafter “applicant”) are exempt from taxes for the year 2003. The applicant alleges that the property qualifies for an exemption under section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is used for religious purposes. In the alternative, the applicant contends that the property should be exempt under section 15-65 on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department of Revenue (hereinafter

“Department”) has conceded that the applicant has met the ownership requirement. The Department denied the exemption on the basis that the property is not used for either religious or charitable purposes. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved partially in favor of the applicant.

FINDINGS OF FACT:

1. The applicant purchased two parcels of property in July 2000. They are adjacent to the applicant’s property that contains the main church sanctuary, which is exempt from property taxes. (Dept. Ex. #1, #2; Tr. p. 28)
2. One of the two parcels contains an addition (hereinafter “Addition”) to the main sanctuary. The other parcel contains two retention ponds that are necessary for water runoff. The Addition is approximately 20,000 square feet. (Dept. Ex. #1, #2; Tr. pp. 30-31, 58-59, 63)
3. The applicant was able to build the Addition because it received a donation of approximately \$3 million from a family. (Tr. pp. 32-33)
4. The Addition has six classrooms and office space that total approximately 10,000 square feet. The remaining 10,000 square feet include a fellowship hall, an activity room, and a kitchen. (Dept. Ex. #1 p. 7)
5. The Addition was necessary in order to accommodate the need for additional space for Sunday School and fellowship. Prior to the use of the Addition, the Sunday School classes were held in the choir loft in the back of the sanctuary. (Tr. p. 33)

6. A playground and parking lot are on the property outside of the Addition. The applicant's members have had outdoor activities, such as outdoor luncheons and games, on the property. (App. Ex. #4, #12; Tr. pp. 35, 37)
7. Construction of the Addition began April 25, 2002. (Dept. Ex. #1 p. 18, App. Ex. #8; Tr. pp. 31-32)
8. In December 2002, the applicant formed an Illinois Limited Liability Company known as Prince of Peace Community Early Learning Center, LLC (hereinafter "Learning Center"), which uses the Addition. The applicant is the sole member of this company. (App. Ex. #21; Tr. p. 44)
9. A dedication ceremony for the Addition took place on April 27, 2003. On June 9, 2003 the Learning Center began using part of the Addition as a day care and pre-school for all children, regardless of denomination. (App. Ex. #23; Tr. pp. 12, 54-55, 65, 133)
10. The applicant's mission statement is the following: "We are a family of believers, united to know Christ and to make Him known!" (App. Ex. #3, #4; Tr. p. 26)
11. The fellowship hall is used for Saturday evening worship services, Wednesday evening confirmation classes, visitation before funerals and fellowship after funerals. It is also used for adult mentoring programs and special congregational meetings and activities. It has been used for fundraising events for families with ill children and a Mother's Day brunch. The Sunday School children sometimes sing songs there. (App. Ex. #4, #5, #14; Tr. pp. 22-23, 28, 36-37, 39-40)
12. The Learning Center does not use the fellowship hall. (Tr. pp. 56-57)

13. A kitchen is located next to the fellowship hall. This is used to prepare meals for activities such as fellowship events, Vacation Bible School (hereinafter "VBS"), and Mother's Day brunches. (App. Ex. #14; Tr. pp. 39, 42-43)
14. VBS is a two to three hour evening program for one week for children to learn about Christ, sing songs, and do crafts. (Tr. pp. 41-42, 149)
15. The activity room is located next to the kitchen. It is used as a place to serve meals, potluck luncheons, or snacks for various events. Sunday School and VBS also use this room for religious activities. During the evenings of VBS, a meal is served to the children there. (App. Ex. #4; Tr. pp. 41, 56)
16. The six classrooms are used for Sunday School and VBS. They are also used during the week for daycare. The hours for the daycare are 6:30 a.m. to 6:00 p.m. Mondays through Fridays. (Tr. pp. 42-43, 56)
17. Between the classrooms is a multi-purpose room. This is an open area used for indoor games, riding tricycles, bean bag toss, and basketball. (Tr. pp. 42-43)
18. The Learning Center offers both full-time daycare and half-day pre-school. The pre-school hours are either 9:00 a.m. to 11:30 a.m. or 12:30 p.m. to 3:00 p.m. two or three days a week. At the time of the hearing, 130 children attended the Learning Center. (App. Ex. #23; Tr. pp. 67-68, 75)
19. During 2003 the Learning Center served 2 through 12 year olds, and in March 2004 it began accepting toddlers, ages 15 months through 24 months. Children who are in both daycare and pre-school combined are the ages of 15 months to 5 years. The pre-school only program is for ages three to five. The applicant offers

a Before and After School Program for children from kindergarten through fifth grade. (App. Ex. #23; Tr. pp. 68, 114-115)

20. The tuition at the Learning Center is as follows:

Full Time Preschool/Child Care

2 year olds.....\$145 a week  
3-5 year olds.....\$125 a week

Part Time Preschool/Child Care

2 year olds.....\$34 a day  
3-5 year olds.....\$30 a day

Half Day Preschool

3 day session.....\$110 a month  
2 day session.....\$ 80 a month

Before and After School Care

Per week.....\$65 (App. Ex. #22)

21. To enroll a child, a parent must pay a registration fee of \$30 per child or \$50 per family. (App. Ex. #23)

22. All fees are payable in advance on Thursday for the following week's tuition. A one-day grace period is allowed for late payment. Any fees not paid by Monday of the following week at 8:00 a.m. are assessed a \$10 late charge for each day payment is late. Upon enrollment, two weeks tuition is charged which covers the child's first and last week at the Center, provided two weeks notice is given. A two-week notice must be given in order for the last week's tuition to be covered. (App. Ex. #23)

23. If the child is absent for an illness, holiday, or vacation the entire calendar week, tuition is reduced to one half. Tuition is not discounted on a day-to-day basis,

- only by the week. Each child may receive up to two weeks at the discounted rate per enrollment year after 6 months of enrollment. (App. Ex. #23)
24. Late fees are charged at the rate of \$15 per child for the first 15 minutes or portion thereof, and \$1 per minute for any additional time. The second late incident will result in a late charge of \$25 per child for the first 15 minutes or portion thereof, and \$2 per minute per child for additional time. The third incident results in automatic termination of enrollment, with the option to petition for reinstatement. (App. Ex. #23)
25. The parent handbook states that the Learning Center strives “to provide a safe, nurturing environment where developmentally-appropriate practice and curriculum are the basis of learning, and the love of Jesus Christ is experienced in many ways.” (App. Ex. #23)
26. The books used at the Learning Center contain religious teachings. Each day’s lesson plan includes a time for Bible lessons and stories. (App. Ex. #24, #29-35; Tr. pp. 70-71, 78)
27. The parents must sign a permission form that includes the following: “I give permission for my child to participate in all aspects of the program provided by the Prince of Peace Community Early Learning Center including Christian Curriculum, songs, prayer and projects.” (App. Ex. #46)
28. During 2003, the Learning Center received \$72,095.27 in donations from the applicant, \$177,969.79 from tuition, \$225 from other donations, and \$735.50 miscellaneous income, which totaled \$251,025.56 for income. (App. Ex. #85)

29. During 2003, the Learning Center had an expense of \$5,027.90 for advertising. Its net income for the year was \$28,755.41. (App. Ex. #85)
30. The church donated approximately \$81,000 worth of equipment, such as tables and classroom supplies, to the Learning Center. This donation is not included on the income statement. (App. Ex. #88; Tr. pp. 47, 104, 126)
31. During the first quarter of 2004, the total income for the Learning Center consisted of \$4,000 from the applicant and \$121,648.09 from tuition. (App. Ex. #86)
32. During the first quarter of 2004, the net income for the Learning Center was \$27,740.38. (App. Ex. #86)
33. The Learning Center is the only daycare center in the St. Joseph community. (Tr. pp. 62-63)
34. No lease exists between the applicant and the Learning Center, and the applicant does not charge the Learning Center rent. The applicant pays the utility bills (power and water). The applicant also pays for mowing. The snow removal is done on a volunteer basis by church members. The Learning Center pays for the telephone and trash hauling. (App. Ex. #85, #86; Tr. pp. 46, 105)
35. The gas and electric charges for the applicant from June 2002 through March 2003 were \$8,315.53. From June 2003 through March 2004 they were \$19,660.94. This was an increase of approximately \$11,000. (App. Ex. #89; Tr. p. 127)
36. The maintenance of the property is done by volunteers who are members of the church. The applicant does not pay any employees to maintain the church. The

applicant does not charge the Learning Center for these services. (Tr. pp. 47-48, 104)

37. The applicant provided a tuition waiver policy for the Learning Center that states as follows:

“Prince of Peace Community Early Learning Center believes in community outreach and opening our doors to children – regardless of income level. Low income families may seek tuition assistance from CCRS (Child Care Resource Service). In the event a family who has a child or children enrolled at the Prince of Peace Community Early Learning Center is unable or becomes unable to pay all or part of the tuition or CCRS co-payment, a tuition waiver may be approved by a majority vote of the Board of Managers. Tuition waiver applications will be considered on a case-by-case basis and at the sole discretion of the Prince of Peace Community Early Learning Center Board of Managers.” (App. Ex. #90)

38. The applicant’s treasurer did not know when the tuition waiver policy was created. (Tr. pp. 137-138)

39. The Board of Managers oversees the operations of the Learning Center. The applicant’s congregation elects the members of the Board. (App. Ex. #21; Tr. pp. 45)

40. During 2004, the Learning Center began a Scholarship Fund to pay the tuition for children who cannot afford to pay it. The Board of Managers puts \$500 a month into the fund. (App. Ex. #86; Tr. pp. 101, 128, 138)

41. In August 2003, the Learning Center provided a family with \$140.75 for a child whose mother could not pay the tuition. In July 2004, the Learning Center provided an additional \$412.85 to this family for the months of September 2003 through July 2004. (App. Ex. #83; Tr. pp. 101-102, 108)

42. For April and May of 2004, the Learning Center waived the pre-school fee, which totaled \$190, for a child whose father was serving in Iraq. (App. Ex. #81; Tr. pp. 100, 107)
43. The Learning Center used money from its Scholarship Fund to pay the balance due, \$532.64, for care for the months of January through April 2004 for two children whose mother became unemployed. An additional \$112.66 was paid from the Scholarship Fund for May 2004. This family's payment plan is CCRS (Child Care Resource Service). (App. Ex. #82; Tr. pp. 100-101, 107-108)
44. The Learning Center also cares for foster children and had cared for four of them during 2003. The State reimburses the Learning Center for approximately 80% of its fees for foster children. (Tr. pp. 102, 113)
45. The reductions in tuition do not appear as an expense on the income statements. (Tr. pp. 138-139)
46. The Learning Center has never expelled a child for nonpayment. (Tr. p. 102)
47. In May 2004 the Learning Center had a fundraiser for an ill child who had a sibling at the Center. The Learning Center donated \$500 for her benefit. (Tr. pp. 102-103, 116)
48. The Learning Center participates in a program called Operation Child Care where it provides free care for children whose parent is a military member who is home for respite. The program is sponsored by the CCRS, which is a service through the University of Illinois. This program was not in effect during 2003. The Learning Center is not reimbursed for the care of those children. (Tr. pp. 103-104, 115-116)

49. The Learning Center employs 16 people: the director, cook, janitor, and 13 members of the teaching staff. (Tr. p. 112)

50. The Learning Center had a waiting list for children in its younger age group at the time of the hearing. (Tr. p. 114)

CONCLUSIONS OF LAW:

The applicant first contends that the property qualifies for an exemption on the basis that it is used for religious purposes. Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

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

Pursuant to this constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which provides in part as follows: “Property used exclusively for . . . religious purposes . . . qualifies for exemption as long as it is not used with a view to profit.” 35 ILCS 200/15-40(a). The applicant argues that it uses the Addition exclusively for religious purposes, and it is not leased with a view to profit.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are

resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The applicant initially notes that the Addition is approximately 20,000 square feet, and on June 9, 2003 the applicant began using the Addition for its church and religious activities. The applicant claims that during the times when the Addition is not used for the Learning Center, it is used exclusively for various traditional religious activities including but not limited to Saturday evening church services, Sunday school, Bible study, confirmation classes, church dinners, and funeral dinners. According to the applicant, no part is used solely for purely secular purposes.

The applicant argues that the Addition is used to fulfill its mission of fellowship and outreach to the community, and that use includes witnessing to the community. The Addition is not leased to the Learning Center, and the applicant pays for the maintenance and utilities. The applicant contends that it has never profited from the operation of the Learning Center, and without contributions from the applicant, the Center would operate at a loss.

The applicant asserts that in Calvary Baptist Church of Tilton v. Department of Revenue, 349 Ill. App. 3d 325 (4<sup>th</sup> Dist. 2004), the court stated that the broadening definition of religion warranted an expanded view of the religious use exemption. The applicant maintains that the court found that the church's mission of evangelism and fellowship were the primary purposes behind the recreational nature of the church's property, which included a miniature golf course and volleyball court. The applicant contends that in a special concurrence, Justice Appleton indicated the exemption should

be based on the “broadening definition of religion in the more evangelical of our churches where fellowship is as much a component of the religious experience afforded a church’s congregants as a formal service.” Calvary Baptist at 334. The applicant argues that the role of churches in modern society has evolved from one of providing sermons and strict services to providing community outreach and fellowship. The applicant states that in Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Supreme Court found that property used for the educational training of priests was entitled to a religious use exemption despite the non-traditional character of its use.

The applicant believes that the use of the Addition falls within the definition of religious purpose as crafted in Pearsall and Calvary Baptist. The applicant contends that the primary purpose for the Addition is to have a facility for its outreach ministry programs. It believes that the Learning Center is an integral part of the outreach program, and the curriculum of the daycare is Christian based in order to facilitate the dissemination of the applicant’s religious message. Before the Center opened, there was no public daycare facility in the community. The applicant claims it recognized an opportunity to provide Christian outreach and serve the community at the same time. The applicant notes that of the 20,000 square feet in the Addition, only 10,000 is for classrooms and offices, and the remainder is used exclusively for church activities.

The applicant also argues that the daycare is reasonably necessary for achieving its religious purposes. The applicant asserts that as part of its religious mission, it strives to witness to non-congregational members of the community. Through the operation of the daycare, the applicant claims that it could encourage members of the community to

become active members of the applicant's congregation. In addition, the applicant believes that any alleged secular purpose is incidental to the primary religious use.

Finally, the applicant argues that it does not lease the Addition with a view to profit. It states that in First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114 (2d Dist. 1999), the church leased property to a non-profit corporation that distributed furniture and clothing to persons in need. The court found that whether property is used with a view to profit depends on the intent of the owner using the property. The church intended to use the property for religious purposes and not with a view to profit. The court found that the church leased the property in order to fulfill its own mission of providing charity to the community, and the fact that the non-profit corporation generated net revenue did not affect the religious use of the property. The applicant believes the instant case is similar because the applicant does not intend to use the Addition to make a profit, and it makes no profit from the Addition. The Learning Center does not pay rent, and the applicant pays for the utilities. Also, the applicant does not receive revenue generated from the Learning Center.

The Department has not responded to the applicant's arguments concerning religious use but stated that the "building is used for various purposes that are clearly religious." (Dept. brief p. 1) Although the Department contends that the testimony did not indicate the precise percentage of the parcels that the applicant uses for the purposes discussed, one of the documents presented indicates that approximately 10,000 square feet of the Addition is used for the fellowship hall, kitchen, and activity room. These rooms are used for a number of religious activities and are entitled to the exemption.

The remainder of the Addition, however, is not primarily used for religious purposes. In determining whether property is entitled to an exemption on the basis that it is used for religious purposes, a court must first accept the organization's characterization of the purposes of its activities and then determine whether the property is in fact exclusively used for the religious purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4<sup>th</sup> Dist. 1987). An incidental secular use will not destroy the exemption if the primary use of the property is to further religious goals. *Id.* at 774.

In Fairview Haven, 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.* The court stated, however, that the operation of the nursing home was not necessary for these religious purposes because they could also 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 commonly accepted definitions of the word. *Id.*

The operation of the daycare is similar to the retirement home in that it gives the members of the applicant's church an opportunity to carry out their Christian mission and evangelize. The operation of the daycare, however, is not necessary to promote the applicant's religion because that can be accomplished through other means. The primary use of the property is to operate a daycare, which is not a religious use within the

commonly accepted meaning of that term. The religious instruction is incidental to the operation of the daycare.

The cases relied upon by the applicant are distinguishable. In First Presbyterian, the church leased its property to a nonprofit corporation that was open for 18 hours a week to accept, distribute, and sell donated items. Volunteers worked for the organization, and there was no paid staff other than a man who shoveled snow. Items were sold at reasonable prices, and on a number of occasions they were given free to those unable to pay. After expenses, it had revenues of \$15,469.14, of which \$15,356.60 was donated to various community organizations. The court found that the nonprofit corporation's use of the property was exclusively for religious purposes, noting that the provision of charity was consistent with the church's mission. The court also found that the church did not lease or otherwise use the property with a view to profit. The court stated that while some revenues were generated through the sales of clothing and furniture, this was not the primary purpose in using the property.

The facts in the instant case are not similar. The daycare is open from 6:30 a.m. to 6:00 p.m. Monday through Friday, and the staff includes teachers who are paid at market rates. In First Presbyterian, nearly all of the net revenue was donated to community organizations, but the same is not true for the present case. In Calvary Baptist, the court found that recreational property was primarily used for the religious purposes of evangelism and fellowship, and any secular use was incidental. In the present case, the daycare service is the primary use of the property, which is a secular purpose. Although religious instruction is given as part of the service, this is incidental to the primary use of the property. Moreover, for reasons that are fully explained in the next

section regarding charitable use, the evidence suggests that the daycare is operated with a view to profit. The applicant, therefore, has not established that the primary use of the property is for religious purposes.

Next, the applicant contends that the property is entitled to a charitable purposes exemption. Section 15-65 of the Property Tax Code allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. \* \* \*. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1<sup>st</sup> Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or

dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and 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 (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are not requirements and are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2<sup>nd</sup> Dist. 1995).

The Department has conceded that the applicant has no capital, capital stock, or shareholders and that nothing indicates that private inurement occurred during 2003 or 2004. The Department contends, however, that the daycare center is a commercial, not a charitable, enterprise. The Department maintains that the primary purpose of the property is to provide quality childcare for payment.

The Department argues that the Learning Center does not provide charity but provides its benefits on a payment for services basis. The Department asserts that there is no evidence that the waiver policy produced at hearing existed during 2003 or that there

was a broad dissemination of information about the waiver of tuition. The Department states that the Learning Center's handbook outlines payment policies that include the requirement that all fees be paid in advance, fees are not fully reimbursed for absences, and late pickups are charged up to \$25 for 15 minutes; the handbook does not include a fee waiver policy. The Department states that the Learning Center waived charges of only \$500 for one child during the year in question, 2003, and only a little more was waived in 2004 up to the date of the hearing. According to the Department, even a well-advertised tuition waiver policy could not justify a property tax exemption if the primary use of the property is to serve paying customers. The Department claims that tuition waivers and reductions were not a significant portion of the Learning Center's operations. The Department claims that the reserve of \$500 per month out of potential monthly revenues of \$40,000 is insignificant.

The Department contends that the Learning Center does not derive its funds mainly from public and private charity and hold them in trust for the purposes expressed in its charter. The Department notes that since its operations began on June 9, 2003, its revenue for 2003 was \$177,970, and it met and exceeded its expenses with the help of the applicant. The Department states that even though it started in June of 2003, by the middle of 2004 it had a waiting list for some of its services, and its revenues were substantial for the first seven months of its existence. The Department contends that for the first three months of 2004 it had received tuition in the amount of \$121,648 and had net income of \$27,740. The Department argues that if this trend continues, the Learning Center will be able to repay the church for the startup costs and contributions, and

nothing prohibits the Learning Center from doing so. The Department believes that this organization is meeting more than all of its expenses by charging for its services.

The Department argues that the Learning Center does not persuade persons to an educational or religious conviction, meet some general welfare need, or reduce the burdens of government. The Department contends that pre-school daycare is not a necessity for children but a convenience for parents and a distinctly commercial endeavor. It notes that there is a religious nature to the Center's education, but the religious component does not take up the full day of care for any of the children. The Department states that the testimony indicates that it is a normal childcare center with a religious flavor and tone.

In response, the applicant contends that the Addition is used to persuade people to a religious conviction and meet a community need. It claims that the various uses of the property show a design to provide charity and allow the applicant to minister to the religious needs of the community. The applicant notes that in Grace Evangelical Lutheran Church v. Department of Revenue, 01-PT-0006 (Feb. 21, 2003), the ALJ recommended a charitable use exemption for a daycare facility operated by the church. The applicant argues that decision was based on the fact that the church had constructed and operated the facility in order to satisfy a need in the community, and the use of the daycare directly contributed to the church's goal of outreach and ministry to the community. The applicant maintains that those facts are present in the instant case. The applicant provided start-up funds for the Learning Center just as Grace Evangelical Lutheran Church ("Grace Evangelical") did for its daycare facility. The applicant states

that unlike Grace Evangelical, it has a policy to assist families who are unable to pay the tuition.

The applicant states that it operates the Addition to help inculcate the community with religious conviction. It notes that prospective employees are asked how they would bring the Christian faith to the children, and the curriculum is based on religious instruction. Also, the parents must give permission for their children in all aspects of the program, “including Christian curriculum, songs, prayer and projects.” The applicant argues that child care is not a convenience but a necessity for single parents. The applicant states that it recognized this problem and created a center where it could assist all parents while concurrently providing a religious environment for spiritual growth.

The applicant argues that it earns no profits from the Addition. It notes that it provided all of the start-up funds of approximately \$171,000<sup>1</sup>, and the utilities increased by \$11,345. In addition, the applicant claims that the Learning Center operates at a loss, and if not subsidized by the applicant it would have operated at a net loss of approximately \$47,000. The applicant contends that the Department’s argument that it operates at a profit is mere speculation and the record doesn’t support it. The applicant argues that it derives its funds from public and private charity, and it constructed the Addition with funds it had received from an individual donation.

The applicant asserts that it dispenses charity to all who need it and does not place obstacles in the way of those who would avail themselves of the use of the Addition. The applicant believes that the Department’s contention that these factors are not met because the Learning Center exists only to serve paying customers misinterprets the definition of

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<sup>1</sup> The applicant provided \$72,095 in donations during 2003 and \$81,000 for equipment. In 2004, the applicant gave the Learning Center \$4,000. This totals \$157,095. The applicant contends that with the gas and electric expense, the total cost is approximately \$171,000.

charity. The applicant contends that it meets these factors because this case is similar to both Grace Evangelical and Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App. 3d 964 (1<sup>st</sup> Dist. 1991). In Grace Evangelical, the daycare was used as a primary part of the church's charitable mission, and it was constructed because the church determined that the community needed a daycare facility. The applicant claims that the church did not discriminate as to who attended the facility, it was run in part by donations from the church, and the facility helped the church achieve its mission of ministering to the community.

The applicant notes that in Resurrection Lutheran, the court found that a church was entitled to a charitable purposes exemption for property leased to a non-profit corporation and used as a dance school and for performances. Although the studio did not have a tuition waiver policy, it did have a work study program for students who were unable to pay, and the amounts charged for tuition and admission fees were substantially less than enough to cover regular operating expenses. The court also found that the mission of providing a forum for the performing arts was a charitable one.

The applicant claims the instant case is similar to Resurrection Lutheran and Grace Evangelical because the applicant provides charity to all who need it. The Addition was constructed with funds derived from private charity, and the applicant provided approximately \$81,000 for supplies and \$72,000 in start-up funds. Also, the applicant contends that it provides a Scholarship Fund for those children unable to pay for tuition, and several children have benefited from the fund. In addition, no child has ever been expelled from the Learning Center for inability to pay for tuition.

As previously mentioned, exemption provisions are strictly construed and all doubts must be resolved in favor of taxation. The evidence raises doubts as to whether the portion of the Addition used for the Learning Center is used for charitable purposes. The Learning Center's fee waiver policy is not in the parent handbook; the written policy provided by the applicant is on a separate piece of paper. The applicant's treasurer did not know when this policy was created. The evidence does not show that the Learning Center or the applicant advertised that the Learning Center would waive fees for those who cannot pay. Although public notice of a fee-waiver policy is not an indispensable fact for a charitable tax exemption (see Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1<sup>st</sup> Dist. 2000)), it is still relevant that the policy was not advertised. Also, the applicant did not provide the general criteria that the Learning Center uses to determine whether a family qualifies for charity. Although the policy states that the applications are considered on a case-by-case basis, the evidence does not show how the Learning Center concludes that a fee waiver is warranted.

In addition, it is not clear that the amounts written-off by the Learning Center should be considered to be charity. For the child who received assistance during 2003, the Learning Center provided this family with \$140.75 in August 2003 and \$412.85 in July 2004. From July 2003 to July 2004, however, the Learning Center received four different payments from the family on this account: one \$30 payment, two \$50 payments, and one \$100 payment. (App. Ex. #83) The Learning Center provided assistance of approximately \$554, and the payments from the family were \$230. The amount received from the family is substantial compared to the amount that was written-off. The applicant explained that this family received assistance because the mother

could not pay the tuition, but the evidence suggests that this was simply a write-off for an uncollectible amount. Writing off a bad debt is not tantamount to providing charity. Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998)

One of the accounts that received assistance during 2004 provides a similar example. The Learning Center's written waiver policy states that low-income families may seek tuition assistance from CCRS, and two children who received assistance from the Scholarship Fund in 2004 were already on the CCRS payment plan. (App. Ex. #82) The amount given from the Scholarship Fund was only provided after their mother became unemployed. If this was a low-income family that was already on the CCRS payment plan, it is not clear why this family would not have qualified for charity prior to the unemployment. Like the last example, the amount written off by the Learning Center appears to be an uncollectible amount rather than charity.

The late fees that the Learning Center charges are indicative of a profit motive rather than a charitable one. The Learning Center charges for late payment of tuition and for failing to timely pick-up a child. The third incident of failing to timely pick-up a child results in automatic termination of enrollment. These penalties suggest a business-like operation. Furthermore, although the applicant claims that the Learning Center operates at a loss, for the first quarter of 2004 the Learning Center received \$121,648 in tuition and had net income in the amount of \$27,740. During this time period the applicant provided only a \$4,000 donation plus the amount to cover power and water. It appears as though the Learning Center became self-sufficient after it received the initial start-up amounts from the applicant.

These facts are not like those in Grace Evangelical where the daycare was not self-supporting and needed an endowment fund to support it. In that case, the daycare's needs were published in the church's bulletins and church members volunteered their services and made private donations to the daycare for its needs. In the present case, other than the start-up costs and the small amount received during 2004, the Learning Center does not receive similar donations. Although the applicant pays for power and water, this amount is not significant compared to the amount the Learning Center receives from tuition. In Resurrection Lutheran, the amounts charged for tuition and fees were substantially less than the operating expenses. In the present case, the tuition and fees were enough to cover the expenses for the first quarter of 2004. These facts do not support a finding that the use of the property is charitable.

Recommendation:

For the foregoing reasons, it is recommended that 10,000 of the 20,000 square feet of the Addition and a proportionate amount of the remaining property qualify for the religious purposes exemption. The remainder of the property should not be exempt from taxes for 2003.

Linda Olivero  
Administrative Law Judge

Enter: January 11, 2006