

**PT 07-14**

**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

**7**

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

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**EDGEWATER COMMUNITY  
COUNCIL, INC.,**

**Applicant**

v.

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

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No..           05-PT-0077  
                  (04-16-1490)  
PIN            14-05-125-069  
John E. White,  
Administrative Law Judge

**RECOMMENDATION FOR DISPOSITION**

**Appearances:**       Anne Auten, Colleen McManus, DLA Piper US LLP,  
                                  appeared for ECC Community Council, Inc.;  
                                  John Alshuler, Special Assistant Attorney General,  
                                  appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter arose after Edgewater Community Council, Inc. (ECC or Applicant) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for property ECC owned during calendar year 2004, and which is situated in Cook County, Illinois. The issue is whether ECC is entitled to a charitable property tax exemption for that property.

The hearing was held at the Department's offices in Chicago. ECC presented evidence consisting of books and records and other documents, as well as the testimony of a witness. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend the Director revise, in part, the

Department's prior denial, to reflect that ECC actually used a portion of the property exclusively for charitable purposes during 2004.

**Findings of Fact:**

1. ECC is the title-holder of the property at issue, and it owned the property throughout 2004. Applicant Ex. 10 (copy of warranty deed to property).
2. The property is improved with a 2-story brick building. Applicant Ex. 9 (photos of interior and exterior of property).

**Facts Regarding ECC's Organization and Operation**

3. ECC was incorporated as an Illinois not-for-profit corporation in 1960. Applicant Ex. 14 (copy of Illinois Secretary of State's Certificate of Incorporation for ECC, certificate no. 13198, and ECC's bylaws).
4. Nancy Schroeder was elected president of ECC, effective January 2006. Hearing Transcript (Tr.) pp. 9-10. Schroeder was ECC's vice-president in 2005, the chair of its housing committee in 2004, and a member of ECC's board of directors since January 2003. Tr. p. 10.
5. ECC's purposes are:

... to promote the welfare of all residents of our community, regardless of their race, color, creed or natural origin, and without regard to political party, so that all people in Edgewater may have the opportunity to find health, happiness and security through the democratic way of life.

The goal is reached in many ways. Included therein are the maintenance and improvement of the physical environment of our neighborhood; enforcement of the existing zoning ordinances and building codes and revision thereof where necessary by our elected and appointed officials; development of additional facilities for the

cultural use of our residents; protection of and safety of the persons and property of our community through adequate police and fire protection; providing an opportunity through community gatherings for every individual to know his neighbor, and through this knowledge, instilling into all a sense of community pride and well being, thus making Edgewater a friendly community and a good place to live.

ECC is therefore dedicated:

A. Through education, to provide an opportunity for those who live or are interested in the Edgewater community to work together for the common good of the community.

B. To correlate, assemble and disseminate information relating to conditions in Edgewater and the means for improving conditions and preventing adverse conditions occurring in Edgewater; to raise the quality and availability of providing community public services; to aid in the general welfare of the community.

C. To provide emergency assistance to those persons in the community in need of such aid and to provide and support a wide range of social services for all residents of the community in need of such services.

D. To promote community discussion of all matters and on all topics relating to the needs of the Edgewater community.

E. Through education and dissemination of information to train community leadership.

Applicant Ex. 14 (copies of ECC's Articles of Incorporation (pages 1-4 of exhibit), and bylaws (pp. 4-13 of exhibit)), p. 6 (Art. II of bylaws, Statement of Principles and Purposes).

6. In 1977, the Internal Revenue Service (IRS) determined that ECC was exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code (IRC). Applicant Ex. 1 (copy of IRS determination letter); Tr. p. 11.
7. ECC is governed by its members. Applicant Ex. 14 (bylaws), p. 7 (Art. IV-Membership). ECC has different classes of memberships: (1) individual memberships; (2) business, professional, and property owner memberships; and

(3) honorary memberships. *Id.* A member in good standing is entitled to one vote on any question presented to the membership for vote. *Id.* A member is in good standing when its dues are not in arrears. *Id.*

8. ECC’s members in good standing are eligible to become an ECC director and/or officer. Applicant Ex. 14 (bylaws), pp. 7-8 (Arts. V-VI, respectively, Board of Directors and Officers), 10-12 (Art. VIII-Nomination and Election of President and Board of Directors) (“The purpose of the Nominating Committee is to: ... [d]etermine eligibility of all candidates by certifying they are members in good standing. \*\*\*”).
9. ECC has approximately 500 members (Tr. p. 19), and approximately 40 board members. Tr. p. 12.
10. ECC caused to have created, and maintains, financial books and records regarding its activities in 2004. Applicant Ex. 4 (copies of: independent auditor’s report, with accompanying notes; a statement of financial position; a statement of activities; a statement of functional expenses; and a statement of cash flows).
11. ECC also prepared and filed a federal form 990 for 2004. Applicant Ex. 15 (copy of ECC’s federal form 990 (form 990)).
12. In 2004, the member dues that ECC received accounted for \$20,169 of ECC’s total revenues of \$412,239, or a little less than 5% of its total revenues. Applicant Ex. 15, p. 1 (Part I) ( $20,169 \div 412,239 \approx 0.0489$ ).
13. In prior years, the comparative amounts of ECC’s membership dues and total revenues were as follows:

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Total</b>
<b>Membership Dues</b>	20,157	14,691	10,894	27,688	73,430

<b>Total Revenues</b>	355,155	662,167	419,211	460,315	1,896,848
<b>Dues as % of Total Revenues</b>	5.67%	2.22%	2.59%	6.01%	3.87%

Applicant Ex. 15, p. 12 (Part IV-A).

14. ECC does not pay its directors and officers. Applicant Ex. 14, p. 7 (Art. V); Tr. p. 36.

15. ECC has four full-time employees. Applicant Ex. 4, p. 4 (salary amounts); Applicant Ex. 15, pp. 2 (Part II, lines 26, 28), 10 (Schedule A), 23 (form AG-990-IL, lines T-V); Tr. pp. 36-37.

16. ECC identified the following programs on its 2004 form 990:

- Housing Resource Center – to promote housing improvements and encourage renovation in the Winthrop/Kenmore area;
- Senior/Handicapped Home Repair Program – provides free small home repair to eligible seniors or disabled persons in the community;
- Care for Real – provides emergency food and clothing to needy residents of the Edgewater Community;
- Edgewater Community Organizing – to organize the residents and business people of Edgewater to fight crime in the community;
- Youth Program – provides after school and summer programs for neighborhood youth;
- Balkan Outreach Program – provides services and information to recent immigrants to the Edgewater community;
- 4+1 Program – to assist owners of “4+1” apartment buildings in applying for City of Chicago funds available for façade renovation.

Applicant Ex. 15, pp. 2, 20-21 (Part III).

17. ECC’s Care for Real program is a food and clothing program for the poor in Edgewater. Applicant Ex. 11 (copies of pamphlets describing Care for Real’s program). Care for Real distributes approximately 3 tons of food and hundreds of bags of clothes each month. *Id.*, p. 1.

18. ECC’s Youth Program includes running a summer camp and an after school camp for area school-age children. Tr. pp. 22-24. The programs are funded by federal

- Community Block Development grants given to the City of Chicago, which then distributes such funds to agencies like ECC. *Id.*, pp. 23-24; *see also* Applicant Ex. 15, pp. 1, 20.
19. ECC's Senior/Handicapped Home Repair Program is also funded by grant monies distributed by the City of Chicago. Applicant Ex. 2 (copy of pamphlet describing program); Tr. pp. 24-25. That program funds small, safety-related home repairs to Edgewater's senior residents of limited means. Applicant Ex. 2, Tr. pp. 24-25.
  20. The benefits ECC provides through its programs are open to all residents of the Edgewater area of Chicago, and not just to ECC members. Applicant Exs. 11, 13 (copies of pamphlets describing ECC's programs); Tr. pp. 16, 21-22, 24, 26, 33.
  21. ECC does not charge anyone that obtains services from its programs. Applicant Exs. 2-3, 11-12; Tr. pp. 16, 21-22, 24, 26, 33.
  22. ECC files a form AG-990-IL with the Charitable Trust Bureau of the Illinois Attorney General's Office. Applicant Ex. 15, pp. 23-24 (copy of ECC's 2004 form AG-990-IL).
  23. For 2004, ECC's total revenues were \$412,239 and its total expenses were \$431,355. Applicant Ex. 15, p. 1 (Part I, lines 12, 17).
  24. The majority of the revenues ECC reported receiving during 2004 are from government contributions and grants (\$221,987) and direct public support (\$79,682). Applicant 15, p. 1 (Part I, lines 1-12).
  25. ECC reports the amount of expenses attributable to its programs on its audited financial statements and on its federal and state 990 returns. Applicant Ex. 4, p. 4; Applicant Ex. 15, pp. 2, 20.

26. ECC spends the majority of its funds on its Care for Real program. Applicant Ex. 4, p. 4; Applicant Ex. 15, p. 2.
27. ECC reported that it received gross rents of \$27,005 in 2004. Applicant Ex. 15, p. 2 (Part II, line 6a). Those revenues are attributable to ECC's rental of parts of the property. Applicant Ex. 4, p. 4; Applicant Ex. 16.
28. ECC has two mortgages on the property: a 5 year balloon mortgage that it took out in 2003 at 6.25%; and a 15-year second mortgage at 6.5%. Applicant Ex. 4, p. 8. In 2004, the annual debt service on those two mortgages was approximately \$12,000. *Id.*; Tr. pp. 74-76.
29. Of the \$27,005 that ECC reported (on its form 990) that it received in gross rents during 2004, \$17,800 is rent that ECC reported as a program expense for its Care for Real program, regarding Care for Real's use of the first floor of the property. Applicant Exs. 4, p. 4 (entry attributing to Care for Real, for 2004, an expense for rent in the amount of \$17,800); 15; Tr. pp. 74-80.
30. ECC reported a rent expense for Care for Real, and a corresponding amount of gross rents, in part, because its Care for Real program was the recipient of a grant of income from a trust, which grant was restricted for use by that program. Applicant Ex. 4, p. 7 (Note 3); Applicant Ex. 15; Tr. p. 77.
31. An explanatory note to ECC's financial statements provides:

Restrictions On Assets

Temporarily restricted net assets are available for year 2005 or restricted purposes:

Unexpended portion of contribution for Youth Program	
Kraft Foods	\$ 7,000
Restricted for use by Care for Real Program:	
Everett C. Stetson Charitable Trust	<u>102,000</u>
	\$109,438

Applicant Ex. 4, p. 7 (Note 3).

**Facts Regarding ECC's Use of the Property**

32. Each floor of ECC's building consists of an 80' by 25' space. Applicant Ex. 6 (copy of survey of property and building).
33. ECC uses the first floor of ECC's building primarily as the offices and storeroom of ECC's Care for Real program. Applicant Exs. 5, 9; Tr. pp. 38-44.
34. The second floor of ECC's building contains office and open space and two bathrooms. Applicant Ex. 5, p. 2; Tr. p. 44.
35. Edgewater Development Corporation (EDC) uses part of the second floor of the property, pursuant to an oral rental agreement with ECC. Applicant Ex. 16 (copy of memo on EDC letterhead, dated November 19, 2004, from Adam Burck, EDC, to Doug Fraser, EDC); Tr. p. 46.
36. EDC pays ECC monthly rent in the amount of \$763.95 for the use and occupancy of the property, plus related services. Applicant Ex. 16. That amount of rent totals \$9,167.40. *Id.*
37. ECC uses the remaining portion of the second floor for administrative purposes. Applicant Ex. 5, p. 22; Tr. pp. 48-49.

**Facts Regarding EDC**

38. EDC is an Illinois not-for-profit corporation, and is exempt from federal income taxes pursuant to IRC § 501(c)(3). Applicant Exs. 8 (copy of EDC's 2004 form 990), 17 (copies of: EDC's Articles of Amendment to the Articles of Incorporation (pp. 3-5 of exhibit), including EDC's Director's Consent To Action In Lieu Of A Special Meeting; EDC's bylaws (pp. 6-15 of exhibit); an

amendment and proposed amendment to EDC's bylaws (pp. 16-17 of exhibit); and an undated document bearing the heading "[EDC] Corporate Mission Statement" (Mission Statement) (p. 18 of exhibit)).

39. In a Director's Consent To Action In Lieu Of A Special Meeting, EDC's directors amended the corporate purpose previously set forth in EDC's Articles of Incorporation. Applicant Ex. 17, p. 3. The amended statement of EDC's corporate purpose is, in substantive part, to "provide planning services consisting of assistance in financing and executing of plans for commercial development within the Edgewater Community ...." *Id.*
40. ECC appoints six of EDC's directors. Applicant Ex. 17, pp. 6 (Art. II § 2), 16.
41. In an undated Mission Statement, EDC states that its mission is:

... to improve the quality of life for all community residents by enlarging, maintaining and enhancing Edgewater's commercial assts. The primary strategies by which EDC accomplishes this mission are:

- As a catalyst and coordinator for, and partner in, new commercial development.
- By developing a strategic plans [sic] for the long-term development of Edgewater's commercial arteries, and through individual plans which identify immediate commercial development opportunities.
- Through an active marketing program and business recruitment program.
- By ensuring the viability of the community's commercial areas through the ongoing identification of infrastructure, parking, transportation, zoning and other capital and physical needs.

Applicant Ex. 17, p. 18.

### **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). 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.

Section 15-65 of the PTC 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:

- (a) Institutions of public charity.
- (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 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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If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

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35 ILCS 200/15-65 (footnotes omitted).

The Department denied ECC's application for exemption because it determined that the property was not in exempt ownership, and that it was not in exempt use. Department Ex. 1; *see also* Tr. p. 6 (Department's opening statement). Thus, ECC has the burden to show that it was an institution of public charity, and that the property was

actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65; Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248.

When considering whether an entity is organized and operated exclusively for charitable purposes, or, in other words, whether it is an institution of public charity, Illinois courts and the Department follow the guidelines announced by the Illinois Supreme Court in Methodist Old Peoples Home, 39 Ill. 2d 149, 233 N.E.2d 537. Those guidelines ask whether:

- (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reduce the burdens on government;
- (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise;
- (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 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) whether the primary purpose for which property is used is charitable, and not merely a secondary or incidental purpose.

Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542.

ECC asserts that it satisfies each of the Methodist Old Peoples Home guidelines. [ECC's] Brief in Support of Its Petition for Tax Exemption (ECC's Brief), p. 11.<sup>1</sup> The documentary evidence supports ECC's argument, at least with regard to those guidelines concerning ECC's charitable organization and operations. ECC has no capital, capital stock or shareholders earning profits. Applicant Ex. 14. Its financial books and records establish that it receives most of its revenues from public and private charity, and that it devotes such funds to programs that further the charitable purposes expressed in its

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<sup>1</sup> The Department did not file a brief to respond to ECC's arguments.

bylaws. Applicant Exs. 4, 14, 15. Although it receives some revenues from membership dues, the amount of such revenues is an incidental, and not a primary, source of its funding. Applicant Exs. 4, 15. Nor does the evidence support a finding that ECC's members receive some benefit from their association with ECC that could be considered an inurement of private profit. *E.g.*, Midwest Physician Group, Ltd. v. Department of Revenue, 304 Ill. App. 3d 939, 955, 711 N.E.2d 381, 392 (1<sup>st</sup> Dist. 1999) (“the focus of the second factor is whether individuals profit from the enterprise.”); DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901, 532 N.E.2d 1116, 1119-20 (2d Dist. 1988) (art gallery denied charitable property tax exemption where members, but not non-members, could use gallery to display and sell their works). Based on the record, ECC has satisfied the second and third Methodist Old Peoples Home guidelines.

I also conclude that ECC programs constitute charity. That is, its programs are designed to provide “benefits ... [to] an indefinite number of persons for their general welfare ....” Methodist Old Peoples Home, 39 Ill. 2d at 156, 233 N.E.2d at 542; Applicant Exs. 2-3, 11, 13, 15; Tr. pp. 16,21-22, 24, 26, 33. The record shows that ECC provides benefits to all who seek assistance through its programs. Applicant Exs. 2-3, 11. Further, the documentary evidence shows that ECC does not place obstacles in the way of persons receiving benefits pursuant to its programs. *See* Applicant Ex. 4, *passim* (no revenues from persons receiving program benefits); Tr. pp. 16,21-22, 24, 26, 33. Thus, I conclude that ECC satisfies the first, fourth, and fifth Methodist Old Peoples Home guidelines.

The final guideline calls for an examination of whether the property is actually being used exclusively, and by that I mean primarily, for charitable purposes. Methodist

Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542. Here, the evidence establishes that half of the building on the property is being primarily used for charitable purposes. ECC actually uses all of the first floor of its building primarily for its Care for Real program. That program consists of ECC's provision of free food and clothing to needy persons residing in Edgewater. Applicant Exs. 5, 11; Tr. pp. 16, 21-22. The documentary evidence thus clearly and convincingly establishes that ECC actually uses that identifiable part of the building exclusively for charitable purposes. The evidence, however, does not clearly and convincingly establish that ECC similarly uses the second floor of the building primarily for exempt, charitable purposes.

ECC rents out some of the second floor of its building to EDC. Section 15-65 provides that "[i]f a not-for-profit organization leases property that is otherwise exempt [as charitable property] to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is [also] exempt." 35 **ILCS** 15-65. The evidence ECC introduced, however, does not establish that EDC was an exclusively charitable organization.

ECC offered three documents that are relevant to EDC's putative status as an exclusively charitable organization: a copy of EDC's form 990 (Applicant Ex. 8); a copy of a September-October 2004 issue of Edgewater Developments, a newsletter published by EDC (Applicant Ex. 12); and a copy of some of EDC's organizational documents, including its bylaws. Applicant Ex. 17. On EDC's form 990, it reported total revenues of

\$65,382, most of which, \$56,553, came from government contributions (grants). Applicant Ex. 8, p. 1 (lines 1-12). EDC also reported having \$61,859 in program service expenses, which program it described as being “[t]o promote commercial development, neighborhood revitalization and stability within Edgewater community.” *Id.*, p. 2 (Part III). But the form 990 also shows where EDC spends its funds, and the great majority of EDC’s program service expenses were spent to pay its executive director’s salary. *Id.*, p. 2 (Part II). Specifically, \$46,800, which is over 75% of EDC’s \$61,859 expenses, were paid to its one employee. Applicant Ex. 8, pp. 2, 4 (Part V). At a very minimum, ECC has not established that EDC’s funds are actually devoted to providing charity. Methodist Old Peoples Home, 39 Ill. 2d at 156, 233 N.E.2d at 542

More fundamentally, I cannot conclude that promoting commercial development in a particular area constitutes a charitable purpose, as charity has long been defined by Illinois law. “A charity, in a legal sense, may be more fully defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education, religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.” Crerar v. Williams, 145 Ill. 625, 643, 34 N.E. 467 (1893) (internal quotation marks omitted). EDC’s newsletter helps to corroborate this conclusion. Half of the four-page EDC newsletter, that ECC offered as exhibit 12, consists of a section titled “Current and Proposed Developments in Edgewater’s Commercial Districts[.]” Applicant Ex. 12, pp. 3-4. Those pages list and describe the

status of eight different commercial real estate projects, often including an identification of the developers, and the individual projects. *Id.* One such entry is as follows:

**Broadway Place** (old Loyola property at northeast corner of Granville/Broadway): The developer, Access Group, is proposing a 12-story mixed-use development containing 30,000 square feet of retail space, 281 parking spaces, and 162 condominium units. The parking provides 1 space per residential unit (162 spaces) plus 119 spaces of parking for retail/public. This generous number of public parking spaces meets the criteria of retailers that have been requested by residents, particularly a high-quality grocer such as Trader Joes's. In addition, the project will participate in the city's CPAN Program by designating 10% of the condominium units as CPAN units. CPAN, a partnership between the City of Chicago and developers, provides affordable units in market rate developments through developer incentives and purchase price assistance to qualifying buyers. Due to the higher number of parking spaces and the increased number of condominium units needed to participate in CPAN, the developer has increased the height of the building to 12 stories, from the original plan for 10 stories.

Applicant Ex. 4, p. 3.

This section of the newsletter is very close to resembling an advertisement for the developers, none of whom appear to be — or at the very least, none of whom are described within the newsletter, as — charitable organizations. Based on this record, I conclude that EDC is not an organization actually operated primarily for the benefit of the public, and as described by the Court in Crerar and in subsequent cases. Rather, EDC appears to be an organization that is more in the nature of a chamber of commerce, or an organization which exists to serve the pecuniary interests of commercial entities. *See* 86 Ill. Admin. Code § 130.2005(g) (“Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions ... as to which an important purpose is to protect

and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work.”).

The record also includes evidence sufficient to conclude that ECC’s rental of some of the property to EDC, a non-exempt organization, constitutes a use of the property with a view toward profit. The annual rent that ECC charges EDC, i.e., \$750 per month, without accompanying charges for services, for a total of \$9,000, is a little bit more than half of the amount Care for Real expenses for its use of the entire first floor of the building. Applicant Ex. 16. And of course, the total proceeds ECC gets from renting part of the second floor of its building to EDC is enough to fully cover all of ECC’s annual first mortgage payments due for 2004 on the entire property. *Compare* Applicant Ex. 4, p. 8 *with* Applicant Ex. 16.

Finally, the facts here bring this matter within the second type of two situations the Court described in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 273 N.E.2d 371 (1971):

We must recognize that it is the primary use of property, rather than its incidental uses, which determines tax exemption status. In the application of this principle, we may encounter two distinct situations. First is the case where the property as a whole, or in unidentifiable portions, is used both for an exempting purpose and a nonexempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations omitted] In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a nonexempting purpose or not used at all. Thus, ‘there may be separate assessments by separating uses, as in the case of *First M.E. Church v. City of Chicago*, 26 Ill. 482, where the court held that the first story of the church building, occupied for stores,

banking business, and the like, and the second story, used for lawyers' and doctors' offices and other business purposes, were not exempt from taxation, but the main body of the third and fourth stories, used for religious purposes, was exempt.'

Institute of Technology v. Skinner, 49 Ill. 2d at 65-66, 273 N.E.2d at 375-76.

Here, ECC has not shown that it uses the second floor of its building primarily for charitable purposes because it did not sufficiently detail the portion of the second floor space that it used for its own operations, versus that portion it rented to EDC, and which was occupied by that tenant. Nor has it shown that the amount of property it rents to EDC constitutes an incidental use of the second floor of its building. In its brief, ECC argues that the portion of the second floor that it rents to EDC is “about 10% of the entire property”, but it cites to no evidence to support that estimate. ECC’s Brief, p. 14. Moreover, the documentary evidence admitted at hearing does not detail the actual square footage of the second floor that ECC rents to EDC, and reflects only an approximation of the space ECC rents to EDC, and the space ECC uses itself. Applicant Ex. 5, p. 2 (“6044 N. Broadway 2<sup>nd</sup> floor sketch only – not to scale!”) (exclamation original); Tr. p. 44.

Now, if I were to compare the amount of rent ECC expended for Care for Real’s use of the entire first floor of the building with the amount of rent ECC charged EDC for using some of the second floor of the building, I might guess that EDC rented about half of the entire second floor of the building. *See* Applicant Exs. 4, 16. But that guess would be based on the further assumptions that ECC used a market-based cost per-square-foot when it expended Care for Real’s rent for the first floor, and that it also used the same basis when calculating EDC’s rent. In short, the record does not provide evidence from which I might make a fact-based conclusion of the amount of the second floor that ECC

uses for administrative purposes, and the amount that it rents to EDC for profit. The record does, however, provide me with evidence to support a conclusion that ECC's rental of some of the second floor of the building to EDC is not a mere incidental use of the property. Applicant Exs. 4, 16.

**Conclusion:**

I conclude that ECC has supported its claim for a charitable exemption, but only for 50% of the building located on the property at issue, to reflect its exclusively charitable use of the first floor of its building, for all of 2004. All other parts of the property should remain on the tax rolls. I recommend that the Director revise the Department's prior denial to reflect the extent of ECC's exempt use of such property.

Date: 4/19/2007

John E. White  
Administrative Law Judge