

PT 08-2

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

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

v.

**THE MOST REVEREND GEORGE J.
LUCAS, ROMAN CATHOLIC BISHOP**
Applicant

Docket # 07-PT-0007

Tax Year 2006

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Bradley E. Huff and Jennifer Browning of Graham & Graham, Ltd. for the Most Reverend George J. Lucas, Roman Catholic Bishop of the Diocese of Springfield, Illinois

Synopsis:

The Most Reverend George J. Lucas, Roman Catholic Bishop of the Diocese of Springfield, Illinois (“applicant”) filed an application for a property tax exemption for the year 2006 for a parcel of property located in Christian County. The County Board of Review recommended that the exemption be granted, and the Department of Revenue (“Department”) disagreed with the Board’s determination. The applicant timely protested the Department’s decision to deny the exemption, and an evidentiary hearing was held. The applicant alleges that the property qualifies for an exemption on the basis

that it is used for school purposes pursuant to section 15-35 of the Property Tax Code (“Code”) (35 ILCS 200/15-35) because the applicant uses the property to operate a preschool facility. The Department denied the exemption on the basis that the property is not used for an exempt purpose. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 19, 2001, the applicant acquired property located at 305 S. Locust in Pana, Illinois. The property contains a two-story building that is used for a preschool known as Sacred Heart Preschool, which is an educational branch of St. Patrick’s Church. (Dept. Ex. #1; App. Ex. #1, p. 8)
2. The preschool is a child development program for children aged 3 to 5. The 3 year olds meet on Tuesday and Thursday from 8:30 to 11:00. The 4 and 5 year olds meet Monday, Wednesday, and Friday from 8:30 to 11:00. During the 2006-2007 school year, the applicant had one child who attended preschool 5 days a week. (App. Ex. #1, pp. 8, 8a, 20; Tr. p. 21)
3. The preschool is open during the same months that the elementary school is open, August through May. (Tr. pp. 21-22)
4. The preschool’s brochure states that the goals of the preschool program are for children to grow socially and to become enthusiastic learners. The preschool involves children in developmental activities to open their minds to learning. It provides an environment of Christian values to foster a love for truth, goodness, and beauty. It inspires children with a sense of responsibility for themselves and the world. (App. Ex. #1, p. 8a; Tr. p. 11)

5. The daily activities at the preschool include the following: prayer, pledge, bible stories, calendar, weather, alphabet, letter of the week, shapes, colors, numbers, theme-related activities, theme stories, music, and a nutritious snack. The theme changes each week, and examples include transportation, insects, our five senses, arctic animals and weather. (App. Ex. #1, pp. 1-5, 8a)
6. The instruction at the preschool follows the Illinois Early Learning Standards promulgated by the Illinois State Board of Education for Language Arts, Mathematics, Science, Social Science, Physical Development and Health, Fine Arts, Foreign Languages, and Social/Emotional Development. (App. Ex. #1, pp. 25-49; Tr. pp. 23-28)
7. During 2006, the preschool had total revenue of \$15,633.26, which was entirely from registration and tuition. Its expenses for the year were \$12,399.99. (App. Ex. #1, pp. 11, 16; Tr. p. 42)

CONCLUSIONS OF LAW:

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. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-35 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which allows exemptions for property used for schools and provides in relevant part as follows:

Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

* * *

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, * * *; 35 ILCS 200/15-35(b).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). 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 (2nd Dist. 1992).

In Coyne Electrical School v. Paschen, 12 Ill. 2d 387 (1957), the Supreme Court found that in order for an institution to qualify as a school for purposes of a property tax exemption, its course of study must: (1) fit into the general scheme of education founded by the State and supported by public taxation, and (2) substantially lessen what would otherwise be a governmental function and obligation. *Id.* at 392-93. In Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1st Dist. 2000), the First District Appellate Court applied this two-part test to determine that an organization operating a daycare center did not qualify for an exemption from the retailers' occupation tax and use tax on the basis that it was operated for educational purposes.¹ The court in

¹ The court noted that the test was first articulated in property tax exemption cases but applies to sales tax exemption cases as well. *Id.* at 772.

Rogy's New Generation stated that the fundamental flaw in the taxpayer's case was that the State of Illinois does not provide, nor mandate, education for children under the age of 5. As a result, the taxpayer did not establish that its early childhood learning program fit into the general scheme of education founded by the State. *Id.* at 772. Moreover, because education is not required for children under the age of 5, there is no government obligation to educate these children and no corresponding public tax burden. *Id.*

The applicant in the present case argues that although Illinois still does not mandate schooling for children under the age of 5, since the decision in Rogy's New Generation, Illinois now offers and strongly promotes early childhood education programs. In 2006, the General Assembly passed Preschool for All Children ("Preschool for All") (105 ILCS 5/2-3.71), which is a voluntary, state-funded preschool program for 3 and 4 year olds whose parents want their children to participate. The goal of the program is to nurture the promise of Illinois' young children and to ensure they are well prepared to succeed in school and life. According to the applicant, Preschool for All demonstrates the legislature's intent to promote early childhood education programs for all Illinois children and to incorporate preschool education into the general scheme of education for the State of Illinois.

The applicant claims that Illinois' Pre-Kindergarten program, which was established over 20 years ago, also supports a finding that the legislature strongly promotes early childhood education programs. This state-funded program provides early childhood education to pre-kindergarten aged children who are identified by the school

district as being at risk of academic failure (“at-risk children”).² In addition, the applicant notes that before the passage of Preschool for All, the State Board of Education established the Illinois Early Learning Standards for 3-4 year olds, which set forth goals and benchmarks for children to achieve in an early childhood education program. The Standards cover traditional subjects that are required for elementary, middle, and high school children (e.g., language arts, mathematics, science, social science, fine arts, physical development and health, and foreign language).

The applicant believes that the course of study at Sacred Heart Preschool fits into the general scheme of education established by the State of Illinois. The curriculum follows the Illinois Early Childhood Learning Standards, and the preschool is an institution of learning under the common meaning of the term. The applicant contends that the teacher provides systematic instruction in traditional areas of study and ensures the children are prepared both academically and socially for kindergarten. The school calendar mirrors that of Sacred Heart School and runs from August to May, and any child who wishes to attend may enroll.

The applicant also argues that the preschool lessens the public’s tax burden for services that would otherwise be furnished by the State. The applicant claims that through Preschool for All, Illinois provides funding for early childhood education for all children. The applicant asserts that prior to 2006, State funding for preschool was limited to public school districts and at-risk children. Preschool for All authorizes the State Board of Education to supplement the funding of preschool education at other child care

² Preschool for All indicates that these children are those “who, because of their home and community environment, are subject to such language, cultural, economic and like disadvantages that they have been determined as a result of screening procedures to be at risk of academic failure.” 105 ILCS 5/2-3.71(4).

entities in addition to school districts.³ 105 ILCS 5/2-3.71. The applicant maintains that Preschool for All provides an opportunity for any child, regardless of status, to attend preschool, and the passage of Preschool for All demonstrates the General Assembly's recognition of the importance of a preschool education not just for at-risk children but for all children in Illinois.

The applicant believes that Sacred Heart Preschool lessens the government's obligation to provide preschool services; if the preschool did not exist, the State would be responsible for funding the preschool and pre-kindergarten programs in the tax-supported public school. Sacred Heart Preschool does not receive any funding from the State, and the preschool operates solely on the fees and tuition charged. The applicant states that the tax burden is therein reduced because fewer funds are required to support the legislative program that would otherwise be provided in the public schools. The applicant also alleges that because Preschool for All has a priority list for funding, the General Assembly recognizes that additional resources will be required to completely fund the legislation. The applicant notes that its preschool does not prioritize funding or restrict enrollment. The applicant contends that its preschool fulfills the intent of Preschool for All by providing services to children who may not be eligible to participate in the public school funded programs.

Finally, the applicant maintains that the preschool does not operate with a view to profit. The applicant claims the preschool's primary purpose is to provide early childhood education and prepare children for kindergarten and elementary school. The applicant contends the building is being used exclusively for school purposes, even

³ Currently Preschool for All gives funding priority to programs serving primarily at-risk children. Second priority is given to programs serving primarily children with a family income of less than four times the poverty level. 105 ILCS 5/2-3.71.

during the summer months, because some rooms are used to store books, uniforms, and other school supplies for the neighboring Sacred Heart School.⁴ According to the applicant, every dollar received is used to operate the preschool, the preschool has barely kept itself out of the red, and the preschool still owes the church \$3,000 that it borrowed.

The Department argues that the applicant is not entitled to an exemption because preschools and daycares are not organized and operated exclusively for educational purposes and because the State does not provide, nor mandate, education for children under the age of 5. The Department contends that like the taxpayer in Rogy's New Generation, *supra*, Sacred Heart Preschool cannot meet the two-pronged test established in Coyne Electrical School, *supra*. The Department argues that the applicant has not met the first part of the test because Illinois does not mandate schooling for children under the age of 5 years. The Department maintains that neither Preschool for All, nor the State Pre-Kindergarten Program, nor the Illinois Early Learning Standards supports a finding that Illinois has an overall, state-provided, state-mandated education for children under the age of 5. The Department claims that there is no basis in statute or case law for allowing the exemption in this case. The Department asserts that because the applicant failed to establish that the course of study (i.e., the preschool program) fits into the general scheme of education established by the State, it is difficult, if not impossible, for the applicant to demonstrate that its program lessens the tax burden of the public by providing an education that would otherwise have to be furnished by the State.

The Preschool for All statute provides in part as follows:

Sec. 2-3.71. Grants for preschool educational programs.

⁴ The applicant did not indicate what percentage of the building is used by Sacred Heart School to store its supplies. (Tr. p. 53)

(a) Preschool program.

(1) The State Board of Education shall implement and administer a grant program under the provisions of this subsection which shall consist of grants to public school districts and other eligible entities, as defined by the State Board of Education, to conduct voluntary preschool educational programs for children ages 3 to 5 which include a parent education component. A public school district which receives grants under this subsection may subcontract with other entities that are eligible to conduct a preschool educational program. These grants must be used to supplement, not supplant, funds received from any other source. 105 ILCS 5/2-3.71.

Subsections (4) and (4.5) of this provision concern the source and distribution of the funding. Subsection (4) applies before July 1, 2006 and after June 30, 2008 and provides that the funds shall be distributed for the benefit of at-risk children. Subsection (4.5) applies from July 1, 2006 through June 30, 2008 and includes the following: “Such funds shall be distributed to achieve a goal of ‘Preschool for All Children’ for the benefit of all children whose families choose to participate in the program.” 105 ILCS 5/2-3.71(4.5). It also states that based on available appropriations, priority for newly funded programs shall be for those serving primarily at-risk children; second priority is given to programs serving primarily children with a family income of less than four times the poverty level. Subsection (5) concerns evaluating children for school readiness prior to age 5 and includes the following: “The State Board of Education shall encourage local school districts and other eligible entities to evaluate the population of preschool children in their communities and provide preschool programs, pursuant to this subsection, where appropriate.” 105 ILCS 5/2-3.71(5).

As the applicant has indicated, this statute demonstrates the legislature’s intent to promote preschool education; it does not, however, show the legislature’s intent to incorporate preschool education into the general scheme of education for the State of

Illinois. Through Preschool for All, the General Assembly clearly recognizes the value and importance of preschool education. Nevertheless, encouraging preschool education is not the same as requiring it. The statute does not mandate that every child receive a preschool education, and it does not require the State to provide preschool education for those who want it. It simply provides a possible source of funding for some preschools.

The party claiming the exemption must “prove clearly and conclusively that the use of the property in question is within both the constitutional authorization and the terms of the statute under which the claim of exemption is made.” Coyne Electrical School at 390. The two-part test established in Coyne Electrical School must be met to satisfy the constitutional requirements. *Id.* at 392-393. In addition, all doubts must be resolved in favor of taxation. See Chicago Patrolmen’s Association, *supra*. As the court explained in Rogy’s New Generation, *supra*, because Illinois is not required to provide and does not mandate education for children under the age of 5, the preschool program cannot fit into the general scheme of education founded by the State. Also, because preschool education is not mandated, there is no corresponding tax burden. *Id.* at 772; see also American College of Chest Physicians v. Department of Revenue, 202 Ill. App. 3d 59, 66 (1st Dist. 1990) (no Illinois law requiring continuing medical education means there is no burden on the State to furnish such education and no burden for plaintiff to lessen). Because Preschool for All does not require the State to provide preschool education or require children to attend preschool, the preschool program does not fit into the general scheme of education founded by the State, and there is no corresponding tax burden to lessen. The applicant’s request for an exemption must, therefore, be denied.

Recommendation:

For the foregoing reasons, it is recommended that the exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: January 25, 2008