

**PT 11-19**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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

v.

**FAMILY COUNSELING CENTER, INC.**

**Applicant**

**Docket # 10-PT-0025**

**Tax Year 2010**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Larry W. Mizell, *pro se*, for Family Counseling Center, Inc.

Synopsis:

Family Counseling Center, Inc. (“applicant”) filed an application for a property tax exemption for a parcel of property located in Johnson County. The applicant operates a facility on the property that helps adults who have developmental disabilities; the applicant provides assistance with daily habitation. The applicant contends that the property is owned by a charitable organization and is used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Johnson County Board of Review (“County”) recommended that the parcel be

exempt. The Department of Revenue (“Department”) disagreed with the County’s decision and found that the property is neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department’s decision. During the evidentiary hearing, the parties also raised an issue concerning which tax year is under review in this matter. For the following reasons, it is recommended that the year 2010 is at issue. It is also recommended that the exemption be denied.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on June 21, 1974. (App. Ex. #14-20)
2. The applicant’s purpose, as stated in the Articles of Amendment filed on April 16, 2007, is as follows:

To operate a community mental health center organized pursuant to the Community Mental Health Act, for the purpose of providing direct patient services; and

To provide affordable housing; and

To be exempt from taxation under Section 501(c)(3) or 501(d) of the United States Internal Revenue Code, as now in or hereafter amended. (App. Ex. #4-13, p. 1)

3. The applicant’s mission, as stated in its bylaws, is “to improve the quality of life of persons in need of Mental Health, Substance Abuse, Child Welfare, Developmental and Disability Services.” (App. Ex. #4-12, p. 2)
4. In January 2007, the applicant acquired a parcel of property located at 100 Oliver Street in Vienna, Illinois. (App. Ex. #4-1; 4-2)

5. The parcel is now used as a developmental training center and is known as the Johnson County Developmental Training (“JCDT”) Center. (App. Ex. #14; Tr. p. 56)
6. The applicant has operated two other developmental training facilities in Pope and Hardin Counties, and both of these facilities have property tax exemptions. The applicant also has 24 other programs at other locations where it offers different types of social services. (Dept. Ex. #2; App. Ex. #12, 13; Tr. pp. 26-29, 46)
7. The JCDT Center was previously operated at a different location in Vienna. That location was leased by the applicant. (App. Ex. #14; Tr. p. 55)
8. After remodeling and renovating the facility on Oliver Street, clients moved in on February 17, 2009. (Dept. Ex. #1, p. 4; Tr. p. 55)
9. The applicant applied for an exemption for the property on January 28, 2010. (Dept. Ex. #1, p. 5; Tr. p. 15)
10. The Board of Review adjourned for the 2009 assessment year in February 2010. (Tr. pp. 15-16)
11. The Board of Review made a decision regarding the applicant’s application for an exemption on March 17, 2010. (Dept. Ex. #1, p. 5; Tr. p. 16)
12. At the JCDT Center, the applicant serves adults who are 18 years or older and have a mental IQ of 70 or below. (App. Ex. #14, p. 1; Tr. p. 55)
13. The Center operates Monday through Friday from 9:00 a.m. to 2:00 p.m. The applicant provides transportation to and from the facility for the clients. (App. Ex. #14, p. 1; Tr. p. 56)

14. At the Center, the clients are evaluated based on their needs and their general functioning level. The applicant then provides day-to-day training for the clients to enhance their development. (Dept. Ex. #14; Tr. pp. 56-57)
15. The services that are provided at the center include vocational services, behavior intervention, training in personal grooming, training in independent living skills, medical nursing services, recreation services, psychiatric services, psychological services, and educational services. The clients are divided into 6 different classrooms where the staff work with the clients on goals based on their identified deficits. (App. Ex. #14, p. 2)
16. Two specialty programs include a senior program for clients over 60 and an enclave working group (5 to 8 clients) who go into the community on work contracts and clean the park, wash windows, clean offices, and mow yards. The contractual money that the applicant receives from the enclave covers the clients' minimum wage, and the remaining portion of the program (*e.g.* staff wages) is funded by the applicant's developmental training program. (App. Ex. #14, p. 2; Tr. pp. 57-58)
17. Outside of the primary hours of Monday through Friday from 9 to 2, the Center offers two annual evening dances, some recreational evening events in the local community, and the weekly Saturday employment opportunities. (App. Ex. #14, p. 1; Tr. p. 57)
18. The applicant currently serves about 48 clients at the Center. (Tr. p. 58)

19. When someone is interested in the Center's services, they typically tour the facility and meet with the staff and clients to learn about the program. (App. Ex. #14, p. 2)
20. If the individual has the ability to privately pay, services can begin immediately. If not, a referral is made to Southern Illinois Case Coordination Services ("SICCS"), a contracted entity from the State of Illinois for gate keeping to the services. (App. Ex. #14, p. 3; Tr. pp. 63-64)
21. An application and assessment is completed by both the applicant and SICCS. When an individual meets the state's established criteria, the name of the client is forwarded to be placed on the state's Prioritization of Urgency of Need for Services ("PUNS") list. (App. Ex. #14, p. 3; Tr. p. 64)
22. The State of Illinois Department of Human Services randomly draws from the PUNS list as state funds become available for the placement of individuals. (App. Ex. #14, p. 3; Tr. p. 64)
23. The Center currently has no private pay clients. (Tr. pp. 59, 72)
24. If the State of Illinois denies an individual's admission application and the person cannot privately pay, then that person is denied admission to the facility. (App. Ex. #14, p. 3)
25. All of the clients are pre-qualified as eligible for state-funding prior to starting at the Center. Before arriving at the facility, the clients have been approved for Medicaid. (Tr. pp. 63-65)
26. The Center primarily receives payment for most of its clients from the State of Illinois through the Department of Human Services, which pays \$10.39 an hour

for a maximum of 1,100 hours per client, per year. (App. Ex. #14, p. 3; Tr. pp. 59-60)

27. The Center is open 5 hours a day, 5 days a week, 48 weeks a year, which totals 1,200 hours per client, per year. Because the state will only pay for a maximum of 1,100 hours, this means that there is a deficit in the amount of payment from the state of approximately 100 hours per client, per year.<sup>1</sup> (App. Ex. #14, p. 3; Tr. p. 59)

28. The Center records the hours that each client is there and summarizes it at the end of the month. The summary is then submitted to the State of Illinois, Department of Human Services. (App. Ex. #14, p. 3; Tr. p. 59)

29. The Center also has some clients who live at Intermedial Care Facilities for the Developmentally Disabled (“ICFDD”). The applicant provides transportation to the Center for these clients, and the applicant receives money for providing them training. The ICFDDs receive money from the State of Illinois, and then the ICFDDs pay the applicant. The applicant sends a bill to these facilities through a contractual arrangement. (App. Ex. #10, p. 2; Tr. pp. 40-42, 59-60, 67-68)

30. The Center also has some clients from a home-based program known as SAIL (Self Achievement Independent Living), which transitions “high school age appropriate children into [in]dependent living.” The clients from this program choose to go to the Center, and then the Center bills the State through a

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<sup>1</sup> Although applicant’s exhibit #14 indicates that the Center operates 1,200 hours per year, which is 48 weeks per year, the testimony indicated that the Center is open 52 weeks a year, and the Center can operate anywhere from 4 to 8 weeks without payment from the state depending on how a client maximizes his or her hours. (Tr. pp. 50, 61, 66)

contractual agreement. The State pays \$10.39 an hour for this program. (App. Ex. #10, p. 2; Tr. pp. 43, 58-60, 63)

31. If the client is from the ICFDDs or the home-based program, the client is already qualified for Medicaid. (Tr. p. 65)

32. The applicant claims that it provides charitable services two ways: (1) some of the clients live far away from the Center, and the cost of transporting them to the Center is approximately the same amount that the Center receives for having the clients at the facility, so the remaining services that it provides to the clients should be considered charity; and (2) the State of Illinois pays the Center only for a maximum of 1,100 hours per client, per year, and the remaining hours that it operates without pay should be considered charity. (Tr. pp. 60-61)

33. The budget for the JCDT Center for the fiscal year ending June 30, 2011 is as follows:

Revenue

Interest	\$13.55
Krypton <sup>2</sup>	9,916.72
Glenbrook	159,711.33
31U <sup>3</sup>	269,475.25
58G <sup>4</sup>	1,748.70
58U <sup>5</sup>	2,665.20
SAIL <sup>6</sup>	41,677.00
Janitorial	21,418.45
Mowing	245.00
Vending	710.96
Special Olympics <sup>7</sup>	<u>439.35</u>

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<sup>2</sup> Krypton and Glenbrook are ICFDDs. (App. Ex. #10, p. 2; Tr. pp. 40-42, 67)

<sup>3</sup> 31U is money that is received directly from the State of Illinois; it is a funding code for Developmental Training Services. (App. Ex. #10, p. 2; Tr. p. 43)

<sup>4</sup> 58G is also money that is received directly from the State of Illinois; it is a budget therapy code for group services. (App. Ex. #10, p. 2; Tr. p. 43)

<sup>5</sup> 58U is also money that is received directly from the State of Illinois; it is a budget therapy code for individual services. (App. Ex. #10, p. 2; Tr. p. 43)

<sup>6</sup> SAIL is the Self Achievement Independent Living program. (App. Ex. #10, p. 2; Tr. pp. 43, 58-60)

Total Revenue	508,021.51
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Expenses

Wages	305,704.86
Health Insurance	52,682.95
Retirement	13,345.12
Payroll Taxes	22,938.64
Workmen's Comp	12,228.00
Unemployment	1,100.40
Other Consultants	3,774.00
Other Consult – Transp	60,960.00
Office Supplies	3,757.20
Outings	1,440.91
Vending Exp	693.75
Fund Raiser Exp	100.00
Special Olympics	1,788.25
Education Training	1,191.79
Food	1,405.94
Kitchen Supplies	4,368.34
Housekeeping	1,276.44
Laundry Supplies	91.38
Nursing Supplies	262.78
Property/building Ins	11,938.00
Utilities	7,654.65
Janitor/Maint	5,498.44
Building Needs	450.00
Equipment Maint	2,413.60
Veh Op	5,011.97
Staff Transp	14,611.17
Adm Transp	506.55
Interes/Princ. Expense	22,536.00
Telephone	3,741.29
Conference/Training	698.07
Training Travel	248.00
Training Meals	455.32
Training Lodging	248.52
Postage	184.00
Printing	34.00
Liability/Bond Ins	240.00
Mis. Other	5,765.94

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<sup>7</sup> This income is from fund-raisers for the Special Olympics. (Tr. p. 43)

Income Write-Off (31U) <sup>8</sup>	<u>13,390.43</u>
Total Expenses	584,736.70
Excess (deficit)	(76,715.19) (App. Ex. #10, pp. 1-4)

34. The applicant's audited financial statement for the fiscal year ending June 30, 2009 shows the following for the total agency's statement of activities and changes in net assets:

Public support, revenue, and other charges:

Grants	\$2,739,293
Local taxes	32,123
Fees	2,239,854
Other revenues	<u>131,556</u>
Total revenues	<u>5,142,826</u>

Expenses:

Psycho-social rehabilitation	163,579
Client supervised residential	281,237
Outpatient	373,209
CILA <sup>9</sup>	1,271,296
Developmental training	969,718
FAS Adult	66,809
Other mental health	286,246
Adult substance abuse	136,900
CCBYS	58,926
DCFS – SASS	292,612
SOC	108,718
Foster care	155,525
MIO youth	153,181
SAIL	47,380
Family centered services	33,243
Crisis intervention	3,258
Autumn Ridge	<u>1,187,335</u>
Total expenses	<u>5,589,172</u>

<sup>8</sup> This is the amount of the services that were provided and billed to the State of Illinois but were above the state reimbursable amount during fiscal year 2010. The same amount is budgeted for fiscal year 2011. (App. Ex. #10, p. 1; Tr. pp. 68-69)

<sup>9</sup> The acronyms in this statement were not explained.

Change in net assets	<u>(446,346)</u>
Unrestricted net assets at beginning of year	1,279,500
Prior period adjustments	<u>(26,996)</u>
Unrestricted net assets at end of year	\$ 806,158 (Dept. Ex. #2, p. 6)

35. The applicant's policy concerning Requests for Fee Reduction, which was effective October 1, 2006, states as follows:

No one will be refused services because of their inability to pay. Although FCC assigns fees utilizing a sliding fee scale based on income and family size, consumers may request a reduction in the assigned fee. The case manager will forward a completed **REQUEST FOR FEE REDUCTION 02.05.2003.F01** to their supervisor who will present it to the management team for review and recommendation of a fee. (emphasis in original; App. Ex. #9, p. 1)

36. The procedure for a Request for Fee Reduction includes having the consumer provide a list of all income sources and all monthly expenses. The consumer must also identify an amount they feel they can afford. The case manager recommends a fee, and the supervisor of program presents it to the management team for review. The Executive Director then signs and dates the application. (App. Ex. #9, p. 1)

37. The Requests for Fee Reduction are for the behavioral health clients and not for Medicaid recipients. The clients at the Center are all Medicaid recipients. (Tr. pp. 65-66, 70)

38. For the behavioral health clients, the applicant wrote-off the following amounts that it had indicated were accounts receivables: for the time period of July 11, 2007 through September 30, 2008, the write-off was \$3,083.54; for the time

period of October 21, 2008 through August 27, 2009, the write-off was \$1,849.37; and for the time period of January 27, 2010 through January 13, 2011, the write-off was \$3,820.82. (App. Ex. #15 pp. 1-5; Tr. pp. 78-79)

39. The applicant has no capital, capital stock, or shareholders and is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (App. Ex. #4-13; 8, pp. 1-2)

40. The applicant is exempt from retailers' occupation and use taxes pursuant to a determination made by the Department on March 10, 2006. (App. Ex. #4-23)

#### CONCLUSIONS OF LAW:

The applicant's first argument is that the year at issue is 2009 rather than 2010. During the hearing, the Johnson County Supervisor of Assessments testified that the applicant filed an application for a property tax exemption for the year 2009 on January 28, 2010. (Tr. p. 12) She also said that the Johnson County Board of Review adjourned for the year 2009 sometime in February 2010. (Tr. pp. 15-16) In addition, she testified that "we opened [the Board of Review] back up and went over this application" for the year 2009, and the Board made its decision to grant the applicant an exemption for 2009 on March 17, 2010. *Id.*

The Department's regulation concerning non-homestead exemption proceedings provides, in part, as follows:

(c) Determination (recommendation) with respect to an exemption application

(1) *A Board of Review or Board of Appeals shall consider exemption applications only for the tax year for which that Board is in session. A Board shall not consider exemption applications for previous or subsequent tax years.* For example, if a 1995 Board is still in session in January of 1996, an application for exemption for the 1996 tax year

shall not be considered by that 1995 Board and a determination (recommendation) on that application shall not be made by that Board and forwarded to the Department. Only a Board in session for the 1996 tax year shall consider and determine exemption applications for the 1996 tax year. (emphasis added; 86 Ill. Admin. Code §110.115(c)(1)).

The Johnson County Board of Review adjourned for the year 2009 in February of 2010. The Department's regulation clearly states that the Board of Review shall consider exemption applications only for the tax year for which the Board is in session. In the present case, during March of 2010 the Board was in session for the year 2010, and the Board could only make a decision regarding the 2010 tax year. Because the Board's decision in this case was made on March 17, 2010, the year that is at issue in this case is 2010.<sup>10</sup>

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). “[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977). Whenever doubt arises, it must be

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<sup>10</sup> All of the orders that were entered in this matter prior to the evidentiary hearing indicate that the year at issue is 2010.

resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) (“Provena I”). The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an

exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in relevant 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....

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current....35 ILCS 200/15-65(a), (c).

Property may be exempt under subsection (a) if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen's Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary

use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987).

The Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization 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) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as “a gift to be applied ... for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government.” *Id.* In Eden Retirement Center, Inc., *supra*, the Supreme

Court indicated that these guidelines must be considered in addition to determining whether the applicant meets the requirements under subsection (c) of section 15-65. *Id.* at 290-291.

The applicant has indicated that it is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code, and it is exempt from retailers' occupation and use taxes pursuant to a determination made by the Department. Having a charitable exemption from income taxes or from retailers' occupation and use taxes is not determinative of whether an applicant is entitled to a charitable exemption from property taxes. Provena I, at 389; Hopedale Medical Foundation, at 464. Furthermore, the applicant has indicated that it has operated two other facilities in Pope and Hardin Counties that are the exact same program as the one in the instant case, and both of those properties are exempt from taxes. (App. Ex. #12, 13; Tr. p. 61) Unfortunately for the applicant, the Department may review the tax-exempt status of an entity at any time. See Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1<sup>st</sup> Dist. 2000). Each case concerning the tax exempt status of a particular piece of property must be decided on its own facts. Hopedale Medical Foundation, at 462 (citing People ex rel. Cannon v. Southern Illinois Hospital Corp., 404 Ill. 66 (1949); Methodist Old Peoples Home, at 156). In addition, a cause of action for each property tax year is different, and "even where the ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption annually." Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1<sup>st</sup> Dist. 1981). Because the Department denied this exemption on the basis that the property is neither owned by a charitable organization nor used for charitable purposes, the applicant

bears the burden of showing clearly and convincingly that both the owner of the property and the use of the property at issue meet the constitutional standards for a charitable exemption as set forth in Methodist Old Peoples Home, *supra*. See Chicago Patrolmen's Association, *supra* at 271; Small v. Pangle, 60 Ill. 2d 510, 515 (1975).

### **Ownership**

With respect to the ownership of the property, the applicant has failed to meet its burden of showing clearly and convincingly that the property is owned by a charitable institution. As the Supreme Court indicated in Provena I, *supra*, if the owner of the property (*i.e.*, Family Counseling Center, Inc.) owns and operates other entities, then the owner's charitable activities for all of its operations must be considered in determining whether the owner is a charitable institution. Provena I, at 393; *id.* at 411-412 (Burke, J., dissenting). Because the JCDD Center does not hold title to the property in this case, its activities alone are not sufficient to determine whether the owner is a charitable organization. Although the applicant claims that nearly all of its other property is already tax exempt (tr. pp. 80-81), as previously mentioned, the Department may review the tax-exempt status of an entity at any time. Rogy's New Generation, Inc., *supra*.

The record in the present case does not include sufficient information to determine whether the applicant, which is the owner of the property, is a charitable institution. The record does indicate that the applicant does not have capital, capital stock, or shareholders. The record also includes the applicant's financial statement for the fiscal year ending June 30, 2009, which shows that the majority of the applicant's income was from fees and grants. Receiving income from fees is not the same as receiving income from public or private charity. Grant income, however, may or may not

be public charity depending on whether it is a general grant or whether it is similar to fees for services. The information provided in this case is not sufficient to make that determination.

The funding factor is not, by itself, dispositive. See Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4<sup>th</sup> Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010) (“Provena II”) (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967)). The Provena II court stated that the criteria of dispensing charity to all who need and apply for it and placing no obstacles in their way “are essential criteria.” *Id.* at 750. In addition, the factor that the property is used exclusively for charitable purposes is the *sine qua non* of the exemption. *Id.* at 743. In the present case, the facts do not clearly and convincingly show that the applicant meets these criteria.

The record does not include information concerning the charitable activities at all of the applicant’s locations. The applicant did provide information concerning the amounts that it had written off against “what we had indicated as being accounts receivable.” (Tr. p. 78) The document provided is titled “Accounts Receivable Write-Offs.” (App. Ex. #15) The amounts were for the time period between July 11, 2007 and January 13, 2011. The record does not indicate that these amounts were charitable write-offs under the applicant’s policy concerning Requests for Fee Reduction. Rather, the amounts were uncollectible accounts receivable. In other words, these were not fees that the applicant waived as part of its charitable policy; they were fees that were written off as bad debt. Writing off a bad debt is not the same as providing charity. Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998); Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1<sup>st</sup> Dist. 2000). Charity is a gift

(Methodist Old Peoples Home, at 156), and the record does not indicate that the amounts were “gifts” rather than fees that could not be collected. The record, therefore, does not contain any evidence concerning the amount of charity the applicant provided at all of its locations, whether the applicant gave charity to all who needed and applied for it, or whether the property that the applicant owns is primarily used for charitable purposes.

In addition, the evidence does not clearly establish that the applicant does not place obstacles in the way of those seeking its charitable benefits. One obstacle can be failing to notify the public of its fee waiver policy. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 608-609 (3<sup>rd</sup> Dist. 2003); Alivio Medical Center, *supra*. Notifying the public of a fee waiver policy is not an indispensable fact for a charitable exemption. Randolph Street Gallery, *supra*. In Randolph Street Gallery, however, the court found that during the years in question, the applicant had an undisputed and consistent fee waiver policy, and the applicant actually used it. In the present case, although the testimony indicated that the charitable policy was used in some of the applicant’s programs (tr. pp. 62-63), the evidence does not clearly establish when it was actually used. As previously mentioned, the party claiming an exemption must prove by clear and convincing evidence that it is entitled to an exemption. Provena I, at 388. The applicant has not met its burden of proof in this case.

Because the exemption is given only if both ownership and use are charitable, and the charitable ownership element has not been established, the exemption must be denied on this basis. Nevertheless, the applicant has also failed to meet its evidentiary burden of showing that the use of the property at the JCDT Center meets most of the guidelines in Methodist Old Peoples Home, *supra*. See Provena II, at 742.

## Use

With respect to the use of the property, the Center, first of all, does not derive its funds mainly from public and private charity. According to the budget for the fiscal year ending June 30, 2011, the Center receives the majority of its income from fees for services, and this compensation is from the State of Illinois. Only \$439.35 of its income, which was raised for the Special Olympics, can be considered donations or charity. As mentioned previously, this funding factor is not, by itself, dispositive. *Id.* at 746. The Center, however, also has not presented sufficient evidence to show clearly and convincingly that it meets the criteria that the court in Provena II considered to be essential, *i.e.*, dispensing charity to all who need and apply for it, placing no obstacles in their way, and using the property exclusively for charitable purposes. *Id.* at 743, 750.

The applicant contends that the charity it provides at the Center includes the following two ways: (1) some of the clients live far away from the Center, and the cost of the transportation is approximately the same amount that the Center receives for having the clients at the facility, so the remaining services that it provides to the clients should be considered charity; and (2) the State of Illinois pays the Center only for a maximum of 1,100 hours per client, per year, and the remaining hours that it operates without pay should be considered charity. (Tr. pp. 60-61) The applicant, however, entered into contractual agreements with either the State of Illinois or the ICFDDs to provide these services. By entering into these contractual agreements, the applicant has agreed to provide care for the Center's clients at the stated amount of compensation. The Third District Appellate Court has found that care that was provided at a discounted rate pursuant to contracts with Medicare, Medicaid, and private insurers was not charity.

Riverside Medical Center, at 610. The underpayment for the applicant's services, therefore, cannot be considered charity.

In addition, if the State of Illinois denies an individual's admission application to the Center and the person cannot privately pay, then that person is denied admission to the facility. None of the clients at the Center pay privately. All of the clients are pre-qualified as eligible for state-funding prior to arriving at the Center; they all have been approved for Medicaid. The applicant's charitable policy, therefore, has never been used at the Center and apparently never will be used because a client is denied admission when the State of Illinois denies his or her application. Because the charitable policy is never used at the Center, it cannot be found that the Center provides charity to everyone who needs and applies for it or that the property is primarily used for charitable purposes. Furthermore, apparently because the charitable policy is not used at the Center, the public is not notified that one exists, which is an obstacle in the way of those who may need charity. *Id.* at 608-609.

The applicant undoubtedly provides an important service for the community. The applicant's operations are laudable, but laudable acts do not necessarily constitute charity. Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934). As previously mentioned, exemption provisions must be strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The evidence presented in this case unfortunately falls short of showing clearly and convincingly that the property is owned by a charitable organization and is used for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption be denied.

Linda Olivero  
Administrative Law Judge

Enter: June 27, 2011