

**PT 13-02**

**Tax Type: Property Tax**  
**Tax Issue: Charitable Ownership/Use**  
**Educational Ownership/Use**  
**Religious 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.  
**ST. PAUL LUTHERAN CHURCH**  
**OF HAMEL**

**Applicant**

**Docket # 11-PT-0023**  
**Tax Year 2011**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Stephanie Renken, *pro se*, for St. Paul Lutheran Church of Hamel

Synopsis:

This case concerns whether a parcel of property located in Madison County that is owned by St. Paul Lutheran Church of Hamel (“applicant”) is exempt from taxes for the year 2011. After the applicant applied for the exemption, the County Board of Review recommended that the exemption be granted. The Department of Revenue (“Department”) disagreed with the Board’s determination. The applicant timely protested the Department’s decision, and an evidentiary hearing was held. The applicant allows an organization to operate a preschool and daycare on the property, and 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 or for school and 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 has conceded that the applicant has met the ownership requirement. The Department denied the exemption on the basis that the property is not used exclusively for either religious, school, or charitable purposes. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is a church that is a member congregation of the Lutheran Church-Missouri Synod. (App. Ex. #1, p. 2)
2. On July 29, 2005, the applicant purchased property located at 125 Wolf Avenue in Hamel, Illinois. (Dept. Ex. #1, pp. 6-8, 27)
3. St. Paul Early Childhood Learning Center (“Learning Center”) is an Illinois not-for-profit corporation that was organized on July 19, 2005. The Learning Center operates a daycare and preschool in the building that is on the property. (Dept. Ex. #1, pp. 11-13)
4. The property is not adjacent to the applicant’s church. The previous owner of the property operated a private daycare facility in the building. (Dept. Ex. #1, p. 26; Tr. pp. 16-17)
5. The articles of incorporation indicate that the purposes for which the Learning Center is organized are as follows:

The Corporation is organized exclusively for charitable, educational or religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended. (Dept. Ex. #1, p. 11)

6. The bylaws for the Learning Center indicate that its purpose shall be as follows:
  - A. To promote Lutheran education while providing daycare and preschool education for preschool age children as well as supervised learning and recreation for school age children before and after the regular school day and on school holidays.
  - B. To provide daycare services and Christian training for all children of the congregation and for such other children as may be declared eligible for enrollment. The Center admits children of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the Center. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its policies, admission policies, and other programs.
  - C. To teach the fundamentals of the Christian Religion, the principals of Lutheranism, and such secular subjects which conform to are [*sic*] part of the accepted course of study of the Lutheran Church-Missouri Synod. (Dept. Ex. #1, p. 14)
7. The Learning Center offers full and part-day programs for children aged 6 weeks through 5 years, not yet enrolled in kindergarten, as well as before and after school programs for children in grades K-6 until they are 12 years old. (Dept. Ex. #1, p. 32)
8. The Learning Center's Parent Handbook includes the following on the first page:

We believe that children learn through play and repetition. Throughout their day at St. Paul Early Childhood Learning Center, we encourage each child to:

  - Grow in the knowledge of God's love for them
  - Learn to work and play with others while making new friends
  - Express themselves through creative activities
  - Set personal limits through self-discipline
  - Increase their communication skills through learning and practice of language activities
  - Experience new concepts in mathematics and science activities
  - Stimulate hand-eye coordination through puzzles, building blocks, art, and other small muscle activities

- Build a healthy body during playground and other large motor activities (Dept. Ex. #1, p. 30)
9. The 3-year-old half-day preschool program meets from 9:00 a.m. to 11:30 a.m. on Tuesdays and Thursdays. The 4-year-old half-day preschool program meets from 9:00 a.m. to 11:30 a.m. on Mondays, Wednesdays, and Fridays. (Dept. Ex. #1, p. 32)
  10. The preschool programs introduce children to letter, name, shape, and color recognition, with an emphasis on fine and gross motor skills. The 4-year-old program also emphasizes math skills and reading readiness. Both preschool programs include creative arts and group time, including Bible stories and songs. (Dept. Ex. #1, p. 32)
  11. The full-day extended program is offered Monday through Friday from 6:00 a.m. to 6:00 p.m. (Dept. Ex. #1, p. 32)
  12. The extended program “offers a Christ-centered, loving environment for those in need of full-day childcare.” These children participate in the same learning activities as the half-day program. Age appropriate developmental activities are offered throughout the rest of the child’s day. (Dept. Ex. #1, p. 32)
  13. The extended pre-K program includes cooking activities, math, language, art, science, social studies, playground time, age appropriate religious instruction using Bible stories and activities. Afternoons are spent participating in other age-appropriate developmental activities and exploration. (Dept. Ex. #1, p. 9)
  14. The summer program for both school and preschool age children includes activities such as Vacation Bible School at St. Paul Lutheran Church, special

center days, cooking activities, science experiments, dramatic plays, art activities, and field trips. (Dept. Ex. #1, p. 9)

15. The pastor of St. Paul Lutheran Church goes to the center weekly to conduct a short chapel service. A chapel area is set up in the basement. (Dept. Ex. #1, pp. 26, 39)

16. The curriculum is in accordance with the teachings of St. Paul Lutheran Church and the Lutheran Church-Missouri Synod. Curriculum that is contrary to the teachings of the Lutheran Church-Missouri Synod and St. Paul Lutheran Church are not taught. (Dept. Ex. #1, p. 39)

17. The Learning Center requires a \$50 nonrefundable registration fee at the time that the child enrolls. (Dept. Ex. #1, p. 33)

18. The fees for the Learning Center's extended program are as follows:

	Per week (full time)	Per day (part time)
Infants – 24 months	\$195	\$50
24 – 36 months	\$155	\$35
3 – 5 year olds	\$130	\$30

The extended program is also \$45 a week for before **or** after school care (\$12 a day), and \$83 a week for before **and** after school care (\$20 a day). (Dept. Ex. #1, pp. 18, 34)

19. The fees for the summer program for school age children are \$130 per week and \$30 per day. (Dept. Ex. #1, p. 18)

20. The Learning Center offers a 10% discount for the eldest child of families that have multiple children enrolled. (Dept. Ex. #1, p. 35)

21. All fees for the extended program are payable by Wednesday of each week. Payments that have not been paid by Wednesday of that week are assessed a \$20 late fee on Thursday. A \$20 fee is assessed each subsequent week until payment is made. After two weeks of non-payment, the child is dropped from the program. All prior fees must be paid before the child will be re-enrolled. (Dept. Ex. #1, p. 34)
22. The fees for the Learning Center's 3-year-old preschool program are \$50 a month, payable on the fifth day of the month. The fees for the 4-year-old preschool program are \$60 a month, also payable on the fifth day of the month. (Dept. Ex. #1, p. 34)
23. Payments for the preschool programs that have not been paid by the fifth day of the month are assessed a \$20 late fee on the sixth day. A \$20 fee is assessed each subsequent week until payment is made. After two weeks of non-payment, the child is dropped from the program. (Dept. Ex. #1, pp. 19, 34)
24. Weekly payments must be made even in the event of a child's absence. A child will be dropped from the program if they are absent for two weeks without prior notice and payment. A new child may be enrolled in that space. The absent child may be re-enrolled if there is space available and all past fees have been paid. (Dept. Ex. #1, p. 34)
25. Any child absent for four weeks or less is expected to pay full tuition for those weeks. If a child is absent for 5 to 12 weeks, the child's spot may be held by paying a minimum of one day per week to hold the spot. These payments are nonrefundable and may not be applied to tuition when the child returns. Weekly

- payment deadlines and late fees still apply to these payments. No spot will be held for more than 12 weeks. (Dept. Ex. #1, p. 34)
26. All children must be picked up by 6:00 p.m. each day. One 5-minute late pick-up is allowed per family per year. If children are still at the Learning Center after their 5-minute grace period, the parents will be charged at the rate of \$1.00 per minute per family. This charge starts at 6:05 p.m. on the date of the first late pick-up in a year. Any subsequent late pick-ups in that year will be charged at the rate of \$1.00 per minute beginning at 6:00 p.m. (Dept. Ex. #1, p. 36)
27. Late pick-up fees must be paid in cash and must be paid before the child/children will be admitted to the center the next morning. (Dept. Ex. #1, pp. 36-37)
28. Repeated late pick-ups may result in the child being dropped from the program. Repeated late pick-ups are defined as any 3 times per year that a child is picked up after 6:05 p.m. or any 3 times during the child's enrollment at the center that the child is picked up after 6:15 p.m., regardless of calendar year. (Dept. Ex. #1, p. 37)
29. The Learning Center is licensed for a total of 74 children with 15 children in each of the preschool classes. (Dept. Ex. #1, p. 20; Tr. pp. 9-10)
30. On September 14, 2011, 8 of the enrolled children received subsidized care or preschool through the Illinois Department of Human Services ("DHS")/Children's Home & Aid Society of Illinois ("CHASI"). One child was in foster care and the cost was paid for by the Department of Children and Family Services. At that time, no fees were waived for any children due to inability to pay. (Dept. Ex. #1, p. 20; Tr. p. 8)

31. On December 28, 2011, the Learning Center’s tuition assistance was as follows:

	Regular Tuition	Amount Charged
Family #1 (2 preschool age) <sup>1</sup>	\$247.00/week	\$90.00/week
Family #2 (1 preschool age) <sup>2</sup>	\$130.00/week	\$ 0.00
Family #3 (2 school age) <sup>3</sup>	\$157.70/week	\$22.80/week

32. On December 28, 2011, the Learning Center received the following subsidized child care benefits from DHS:

<u>Child</u>	<u>St. Paul Rate</u>	<u>Ill. Reimbursement</u>	<u>Difference</u>
C.C.	\$30/day	\$26.75/day	\$3.25/day
B.C.	\$50/day	\$45.14/day	\$4.86/day
H.M.	\$25/day-staff	\$25/day-staff	\$0.00/day
P.P.	\$30/day	\$26.75/day	\$3.25/day
L.W.	\$25/day-staff	\$25/day-staff	\$0.00/day
L.W.	\$15/day-staff	\$15/day-staff	\$0.00/day
I.J.	\$30/day	\$26.75/day	\$3.25/day
E.L.	\$30/day	\$26.75/day	<u>\$3.25/day</u>
Total			\$17.86/day

The Learning Center does not charge the parents for the difference. (Dept. Ex. #1, pp. 23, 25; Tr. pp. 10-11)

<sup>1</sup> These two children needed the daycare program. The regular tuition was \$130/week per child with a 10% discount for the eldest child, which is \$247. The family’s income was approximately \$36,000/year. (Dept. Ex. #1, p. 25)

<sup>2</sup> This family applied for subsidized child care through DHS, but had not yet been approved on December 28, 2011. The family’s monthly income was \$840. (Dept. Ex. #1, p. 25)

<sup>3</sup> The evidence indicates that on December 28, 2011, their mother’s “husband is unemployed. Children are not required to set a weekly schedule.” (Dept. Ex. #1, p. 25) It is not clear whether this means that the children were temporarily staying at home with their father/stepfather or whether they were at the Learning Center. The evidence indicates that the tuition would be \$157.70 “regardless if they attend or not.” *Id.* The tuition for before **and** after school care is \$83/week per child with a 10% discount for the eldest child, which totals \$157.70. The Learning Center charged them the 1 day minimum rate for before **or** after school care (\$12 plus 10% discount) to “maintain their enrollment.” (Dept. Ex. #1, pp. 25, 34) Again, it is not clear whether the children were actually attending the Learning Center or whether this amount was being paid to hold their spots.

33. The Learning Center’s “2011-2012 Tuition Assistance Application” (“Application”) provides, in part, as follows:

Dear Parents:

It is our goal that no child is excluded from attending St. Paul Early Childhood Learning Center based on financial status. We want you to know that we are willing to work with you and ask that you help us analyze your financial needs so that we might assist you in fulfilling your responsibility. Please fill out this form and mail/return to the center office. This form will be kept in strict confidence. (Dept. Ex. #1, p. 24)

34. The Application asks for, among other things, the number of people in the family, the number employed in the household (not counting students), the monthly/yearly income, and the amount that the family expects to be able to pay per month. (Dept. Ex. #1, p. 24)

35. The Application asks for the family to explain any special needs or considerations that exist for the family at the time of the application. (Dept. Ex. #1, p. 24)

36. The un-audited Profit and Loss Statement for the Learning Center for July 2010 through June 2011 includes the following amounts as income, expenses, and net profit:

**Income**

Day Care Tuition – Before & After	\$22,451.22
Tuition – Full-time Copay	4,523.50
Day Care Tuition – 4 year olds	46,195.60
Day Care Tuition – Infants	58,681.50
Day Care Tuition – 2 year olds	44,766.50
Day Care Tuition – 3 year olds	37,626.50
3 year olds – CHASI Reimbursement	46,679.33
Registration fees – Before & After	615.28
Registration fees – 4 year old	150.00
Registration fees – 3 year old	150.00
Registration fees – 2 year old	225.00

Preschool Tuition & Fees:	
Preschool Tuition – 4 year old	6,491.80
Preschool Tuition – 3 year old	2,930.00
Registration fees – 4 year old	375.00
Registration fees – Infants	<u>550.00</u>
Total Preschool Tuition & Fees	10,346.80
Grants	(1,074.04)
Late fees collected	905.00
Miscellaneous income	<u>122.00</u>
Total Day Care Tuition and Fees	\$272,364.19
Other Income:	
Donations – St. Paul Lutheran	80.00
Miscellaneous Income	42.94
Matching Gifts – Thrivent	<u>108.00</u>
Total Other Income	<u>230.94</u>
<b>Total Income</b>	<b>\$272,595.13</b>

**Expenses**

Fundraising expense	\$ 180.00
Advertising	172.33
Classroom supplies	4,046.69
Catered Meals	15,733.18
Bad Debts	673.40
Dues & Subscriptions	107.90
License Fees	415.00
Maintenance	2,400.72
Office Supplies	1,895.00
Real Estate Taxes	2,100.00
Trash/Waste Pick-up	1,217.93
Miscellaneous	1,015.59
Start-up Capital Improvement	5,415.90

Payroll:	
Wages	18,427.12
Wages – director	34,887.70
Wages – asst. director	883.31
Wages – custodian	4,952.40
Wages – teachers	78,588.43
Teachers – FICA	13,711.55
Wages – aides	41,496.87
Fringe benefits – director	5,959.79

Fringe benefits – teachers	<u>14,108.41</u>	
Total Wages		213,015.58
Telephone		2,263.65
Travel & Entertainment		177.95
Bus service		1,759.40
Utilities <sup>4</sup>		<u>5,867.56</u>
Total Expenses before other expenses		258,457.78
Other Expenses:		
Interest Expense	29.39	
Real Estate Taxes	<u>2,700.00</u>	
Total Other Expenses		2,729.39
<b>Total Expenses</b>		<b>\$261,187.17</b>
<b>Net Profit</b>		<b>\$ 11,407.96</b>
(Dept. Ex. #1, pp. 46-47)		

37. The Learning Center does not have capital, capital stock, or shareholders. Both the applicant and the Learning Center are exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, pp. 11-13; App. Ex. #1)

38. The applicant is exempt from retailers’ occupation taxes and use taxes pursuant to a determination made by the Department on April 6, 2007. (Dept. Ex. #1, p. 50)

CONCLUSIONS OF LAW:

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

<sup>4</sup> This includes electricity, gas, water, and alarm/monitoring services. (Dept. Ex. #1, pp. 46-47)

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 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.

It must first be noted that the Learning Center is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. Having an exemption from income taxes, however, is not determinative of whether an applicant is entitled to an exemption from property taxes. Provena I, at 389; Hopedale Medical Foundation, at 464. The applicant has also indicated that a church in a neighboring town operates a daycare and preschool on a parcel of property that is not adjacent to that church, but that parcel is exempt from property taxes. (Tr. p. 19) Whether that parcel is properly exempt from taxes is not relevant to the present case because 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).

### **Religious Exemption**

Pursuant to the constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, which allows exemptions for religious purposes or school and religious purposes and provides, in part, as follows:

(a) Property used exclusively for:

- (1) religious purposes, or
  - (2) school and religious purposes, or
  - (3) orphanages
- qualifies for exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

In Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (4<sup>th</sup> Dist. 2008), the court found that a daycare and preschool that was operated by Faith Builders Church did not qualify for a property tax exemption. The Faith Builders Church had purchased a building that was previously used as a daycare and was not adjacent to the church. The court stated that it was reasonable to find that the property was not primarily used for religious purposes or religious instruction and noted as follows:

Infants, toddlers, and preschoolers have an extremely limited capacity for assimilating theological concepts. With children so young, the supervising adults’ primary purpose, from 6 a.m. to 6 p.m., will inevitably be day care – and Faith Builders’ descriptive literature reflects that reality. In a list of 11 tasks and activities, religion appears once. Arguably, that is because the children are simply too young for sustained religious instruction and their primary need is day care. *Id.* at 1045.

The court also stated as follows:

In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion. A church could open a restaurant, for instance, and because waiters attempted to evangelize customers while taking their orders, the restaurant would be exempt. But the operation of a restaurant is not necessary for evangelism and religious instruction, although, like any other social activity, it can provide the occasion for those religious purposes. The same could be said

of a day-care facility. Day care is simply not a ‘religious purpose’ within the commonly accepted definition of that term. *Id.* at 1046.

The facts in the present case are similar to those in Faith Builders Church. In the handbook’s list of 8 activities that the Learning Center encourages each child to do on a daily basis, religion appears once. The children participate in numerous secular activities in addition to the religious ones. The primary use of the property is to operate a daycare, which is not a “religious purpose” within the commonly accepted meaning of that term. See also Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4<sup>th</sup> Dist. 1987) (operation of retirement home allows church to engage in evangelization but is not primarily religious and does not qualify for religious purposes exemption).<sup>5</sup>

The court in Faith Builders Church also considered whether the daycare and preschool qualified as a “school” within the meaning of sections 15-40(a) and 15-35 of the Code.<sup>6</sup> The court noted that there is a two-part test for determining whether property is used as a school for purposes of the property tax exemption. In order to qualify, an institution’s 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. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957). The court in Faith Builders Church noted that in determining whether the first element has been met, “courts have been inhospitable

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<sup>5</sup> The evidence indicated that the pastor of St. Paul Lutheran Church goes to the center weekly to conduct a short chapel service, and a chapel area is set up in the basement. (Dept. Ex. #1, pp. 26, 39) If this area is used exclusively for religious purposes, then a partial exemption would be warranted for this portion of the property. The evidence does not indicate, however, whether this area is also used for daycare activities. The evidence also does not include the square footage of the chapel area. Without that information, a partial exemption cannot be granted.

<sup>6</sup> Section 15-35 provides, in part, as follows: “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).

towards granting a school exemption to schools whose curriculum d[o] not consist of traditional subject matter common to accepted schools and institutions of learning....” citing Chicago & Northeast Illinois District Council of Carpenters Apprentice & Trainee Program v. Department of Revenue, 293 Ill. App. 3d 600, 608 (1<sup>st</sup> Dist. 1997). The Faith Builders Church court found that there was no evidence that the daycare and preschool offered curricula consisting of traditional subject matter common to accepted schools; the property, therefore, did not qualify for the school exemption. *Id.* at 1047. See also Rogy’s New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1<sup>st</sup> Dist. 2000) (daycare not exempt because Illinois does not mandate education for children under the age of 5 and there is no corresponding public tax burden).

The same reasoning applies in the present case. The preschool and daycare programs do not fit into the general scheme of education founded by the State. Also, because preschool education is not mandated, there is no corresponding tax burden. The applicant’s request for an exemption on the basis that the Learning Center is used for school and religious purposes must, therefore, be denied.

### **Charitable Exemption**

Pursuant to the constitutional authority, the General Assembly also 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.... 35 ILCS 200/15-65(a).

Property may be exempt under this subsection 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 Illinois 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.*

Considering these constitutional standards, the Learning Center does not derive its funds mainly from public and private charity. Nearly all of the \$272,595.13 of the Learning Center’s income was from either fees or tuition rather than public or private donations. The fact that the applicant uses its income to further its charitable purposes does not determine whether there should be an exemption. See Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill. App. 3d 679, 697 (5<sup>th</sup> Dist. 2008); Cook Communications Ministries v. Department of Revenue, 345 Ill. App. 3d 753, 763 (2<sup>nd</sup> Dist. 2004); Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2<sup>nd</sup> Dist. 1988). The actual activities on the property must be considered. *Id.*

The fact that the Learning Center’s primary funding source is not public or private charity 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)). In Provena II, the court stated that the factors of dispensing charity to all who need and apply for it and placing no obstacles in their way “are essential criteria; they go to the heart of what it means to be a charitable institution.” *Id.* at 750. Furthermore, 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 Learning Center meets these other guidelines.

With respect to whether the Learning Center gives charity to all who need and apply for it, it is not clear exactly what charity the Learning Center gave during the year in question. On September 14, 2011, no fees were being waived for any children due to the inability to pay. On December 28, 2011, three families were receiving tuition assistance, but it is not clear how long they had received assistance. For the third family, as footnote number 3 indicates, it is not clear whether these children were actually attending the Learning Center or whether they were paying that amount to simply hold their space. The value of the free services that the Learning Center gave during the year in question is, therefore, not clear.

The Learning Center was receiving subsidized child care benefits from DHS for 8 of its children, but the difference of \$17.86 a day is not necessarily “charity.” In Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 610 (3<sup>rd</sup> Dist. 2003), the court found that discounted care that was provided to patients through contracts with Medicare, Medicaid and private insurance was not charity, despite the fact that the care was allegedly given at 50% of the actual cost. In addition, if the State provides the Learning Center with subsidies, then the Learning Center is not lessening the State’s burdens, which is another consideration under Methodist Old People’s Home, *supra*.

Furthermore, the Learning Center’s Profit and Loss Statement includes \$673.40 as a bad debt expense. It is not clear how this amount was determined, but it must be emphasized that there is a distinction between bad debt and charity. Charity is a gift (Provena II, at 750; Methodist Old Peoples Home, at 156), and the applicant must establish that the Learning Center’s “free services” were gifts rather than debt that could

not be collected. 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).

The evidence also suggests that there are obstacles in the way of those who may need charitable benefits. Failing to adequately notify the public of a fee waiver policy or free services is considered to be an obstacle in the way of those seeking charity. See Riverside Medical Center, *supra*; Alivio Medical Center, *supra*. Although the Learning Center currently gives financial assistance forms to each family (tr. p. 18), it is not clear if this was done during 2011. Other than the Tuition Assistance Application, the record does not include written notification to the families concerning the fee waiver policy. The Learning Center's bylaws and parent handbook do not include a charitable policy.<sup>7</sup> 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.

Other facts that raise doubts concerning the charitable use of the property include the following: the Learning Center charges a \$50 nonrefundable registration fee, and the applicant could not say whether the registration fee had ever been waived. (Tr. p. 15) The Learning Center charges fees for failing to timely pay tuition and for failing to timely pick-up a child. If a family fails to make a tuition payment for two weeks, the child is automatically dropped from the program. Weekly payments must be made even in the child's absence. The Learning Center charges \$1 for every minute after 6:00 p.m. that

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<sup>7</sup> The copy of the handbook that was submitted into evidence does not mention the Tuition Assistance Application and has no reference to any fee waiver policy. (Dept. Ex. #1, pp. 27-45) The testimony indicated a reference to the Tuition Assistance Application was added to a later version of the handbook, which was not offered into evidence. (Tr. pp. 13, 17-18) It is not clear whether the later version was in effect during 2011.

the parent is late picking up a child.<sup>8</sup> Late pick-up fees must be paid in cash and must be paid before the child will be admitted to the center the next morning. The third incident of failing to timely pick-up a child may result in termination of enrollment. There is no indication that the late fees have ever been waived. These penalties suggest a business-like operation rather than a charitable one and support the finding that the primary use of the property is to provide child care to those who are able to pay. See also Faith Builders Church, *supra*, (tuition, late fees, and disenrollment for failing to pay suggest a business relationship more than a religious one).

The Learning Center provides an important service for the community, but laudable operations 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. City of Chicago, *supra*. The party claiming the exemption must prove by clear and convincing evidence that it is entitled to the exemption. Provena I, at 388. The evidence presented falls short of showing clearly and convincingly that the property qualifies for a charitable exemption.

Recommendation:

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

Linda Olivero  
Administrative Law Judge

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<sup>8</sup> A one-time 5 minute late pick up is allowed for each family per year.

Enter: April 10, 2013