

PT 13-08

Tax Type: Property Tax

Tax Issue: Educational Ownership/Use

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

**MIDWEST MONTESSORI TEACHER
TRAINING CENTER,**

APPLICANT

v.

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

Docket No: 11-PT-0055 (10-16-593)

**Real Estate Tax Exemption
For 2010 Tax Year
P. I.N. 11-07-120-049-8010**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Thomas M. Tully, Thomas Tully & Associates, on behalf of Midwest Montessori Teacher Training Center; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether Cook County Parcel, identified by Property Index Number 11-07-120-049-8010 (hereinafter the “subject property”), qualifies for exemption from 2010 real estate taxes under 35 ILCS 200/15-35(c) in which “property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely,” is exempted from real estate taxation. The controversy arises as follows: On July 26, 2011, Midwest Montessori Teacher Training Center

(hereinafter “Midwest” or “Applicant”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Cook County (hereinafter the “Board”). The Board reviewed Midwest’s Complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied. Dept. Ex. No. 1.

The Department accepted the Board’s recommendation in a determination dated September 29, 2011 finding that the subject property was not in exempt use.¹ Dept. Ex. No. 1. On November 25, 2011, Midwest filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on February 4, 2013 with Louise Kunert, Director of Education for Midwest, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination denying property tax exemption for the subject property be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in 2010. Tr. pp. 12-13; Dept. Ex. No. 1.
2. Midwest was organized under the Illinois “Not For Profit Corporation Act” on April 7, 1965 and is exempt from sales tax “for educational purposes” in the State of Illinois. Midwest does not have shareholders. Tr. pp. 18-19; App. Ex. Nos. 1 and 8.
3. The “Montessori Method” is an individualized approach to teaching children between the ages of three and six in a prepared environment that is “sequentially ordered with materials that have rationale and goals for child development.” The Montessori Method was begun by

¹ The subject property is owned by Garrett-Evangelical Theological Seminary, which is organized under a Special Charter, granted on February 15, 1855, by the Illinois Legislature. According to Department’s Counsel, all of Garrett’s property is exempt and free from taxation. Tr. p. 5. In 2002, Midwest leased the subject property from Garrett, creating a separate leasehold interest. Tr. pp. 52-53.

Dr. Marie Montessori, in the inner city of Rome, in the early 1900's. Montessori education starts at early childhood, believed to be the "foundation for all learning." Tr. pp. 15-18.

4. The purposes of Midwest are "to prepare adequately qualified teachers to staff pre-schools utilizing the Montessori approach in helping children three to six years old develop within themselves the foundational learning skills and attitudes required in later learning." "This includes designing a twelve-month curriculum of lectures, demonstrations, lab work, observations, assignments, and an internship under properly qualified supervisors." It also includes evaluating trainees' progress periodically and issuing a certificate attesting to the nature of their training and to the fact that the required training has been satisfactorily completed. Tr. pp. 21-22; App. Ex. No. 1.
5. The twelve month curriculum is required for certification as a Montessori teacher. In the summer, Midwest offers a full-time training program of six weeks on the subject property, in which the trainees are given information and shown how to use the Montessori materials and what their purposes are. Trainees are instructed on the academic requirements which have to be completed during the year. There are lectures on a child development project that must also be completed during the year and on the theory and philosophy of Marie Montessori. After the six weeks, trainees go to their internship sites, usually off of the subject property, and incorporate what they have learned in the summer with a multi-age group of children. This internship is for 540 hours. Trainees work under a master-teacher. Trainees may come back to Midwest during the year for additional training and can view the Montessori classroom at Midwest "to see how everything's been set up." In the spring, the trainees take exams and prepare for final testing. Trainees must observe four Montessori classrooms. If trainees meet all the requirements and pass their exams, they are recommended for

certification. If they are not recommended, they can come back to Midwest for more training. Midwest usually has 20 to 25 students begin training in the summer. Tr. pp. 22-25, 33-39.

6. During the year, Midwest schedules three “institutes” or seminars where trainees return with their required work and receive further instruction and testing. Trainees have to complete albums in the area of curriculum, math, language and culture. Trainees also have a year-long child development project. In 2010, 40 to 50 trainees attended the institutes. Institutes on January 28 and 29 were held at a hotel in Evanston and on January 30 (Saturday), the Institute was held on the subject property. Institutes on April 8 and 9 were held at a hotel in Evanston and on April 10 (Saturday), the Institute was held on the subject property. On June 14-18 (Monday through Friday), the Institute was held on the subject property. Tr. pp. 40-43, 56-58; App. Ex. No. 5.
7. Midwest trains teachers for both public and private schools. On April 28, 2004, Midwest entered into a contract to train Chicago public school teachers in the Montessori Method. In 2010, Midwest trained two Chicago public school teachers. Tr. pp. 10-11, 43-44; App. Ex. No. 7.
8. Successful trainees are given the “American Montessori Society Certificate in Early Childhood Elementary Levels.” Midwest is accredited by the American Montessori Society. Tr. pp. 25, 28; App. Ex. No. 3.
9. American Montessori Society programs must be accredited by the MACTE (“Montessori Accrediting Council for Teacher Education”) Commission on Accreditation. Midwest had “full accreditation” for its early childhood teacher education certification course. Accreditation requires a “demonstration model classroom,” so that trainees can see how a “prepared environment is structured.” Tr. pp. 27-30; App. Ex. No. 4.

10. Midwest was approved by the Illinois State Board of Higher Education in 1965 to operate a private postsecondary institution under the Private College Act and/or the Academic Degree Act. Tr. pp. 26-27; App. Ex. No. 2.
11. The demonstration model classrooms (hereinafter the “preschool”) located on the subject property operate all year, but with a smaller class in summer because trainees use one of the two classrooms. The material and the philosophy taught to the trainees are used in the preschool. Trainees can come back to the preschool to see the Montessori Method in practice. Some trainees ask to stay and do their internship at the preschool. In 2010, Midwest had 2 trainees remain. The preschool admits a maximum of 50 children, three, four and five year olds, in the two classrooms. Parents must apply to have their children admitted and pay tuition. Tr. pp. 31-38, 57-58.

CONCLUSIONS OF LAW:

An examination of the record establishes that Midwest has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2010 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for exemption should be affirmed. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6, does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

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 for educational purposes 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:

* * *

(c) property donated, granted, received or used for public school, college, theological seminary, university or other educational purposes, whether held in trust or absolutely; 35 ILCS 200/15-35(c).

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 subject property is used as both a preschool and as a teacher training center and it is necessary to look at both uses to determine if the exemption is applicable.

The Montessori Method is an individualized approach to teaching children between the ages of three and six in a prepared environment that is “sequentially ordered with materials that have rationale and goals for child development.” The Montessori Method was begun by Dr.

Marie Montessori, in the inner city of Rome, in the early 1900's. Montessori education starts at early childhood, believed to be the "foundation of all learning." Tr. pp. 15-18. In an "Affidavit of Use" submitted with Midwest's PTAX-300, Dr. Michael Kunert, Administrative Director of Midwest, stated that the preschool serves children from the ages of 3 to 6 years old. Approximately 40 to 50 students are enrolled in the preschool each year and are placed in one of two classrooms. The school is in session from the end of August to the end of May. A summer session runs from mid-June to mid-August. The school is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Dept. Ex. No. 1. Parents of children seeking enrollment in the preschool apply to have their children admitted and pay tuition.² Tr. pp. 57-58.

It is necessary to look at two factors to determine whether the preschool located on the subject property, constitutes a school or a facility used for "educational purposes," in order to qualify for an exemption under 35 ILCS 200/15-35(c). First, does the property contain a school offering an established, commonly accepted program of academic instruction? Carpenters' Apprenticeship and Training Program v. Dept. of Revenue, 293 Ill. App. 3d 600 (1st Dist. 1997). Under this standard, the courts have been inhospitable toward granting an exemption to a school whose curriculum does not consist of traditional subject matter common to accepted schools and institutions of learning. *Id.* at 608. Second, does the program in question substantially lessen what would otherwise have been a governmental obligation, *i.e.*, would the State be otherwise required to offer such a program of study in a tax supported public school? *Id.* at 609.

Both of these criteria received full articulation by the Illinois Supreme Court in Coyne Electrical School v. Paschen, 12 Ill. 2d 387 (1957), where the Supreme Court found that in order for an institution to qualify as a school for purposes of property tax exemption, its course of

² No financial statements were offered into evidence for the preschool and I am unable to determine that the preschool is not operated with a view to profit, a use of property proscribed by 35 ILCS 200/15-35.

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 retailers' occupation tax and use tax on the basis that it was operated for "educational purposes." The court in 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 Illinois is not required to provide and does not mandate education for children under the age of 5, there is no government obligation to educate these children and no corresponding public tax burden being relieved. *Id.*

It must be noted that since the decision in Rogy's New Generation, Illinois now offers and promotes early childhood education programs. For example, 105 ILCS 5/2-3.71 is a voluntary, preschool state-funded education program for 3 to 5 year olds with a parent education component. 105 ILCS 5/2-3.71. Subsection (5) concerns evaluating children for school readiness prior to age 5 and includes the following statement: "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).

This statute demonstrates the legislature's intent to promote preschool education. The statute does not, however, show the legislature's intent to incorporate preschool education into the general scheme of mandated education for the State of Illinois. The Illinois General Assembly has clearly recognized the value and importance of preschool education. Nevertheless, encouraging preschool education and recognizing its importance is not the same as requiring it. The statute does not mandate that every child in this State 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.

Because the State does not provide, nor mandate, education for children under the age of five, the preschool program operated on the subject property does not "fit into the general scheme of education founded by the State." Nor does the preschool operated on the subject property lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State. Because education is not required for children under the age of five, there is no governmental obligation to educate these children, and therefore, no corresponding public tax burden to lessen. I am unable to conclude, based on the record of this case, that the preschool program, conducted on the subject property, qualifies for exemption for "educational purposes" under 35 ILCS 200/15-35(c). If the subject property qualifies for exemption then, the Montessori Teacher Training Program must be the basis for the exemption.

The Illinois Constitution of 1970 allowed the General Assembly to exempt property used "exclusively" for school purposes. "Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not any secondary or incidental use." People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). The fact that some educational use is made of property does not qualify it for exemption where the primary

use is not tax-exempt. Northern Ill. University Foundation v. Sweet, 237 Ill. App. 3d 28, 37 (2d Dist. 1992).

I am forced to conclude from the record of this case that the primary use of this subject property is for the preschool program, which, as discussed above, is a non-exempt use of the subject property. Dr. Michael Kunert's "Affidavit of Use," submitted with Montessori's PTAX-300 states that approximately 40 to 50 students are enrolled in the school each year and are placed in one of two classrooms. The preschool is in session from the end of August to the end of May. A summer session runs from mid-June to mid-August. The preschool is open Monday through Friday from 8:30 a.m. to 4:30 p.m. Dept. Ex. No. 1. On the other hand, the Montessori Teacher Training Program uses one classroom for six weeks in the summer. The Teacher Training Program usually has 20 to 25 students. The remainder of the Training Program, after the summer session, is completed at internship sites off of the subject property. However, teachers in training did receive further instruction on the subject property on Saturday, January 30, 2010, Saturday, April 10, 2010, and Monday through Friday, June 14 through 18, 2010.

More preschoolers (40 to 50) use the subject property than teachers in training (20 to 25). Preschoolers also use more space on the subject property and use this space over a longer period of time. Preschoolers use 2 classrooms for approximately 9 months and 1 classroom for approximately 3 months. Teachers in training use one classroom for 6 weeks and then use the subject property for further training for 7 days during the year. Clearly, the primary and exclusive use of the subject property is for preschool purposes.

Mr. Kunert's "Affidavit of Use" states that the preschool "serves as a Montessori demonstration school for teachers-in-training throughout the school year and in the summer." Dept. Ex. No. 1. Mrs. Kunert testified that the preschool serves as a "demonstration school" for

the Montessori Method. “We can bring our students back to that classroom to show them what the model looks like, because that is our model.” Tr. pp. 30-31. If the preschool truly serves as a “demonstration school” for the Montessori Method, this alone does not provide a basis for a property tax exemption. If it did provide a basis for exemption, I would not recommend a year-long exemption for six weeks of training and occasional and sporadic visits by trainees. Mrs. Kunert testified that trainees must observe four Montessori classrooms as part of their internship training. Tr. p. 39. Clearly, there are other demonstration classrooms available to the trainees. Finally, it must be noted that in 2010, trainees returned to the subject property on two Saturdays, when preschool classes are apparently not in session and could not be observed. It is also not clear from the record that the preschool (which starts in “mid-June” according to the “Affidavit of Use”) was in session when trainees returned on Monday through Friday, June 14-18, 2010, for their final training.

The record forces me to conclude that training and occasional visits from trainees does not constitute the exclusive use of the subject property, which is necessary for exemption. I agree with the “Department’s position,” as stated in closing argument, that “the training is not the primary use of the property because the use of the property that is being conducted all the time is the preschool.” There may be interns and observers on the subject property but “the thing that is always happening on the property is the preschool.” Tr. p. 62.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Moreover, the burden of proving the right to a property tax exemption is on the party seeking exemption, and courts have required such party to prove, by clear and convincing

evidence, that it falls within the appropriate statutory exemption. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1st Dist. 1991). The level of proof contained in the record of the instant case does not satisfy the standard of clear and convincing evidence that applies without exception in property tax cases.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2010 real estate taxes should be affirmed, and Cook County Parcel 11-07-120-049-8010 should not be exempt from 2010 real estate taxes.

August 28, 2013

Kenneth J. Galvin
Administrative Law Judge