

**PT 13-11**  
**Tax Type: Property Tax**  
**Tax Issue: Educational Ownership/Use**

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

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<b>In re</b>	)	Docket Nos.	11-PT-0063
<b>Property Tax</b>	)		11-56-37
<b>Exemption Application of</b>	)	PIN	13-13-300-023
<b>CRYSTAL LAKE MONTESSORI SCHOOL</b>	)	John E. White,	
	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Ellen Berkshire, Verros, Lafakis & Berkshire, P.C., appeared for Crystal Lake Montessori School; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter involves Crystal Lake Montessori School's (the School) application for a non-homestead property tax exemption for property the School owns, and which is situated in McHenry County, Illinois. The Illinois Department of Revenue (Department) granted an exemption for part of the property for 68% of the 2011 calendar year, the latter being based on the date the School acquired the property. The Department denied an exemption for 31% of the building, site, and parking lot. The School protested the Department's denial of an exemption regarding the 31% of the property. The issue is whether the School used all of the property exclusively for school purposes, during the period it owned the property.

The hearing was held at the Department's offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and

conclusions of law. I recommend that the Department reconsider its prior partial denial, and grant the exemption for the whole parcel for the partial tax year.

**Findings of Fact:**

1. The School is incorporated in Illinois as a not-for profit corporation. Taxpayer Ex. 13 (copy of School's Articles of Incorporation, dated March 13, 1984).

2. The School's Articles of Incorporation provide that its purposes are:

To promote or encourage any educational (not including the operation of full secondary educational institution or a vocational school), scientific, or scientific research purpose or activity.

To provide an enriched school environment and enriched school activities that give students the opportunity to develop their fullest potential psychologically, socially, physically, and intellectually.

Taxpayer Ex. 13, p. 2.

3. The Internal Revenue Service (IRS) has determined that the School is exempt from federal income tax, under § 501(c)(3) of the Internal Revenue Code (Code). Taxpayer Ex. 19 (IRS determination letter, dated January 16, 1985); *see also* Taxpayer Ex. 10 (copy of Taxpayer's most recent completed Form 990).

4. The Department has determined that the School is organized and operated exclusively for educational purposes, and issued it an exemption identification number to use when purchasing tangible personal property for use in Illinois. Taxpayer Ex. 20 (copies of letters from the Department's Tax Exemption Section, dated June 8, 2011 and October 6, 2006, to Taxpayer); 35 ILCS 105/3-5(4).

5. For the 2011-2012 school year, the Illinois State Board of Education recognized the School as a nonpublic school. Taxpayer Ex. 34 (copy of Nonpublic School Certificate of Recognition issued by the Board to the School); Hearing Transcript (Tr.) pp. 31, 34-35

(testimony of Pamela Zirko (Zirko), the School's Administrator); *see also* 105 ILCS 5/2-3.25o; 23 Ill. Admin. Code § 425.10.

6. The School is listed in the McHenry County School Directory for 2012-2013. Taxpayer Ex. 35 (copy of front and pertinent page of the McHenry County School Directory).
7. The School owns the property at issue, and took delivery of the deed for the property on April 29, 2011, which was the 119<sup>th</sup> day of 2011. Taxpayer Ex. 2 (copy of trustee's deed to property dated and delivered on April 29, 2011); Department Ex. 1, p. 1 (Department's partial grant of School's exemption application for 68% of the 2011 tax year) ( $119/365 \approx 0.32$ ).
8. The property is the location where the School operates its nonpublic school, which provides state licensed educational programs for children in kindergarten through eighth grade, as well as state licensed programs for early childhood education. Taxpayer Exs. 2, 8 (copy of survey of parcel), 11 (copy of floor plans of School's school building).
9. The School's early childhood education programs follow the Illinois Early Learning Standards set by the Illinois State Board of Education, and are also certified by the American Montessori Society. Taxpayer Ex. 26 (copy of the Illinois State Board of Education's Illinois Early Learning Standards); Taxpayer Ex. 16 (copy of American Montessori Society teacher competency checklists for educational programs); Taxpayer Ex. 17 (copy of American Montessori Society Overviews for the School's Toddler and Early Childhood Curricula); 23 Ill. Admin. Code § 235.Appendix A (Illinois Early Learning and Development Standards - Children Age 3 to Kindergarten Enrollment Age); 23 Ill. Admin. Code § 235.Appendix B (Illinois Birth to Five Program Standards).
10. The State of Illinois provides block funds for early childhood education programs provided

by different Illinois public school districts, and other schools, which are like the early childhood education programs provided by the School on the property. Taxpayer Exs. 11, 24 (Illinois Early Learning Council, Preschool for All, Report to Governor and Illinois General Assembly (Spring 2006)), 25 (Illinois State Board of Education, Preschool For All, Funding Report for Fiscal Year 2009 (Required by PA 94-1054) (November 2008)), 26, 29 (print-outs of Chicago Public Schools Early Childhood Education website ([www.ecechicago.org](http://www.ecechicago.org)) for the 2010-2011 school year), 30 (print-outs of Crystal Lake [Illinois] School District 47, and the Wehde Early Childhood Education Center and Programs), 31 (Woodstock [Illinois] Community Unit School District 200, Report for School Year 2011-2012, and the Verda Dierzen Early Learning Center), 32 (print-outs of Montessori Private Academy's [Rockford, Illinois] website ([www.montessoriprivateacademy.com](http://www.montessoriprivateacademy.com))), 33 (print-outs of Elgin [Illinois] Academy's website ([www.elginacademy.org](http://www.elginacademy.org)); 105 ILCS 5/1C-2(c) ("An Early Childhood Education Block Grant shall be created by combining the following programs: Preschool Education, Parental Training and Prevention Initiative. \*\*\*") (2009); 105 ILCS 5/2-3.71 ("Grants for preschool educational programs") (2010).

11. Jerry Thrush is the School's building manager, and was employed by the School prior to and during the year at issue. Tr. pp. 14-15 (Thrush).
12. Thrush identified Taxpayer Exhibit 11 as consisting of three pages of drawings of the building layout of the School building situated on the property. Taxpayer Ex. 11; Tr. pp. 15-24 (Thrush). The first page provides a description of particular rooms by reference to their use, for example, a library, gym, offices, elementary, middle, and early education classrooms, and also identifies the area of some of the rooms in square feet. Taxpayer Ex. 11, p. 1.
13. The second page of Taxpayer Exhibit 11 identifies areas of the building used during the

summer months. Taxpayer Ex. 11, p. 2. The last page identifies the length and width of most rooms in the building. Taxpayer Ex. 11, p. 3.

14. The first page of Taxpayer Exhibit 11 also briefly describes the different courses of instruction or programs that the School provides to different grade or age levels, within the school building. Taxpayer Ex. 11, p. 1. They are:

- Parent/Infant/Child: 6 mos-2 years of age with a parent, 1.5 hours per week
- Toddler: 2 year old children, 2 or 3 mornings per week
- Early Childhood: 3-6 years of age, either: 5 mornings, 5 afternoons or 5 full days per week
- Kindergarten Extension: 3 afternoons a week added to the five morning classes
- Lower Elementary: 6 to 9 year olds, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grade
- Upper Elementary: 9 to 12 year olds, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> grade
- Middle School 12 to 14 year olds, 7<sup>th</sup> and 8<sup>th</sup> grade

Taxpayer Ex. 11, p. 1; Tr. pp. 37-42 (Zirko).

15. The School's Toddler room has an area of 600 square feet. Taxpayer Ex. 11, p. 1. The School's Parent/Infant room has an area of 406 square feet. *Id.* The School's four Early Childhood rooms have a combined area of 3,700 square feet. *Id.*

16. The total area of the School's building is approximately 36,000 square feet. Department Ex. 1; Tr. p. 15 (Thrush).

17. After taking title to the property on which the School is, and had been, operated, it applied for an exemption for the property. Department Ex. 1, pp. 2-3 (copy of the School's completed Form PTAX-300).

18. On November 23, 2011, the Department issued a partial grant/partial denial of the School's exemption application, which provided, in part:

Property owner or applicant	Crystal Lake Montessori School
County	McHenry
Property index number ***	13-13-300-023
	69% of the bldg. and site is exempt, 31% of the bldg. and site is taxable

69% of the parking lot is exempt; 31% of the parking lot is taxable  
(property not in exempt use)

Based on the statement of facts and supporting documentation in the application, we hereby issue this certificate approving the exemption for 68% of the 2011 assessment year.

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The Illinois Department of Revenue docket number shown above is your exemption certificate number. Refer to this number on the annual certificate of status form and in all future correspondence regarding the property. \*\*\*

Department Ex. 1, p. 1.

19. The record contains no evidence which identifies the factual bases for the Department's determination that the School was using 31% of the property for a purpose that was other than for school purposes. Department Ex. 1; Tr. pp. 72-73; *see also* Order, dated June 26, 2012 ("The Department agreed to notify Applicant of the factual bases for its determination to grant an exemption for 69% of the property at issue, while denying the remainder."). Nor does the evidence show which part(s) of the school building and site make up the 31% that the Department determined the School was not using in an exempt manner. Department Ex. 1; Tr. pp. 72-73.

### **Conclusions of Law:**

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is "property used exclusively ... for school ... purposes." Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-35 of the Property Tax Code (PTC), which provides, in relevant part:

Sec. 15-35. 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: \*\*\*

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(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations;

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35 ILCS 200/15-35. Swank v. Department of Revenue, 336 Ill. App. 3d 851, 857, 785 N.E.2d 204, 209 (2d Dist. 2003) (“we agree ... that the plain language of section 15-35 limits tax exemption to property used for ‘school purposes ....’ ”). For purposes of Article IX, § 6 of the Illinois Constitution and Illinois’ tax statutes, the term “exclusively” means “primarily.” People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1<sup>st</sup> Dist. 1987).

Taxpayer does not object to the Department’s determination that the partial exemption that was granted was for only 68% of the year (Department Ex. 1; Tr. pp. 5 (Taxpayer’s opening statement), 72 (Taxpayer’s closing argument)), based on the date Taxpayer became the owner of the property. Taxpayer Ex. 2 (deed to property dated and delivered on April 29, 2011, which was the 119<sup>th</sup> day of 2011) ( $119/365 \approx 0.32$ ). What it does contest is the Department’s determination that only 69% of the school building and site, and a corresponding proportion of the parking lot, should be exempt. During its opening statement, counsel for the School asked that the documentary evidence be evaluated to discern whether the School offered a course of study which fit into the general scheme of education as established by the State, and whether that course of study reduced the burden to the public. This is just another way of asking that the

evidence be evaluated to determine whether the School was using the property “exclusively for school purposes,” as that constitutional phrase has been interpreted by Illinois courts. *E.g.*, People ex rel. Brenza v. Turnverein Lincoln, 8 Ill. 2d 198, 201, 132 N.E.2d 499, 500 (1956) (“A school \*\*\* is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance of that word.”) (internal quotation marks omitted).

The documentary evidence provides clear and convincing proof that the property is the place where the School operates its own, nonpublic, school. Taxpayer Exs. 2, 8, 11. The School is recognized as a school by the Illinois Board of Education and the McHenry School District. Taxpayer Exs. 34-35. The School provides programs for kindergarten through eighth grades, as well as early childhood programs which are accredited under relatively new state standards established by the Illinois Board of Education, and which are certified by the American Montessori Society. Taxpayer Exs. 3, 10, 11, 16-17, 26; 23 Ill. Admin. Code § 235. Appendices A-B. Counsel for the School pointed out recent Illinois statutes showing that the Illinois legislature has provided funding for accredited early childhood education programs offered at public and nonpublic schools in Illinois, as well as the legislature’s express finding that such programs are in the public interest. 105 ILCS 5/1C-2(c) (2009); 105 ILCS 5/2-3.71 (2010).

When considering the School’s request regarding how to determine whether it uses all of the property exclusively for school purposes, I take into account the Department’s grant of an exemption for 69% of the property. Department Ex. 1, p. 1. That means that the Department has already determined that the School was using a majority of the property primarily for school purposes. *Id.*; 35 ILCS 200/15-35(a). The Department’s determination that the School was using part of the property for school purposes and part of it for some other, unidentified, non-exempt

use evokes one of the issues in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 273 N.E.2d 371 (1971), which the Court described as follows:

Defendants similarly contend that the remaining 67 acres and buildings thereon are exempt only to the extent of actual use for school purposes and rely on the stipulation that during 1968, 'an average of 25% thereof was used for actual classroom and related uses' and no other use was made of the property. While it is conceded that the stipulation controls in the event of conflict in the testimony, it does not, in our judgment, adequately address the issues involved nor can it control the application of legal principles.

We must recognize that it is the primary use of property, rather than its incidental uses, which determines tax exemption status. In the application of this principle, we may encounter two distinct situations. First is the case where the property as a whole, or in unidentifiable portions, is used both for an exempting purpose and a nonexempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [all citations omitted] In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a nonexempting purpose or not used at all. Thus, 'there may be separate assessments by separating uses, as in ..., where the court held that the first story of the church building, occupied for stores, banking business, and the like, and the second story, used for lawyers' and doctors' offices and other business purposes, were not exempt from taxation, but the main body of the third and fourth stories, used for religious purposes, was exempt.' ...

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

In its opening statement, Department counsel asserted that the Department made a ministerial determination that only a portion of the property was entitled to the exemption because the School used only a portion of the property for exempt purposes. Tr. p. 9. But counsel refused to explain why the Department arrived at that determination. Tr. pp. 72-73 ("Well, excuse me, but we don't have to state a reason why."). Further, counsel's response to a direct request to identify which parts of the property the Department determined were not being used in an exempt manner (Tr. p. 72 ("An undivided 32% [*sic*] of the property [is not in exempt use]")) was inconsistent with the plain text of the Department's written partial grant/partial denial. Department Ex. 1, p. 1 ("31% of the parking lot is taxable (property not in exempt use)"). If the

Department did not divide the property according to distinct (exempt versus non-exempt) uses, it is difficult to understand how it could have arrived at the percentages written on the partial grant/partial denial. Department Ex. 1, p. 1. The School is the only owner of the property, so the facts here are not like those in Chicago Patrolmen's Assoc. v. Department of Revenue, 171 Ill. 2d 263, 664 N.E.2d 52 (1996), where the property was allowed an undivided 50% exemption, because the property was owned, in equal shares, by two persons, only one of which was a charitable organization.

Notwithstanding the absence of an articulated basis for its partial denial, the Department clearly made a determination that the School was using 31% of the building and site for a purpose that was not exempt. Department Ex. 1, p. 1. It may be permissible to infer that the Department's partial denial was based on its determination that the School's use of some of the property to provide early childhood education programs was similar to a person's use of property to provide day care services, which has been upheld as a non-exempt use of property. *E.g.*, Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037, 882 N.E.2d 1256 (4<sup>th</sup> Dist. 2008). On this point, however, Ms. Zirko testified, credibly, that the School did not offer day care services. Tr. p. 41 (Zirko). Moreover, here, the School offered ample documentary evidence showing that its accredited early childhood education programs were similar to the early childhood education programs being provided at and by other public and non-public Illinois elementary schools during 2011. Taxpayer Exs. 16-17, 26, 29-33; *see also* Faith Builders Church, Inc., 378 Ill. App. 3d at 1047, 882 N.E.2d at 1265 (when declining to conclude that church's day care services constituted "school purposes," court noted that "the record appears to contain no evidence that Heartland Childcare Center and Heartland Preschool offer curricula 'consist[ing] of traditional subject matter common to accepted schools and institutions of

learning.’ ”).

And even if I were correct when trying to guess the type of use the Department determined was not exempt, the evidence does not support the Department’s determination of the *amount* of the property devoted to a non-exempt use. Added together, the areas of the building used for the School’s Toddler, Parent/Infant, and four Early Childhood rooms have a combined area of 4,806 square feet. Taxpayer Ex. 11. The total area of the School’s building is approximately 36,000 square feet. Department Ex. 1; Tr. p. 15 (Thrush). The evidence, in other words, shows that the School uses only about 13% of the building to provide standardized and accredited early childhood education programs. Taxpayer Ex. 11 ( $4,806/36,000 \approx 0.1335$ ). Again, the facts here are not like those in the Faith Builders case, where fully half of the property at issue was used to provide day care services. Faith Builders Church, Inc., 378 Ill. App. 3d at 1039, 882 N.E.2d at 1259.

The evidence shows that the Department determined that the property was being used both for an exempt purpose and a nonexempt purpose. Department Ex. 1, p. 1; Illinois Institute of Technology, 49 Ill. 2d at 65-66, 273 N.E.2d at 375-76. In such a case, “[t]he property will be wholly exempt only if the former use is primary and the latter is merely incidental.” Illinois Institute of Technology, 49 Ill. 2d at 65-66, 273 N.E.2d at 375-76. Here, the property at issue is owned by the School and is the place where its nonpublic school is located and operated. Taxpayer Exs. 2, 8, 11, 34-35; 35 ILCS 200/15-35(b). The evidence clearly and convincingly shows that the School’s primary use of the property was for school purposes. Department Ex. 1, p. 1; Taxpayer Exs. 2, 8, 11, 16-17, 34-35; Tr. pp. 31-58 (Zirko). To the extent the Department determined that the School’s provision of standardized and accredited early childhood education programs was a non-exempt use of the property, the evidence shows that only about 13% of the

building and site was used for that purpose, and that such a use was a mere incident of the School's primary use of the property. Taxpayer Exs. 2, 11; Illinois Institute of Technology, 49 Ill. 2d at 65-66, 273 N.E.2d at 375-76.

**Conclusion:**

I respectfully recommend that the Director reconsider the Department's partial denial, and grant the School's application for an exemption for all of the property, for 68% of 2011.

November 20, 2013

John E. White  
Administrative Law Judge