

PT 06-3

Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**COMMISSARIAT OF THE HOLY
CROSS,**

Applicant

v.

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

Docket Nos. 04-PT-0059
(03-16-1237)
PINs 22-22-102-004
22-22-102-005
John E. White,
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Gregory Lafakis, Liston & Lafakis, appeared for Commissariat of the Holy Cross; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue

Synopsis:

This matter arose after Commissariat of the Holy Cross (CHC) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for property CHC owned during calendar year 2003, and which is situated in Cook County, Illinois. The issue is whether the property was used exclusively for religious purposes during that period.

The hearing was held at the Department's offices in Chicago. CHC presented documentary evidence consisting of books and records and other documents, as well as the testimony of witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the exemption be denied.

Findings of Fact:

1. CHC is a religious organization that was founded in 1912, and which organization is listed within the Official Catholic Directory, an annual register of the United States Catholic Bishops. Applicant Exs. 8 (affidavit of Father Blase Chemazar (Fr. Chemazar), CHC's president), 19 (copy of title page and page 1581 of the Official Catholic Directory, 2002 ed.); Hearing Transcript (Tr.), pp. 92-94 (Fr. Chemazar).
2. CHC was incorporated as an Illinois not-for-profit corporation in 1921. Applicant Ex. 4 (copy of Illinois Secretary of State's original and amended certificates of CHC's Articles of Incorporation).
3. CHC's mission is to advance the civic and religious interests of the members of the corporation, and to promote the interests of the Franciscan Order and to educate and train, along civic and religious lines, the Jugo-Slav immigrant in the United States of America. Applicant Ex. 4, p. 2; Applicant Ex. 5 (copy of CHC's Bylaws), p. 1.
4. All of CHC's members, and its directors and officers, are members of the Order of Friars Minor (Franciscan Fathers), a Roman Catholic religious order. Applicant Ex. 5, pp. 1-2.
5. CHC is exempt from Illinois' occupation and use taxes, because it is part of the Catholic Church Archdiocese of Chicago, Illinois, which the Department has determined is an exclusively religious organization. Applicant Ex. 16 (copy of Department exemption letter E 9991-6649-04).
6. CHC is also exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code (IRC), because it is "a religious organization operated,

supervised, or controlled by or in connection with the Roman Catholic Church in the United States” Applicant Ex. 15, p. 1 (copy of June 10, 2003 letter from the Internal Revenue Service (IRS) to Associate General Counsel of the U.S. Council of Catholic Bishops); Tr. pp. 63-66, 93-94 (Fr. Chemazar).

7. In September 1994, Archbishop John Cardinal Bernardin of the Archdiocese of Chicago (Archbishop Bernardin) issued a Decree Establishing A Slovenian Catholic Mission (SCM). Applicant Ex. 18 (copy of Decree Establishing A [SCM] (Decree)).

8. The Archbishop’s Decree provided, in substantive part:

1. I hereby establish a [SCM] under the provisions of the Constitution Exsul Familia of Pope Pius XII, August 1, 1952, Caput IV, nn. 34-39, and the Motu Proprio Pastoralis Migratorum Cura of Pope Paul VI, August 15, 1969, Caput IV, B, n. 33, V, A., and Caput VI. This is also in accord with Canon 516, § 2, which states that when certain communities cannot be erected as a parish or quasi-parish, the diocesan bishop is to provide for their pastoral care in another manner. This Mission shall be known as the [SCM].

2. This mission will serve native Slovenians of the post World War II immigration, and more particularly, of the current immigrants, who live in the southwest portion of the Archdiocese of Chicago, who are not affiliated with a territorial parish and choose to affiliate with this Mission. This choice shall be signified by enrollment in the Mission records. Also people of Slovenian descent who want to join this Mission may do so.

3. This [SCM] is entrusted to the Custody of the Holy Cross of the Franciscan Fathers under the terms of an agreement to be signed by the Archbishop of Chicago and the Custos.

4. The Chaplain and Director shall be nominated by the Custos and shall be appointed by the Archbishop of Chicago. The rights and duties of the Chaplain and Director of the Mission are covered by canons 556-563 under the heading of “Rectors of churches.”

5. Such Chaplain and Director will have personal and

cumulative jurisdiction over those affiliated with the Mission. Thus, any of these has the right to choose to receive the sacraments either at the Mission or from the local pastors. He will also enjoy all the faculties and be bound by all the duties which belong to pastors under the law of the Church and the statutes of the Archdiocese of Chicago (including the power of assisting validity as the marriages of couples of whom one or the other is affiliated with the Mission).

6. Slovenian and Slovenian-speaking people who are affiliated with territorial parishes may attend religious services in the Mission. The priests of the Mission, however, may not marry them or baptize their children without the permission of their respective proper pastors. Sunday and Holy Day Masses are to be celebrated only in Slovenian.

7. The Mission shall be under the pastoral direction of the Dean of the territory in which it is located.

Applicant Ex. 18.

9. On the same day he issued the Decree,¹ Archbishop Bernardin signed an Agreement Regarding the Slovenian Catholic Mission (Agreement). *Compare* Applicant Ex. 19 (copy of the Agreement) *with* Applicant Ex. 18.

10. That Agreement provided, in substantive part:

In fulfillment of Article 3 of the Decree establishing the [SCM] of the Archdiocese of Chicago, the following agreement is entered into between Joseph Cardinal

¹ The Decree itself is ambiguous as to when it was signed. The text of the Decree provides that it is “Dated this 12th day of September, 1995 ...”, whereas the following header appears on the same page as that text:

Decree Establishing Slovenian Catholic Mission
September 12, 1994
Page Two

Applicant Ex. 18, p. 2.

This ambiguity is resolved by reading the Decree together with the related Agreement, which is dated September 12, 1994, and which expressly provides that it is “[i]n fulfillment of Article 3 of the Decree establishing the [SCM] ...” Applicant Ex. 19, p. 1 (quoted in finding of fact number 10). Since the September 12, 1994 Agreement could not be “in fulfillment” of a Decree not to be issued for another full year, I read the header of the Decree as containing the accurate date of its issuance, September 12, 1994, and the date set forth in the body of the Decree as a scrivener’s error.

Bernardin Archbishop of Chicago, and the Custody of the Holy Cross of the Franciscan Fathers, through its Custos, Reverend Blase Chemazar, O.F.M. The parties of the agreement will hereinafter be referred to as the “Archdiocese” and the “Franciscan Fathers.”

The terms of the agreement are as follows:

1. The Archdiocese, in accordance with and under the terms described the Decree, entrusts the care of the [SCM] to the Custos of the Holy Cross of the Franciscan Fathers. The Franciscan Fathers will assume direction of the Mission on October 1, 1994.
2. The Archdiocese agrees with the proposal of the Franciscan Fathers to locate the pastoral activities of the Mission in the facilities of the Slovenian Catholic Monastery in Lemont. The Franciscan Fathers will obtain the approval of the Archdiocese for any agreements pertaining to facilities where the Mission is or may be located.
3. The Franciscan Fathers agree to nominate a priest who, when approved by the Archbishop of Chicago, will be appointed Chaplain and Director of the Mission. Initially, that priest will be the Reverend Vendelin Spendov, O.F.M.
4. The Franciscan Fathers agree to administer the Mission and its finances in keeping with the policies of the Archdiocese of Chicago. In particular, it will provide proper worship, sacramental preparation, and adult and children’s religious education and keep sacramental records. It will establish a Pastoral Council and Finance Council. It will provide budget reports and financial reports as requested by the Archdiocese. It will take up all special collections mandated by the Archdiocese and will be subject to the assessments and fees affecting parishes. The Mission will contribute to the support of children enrolled in neighboring Catholic schools, in accordance with established Archdiocesan guidelines. Under the Archdiocesan Sharing Program, it will establish a relationship of cooperative assistance with another Archdiocesan parish or mission.
5. Both the Archdiocese and the Franciscan Fathers agree to commit themselves to the terms of this agreement for a period of three years, reserving the right to dissolve the agreement before that time if there is mutual consent to do so, provided notification to that effect is served at least six months in advance of the contemplated termination date. At the end of two years, an evaluation of the Mission and Chaplain and Director will be conducted under the

direction of the Vicar General. The evaluation will involve the Episcopal Vicar, Dean, Franciscan Fathers and Pastors of parishes in Lemont.

This agreement becomes effective with the signatures of the Archbishop of Chicago and the Custos of the Franciscan Fathers Custody of the Holy Cross.
[signatures & date]

Applicant Ex. 19.

11. Fr. Chemazar signed the Agreement as the Custos of the Holy Cross of the Franciscan Fathers (*id.*), and he retained that status at the time of the hearing in this matter. Applicant Ex. 20 (copy of 2005 list of SCM's Pastoral Council); Tr. pp. 38-39 (Fr. Chemazar).
12. The Agreement remained in effect throughout 2003. *See* Applicant Ex. 20.
13. The SCM was created to address the religious needs of parishioners who had left another Slovenian parish in Chicago, St. Stephens, after that parish's elementary school was closed, and parishioners began to move from the city to the southern suburbs of Chicago. Tr. pp. 32-36 (Fr. Chemazar), 145-48 (testimony of John Vidmar (Vidmar)).
14. Vidmar is a deacon formerly assigned to St. Stephens, and currently assigned to the SCM. Tr. pp. 145-47 (Vidmar). Vidmar was assigned to and served at SCM during the year at issue. *Id.*
15. Members of the Slovenian community previously served by the St. Stephens parish sought a church where they could take part in Catholic sacraments such as baptism, communion, marriage, etc. Tr. pp. 36, 43-44 (Fr. Chemazar).
16. Vidmar, other members of the SCM, and other members of what had been St. Stephen's parish created the Slovenian Cultural Center (SCC) to organize an effort to build and operate a parish center on land owned by CHC in Lemont,

Illinois. Tr. pp. 33-37 (Fr. Chemazar), 147-48 (Vidmar); *see also* Applicant Ex. 19, ¶ 2.

17. The parish center envisioned by the CHC, SCM and the SCC was intended to recreate the type of parish facilities previously available to the parishioners of St. Stephens. Tr. pp. 147-50 (Vidmar).

18. SCC obtained the funds necessary to build a single story building of approximately 14,537 sq. ft. Tr. pp. 50-51 (Fr. Chemazar); *see also* Department Ex. 2 (copy of Applicant's 2003 Cook County Board of Review Real Estate Exemption Complaint formset).

19. SCC was incorporated in 1990 as an Illinois not-for-profit corporation. Applicant Ex. 6 (copies of Illinois Secretary of State's certificate of SCC's Articles of Incorporation, and SCC's Charter and bylaws).

20. Article 4 of the SCC's Articles of Incorporation provide:

The purposes for which the corporation is organized are:

To promote, encourage and foster in the context of the American society, the ideals of the Slovenian Heritage, based on the Christian religious, ethical and cultural values, providing and operating adequate facilities for the benefit of its members to carry on religious, cultural, literary, social, educational, charitable and athletic activities.

To promote, encourage and foster the Slovenian social customs and literary heritage of the Slovenian nation.

To the extent that the corporation's activities may be determined to be a club then this corporation will comply with the state and local laws, and ordinances relating to alcoholic liquors.

Applicant Ex. 6, p. 3.

21. SCC is exempt from federal income tax pursuant to IRC § 501(c)(3). Applicant Ex. 15, p. 1 (copy of July 31, 1992 letter from the IRS to SCC).

22. CHC has long owned property situated in Lemont, Illinois. Applicant Ex. 3 (copies of deeds).
23. That property was, during the year at issue, divided into three adjacent parcels — the two at issue here, and another parcel having a PIN of 22-22-101-107. Applicant Ex. 17 (copy of exemption certificate regarding PIN 22-22-101-107 for 1988); Tr. pp. 52-54 (Fr. Chemazar).
24. The parcel with PIN 22-22-101-107 contains what was formerly St. Mary's Seminary, also known as the Slovenian Catholic Monastery, which includes a small chapel and living quarters for the priests previously, and currently, assigned there. Applicant Ex. 11 (copy of drawing of building and grounds situated on adjacent parcels 22-22-102-004, 22-22-102-005, and 22-22-101-007, titled, Slovenian Cultural Center Slovenski Dom Master Plan); Applicant Ex. 19, ¶ 2; Tr. pp. 99-101 (testimony of Martin Hozjan (Hozjan), SCM board member and president of the SCC).
25. Regarding 1988, the Department determined the parcel having PIN 22-22-101-107 was exempt from Illinois property tax, and it has remained exempt during the year at issue. Applicant Exs. 9 (copy of Fr. Chemazar's Supplemental Affidavit of Use, ¶ 5), 17; Tr. pp. 52-54 (Fr. Chemazar).
26. The former St. Mary's Seminary facilities lack a large gathering space for parish events. Applicant Ex. 11; Tr. p. 108 (Hozjan).
27. The two parcels of property at issue include approximately 8 to 10 acres of land, and a single story building of approximately 14,537 sq. ft. Applicant Ex. 1 (original goldenrod copy of Applicant's 2003 Cook County Board of Review Real

- Estate Exemption Complaint formset); Tr. pp. 50-51 (Fr. Chemazar).²
28. CHC leases the two parcels of property at issue to the SCC. *See* Tr. pp. 49-51 (Fr. Chemazar). Father Chemazar offered testimony regarding the lease term (99 years; *id.*) and annual rent SCC paid to CHC (\$100, *id.*), but CHC did not offer a copy of the lease into evidence.
 29. The SCC building consists of two wings connected by a central area. Applicant Exs. 11, 12 (copies of, respectively, drawing of the SCC building floor plan, and drawing of the SCC building storm sewer plan).
 30. The larger wing of the SCC building consists of a great hall of approximately 7,085 sq. ft. (109 ft. × 65 ft.), including a stage, dressing rooms and storage area. Applicant Ex. 11, p. 1. The smaller wing of the SCC building consists of approximately 4,140 sq. ft. (90 ft. × 46 ft.), and includes a classroom, lounge, library, office, pantry, and storage areas. *Id.* Finally, the middle section of the building, approximately 3,445 sq. ft., includes a vestibule, lobby, lounge, large kitchen, restrooms, coat room, storage, mechanical and janitor areas. *Id.*
 31. The SCC building is ordinarily closed during weekdays and open on the weekends. Tr. pp. 108, 113, 122 (Hozjan). For some Catholic holy days or seasons, however, SCM groups will use the SCC building for activities associated with the holidays. Tr. pp. 108-09 (Hozjan). For example, for Palm Sunday services, SCM members use the SCC building beginning on Thursday, and will continue to use the facilities till mass on Sunday, to arrange palm leaves that are

² The building itself is commonly referred to as the Slovenian Cultural Center. To avoid confusion when referring to the building, as opposed to the organization, I will use the term “the SCC building.”

- distributed to congregants at the Palm Sunday mass. Tr. p. 108 (Hozjan).
32. Similarly, some groups associated with SCC will occasionally use the SCC building during the week to hold practices and/or conduct meetings. Tr. p. 122 (Hozjan, describing, as two examples, a Slovenian folk dance group and a visiting Slovenian church choir group that used the SCC building during weekdays).
 33. On most weekdays and Sundays, the CHC holds mass in St. Mary's chapel. *See* Tr. pp. 47-48 (Fr. Chemazar), 108 (Hozjan).
 34. On certain Catholic holy days, such as Christmas, Palm Sunday, Easter, and St. Nicholas' Day, mass is held in the great hall in the SCC building. Tr. pp. 47-48 (Fr. Chemazar), 108-09, 123 (Hozjan).
 35. The SCC building's classroom and library facilities are used to hold Slovenian school lessons on weekends, to teach children and anyone else interested about Slovenian culture and traditions, as well as the Slovenian language. Tr. pp. 105-06 (Hozjan), 167-68 (Zerdin).
 36. The SCC offers Slovenian language classes for youngsters during weekends, so that non-Slovenian speaking children of church members will be able to understand the masses conducted in Slovenian. Tr. pp. 134-35 (testimony of Father Ogorevc (Fr. Ogorevc), who is the CHC's board secretary, and chaplain and director of the SCM; Tr. pp. 129-30, 140)), 152 (Vidmar).
 37. SCM members use the same areas on Saturdays to provide religious instruction to students who attend secular government schools. Tr. pp. 105-06 (Hozjan).
 38. Cultural or religious activities conducted at the SCC building by SCM members begin and end with a prayer, and some begin with a mass held at St. Mary's

- chapel. Tr. p. 109 (Hozjan).
39. On Sundays, when mass held in St. Mary's chapel is over, congregants walk over to the SCC building, where they have dinner. Tr. p. 155 (Vidmar). Persons who attend the dinners at the SCC building pay \$5 to cover the cost of those dinners. *Id.*
 40. When weddings are celebrated at St. Mary's, the bridal party or family may hold the reception at the SCC building. Tr. pp. 111-12 (Hozjan). Similarly, when funeral masses are conducted at St. Mary's chapel, the family may choose to have a luncheon afterwards at the SCC building. Tr. p. 124 (Hozjan).
 41. SCC charges a fee for the wedding party's use of the SCC building for a reception. Tr. pp. 123-25 (Hozjan); *see also* Applicant Ex. 27 (copy of SCC's Statement of Cash Flows for 2004). No charge is made for the use of the SCC building when a luncheon is held after a funeral mass. Tr. pp. 124-25 (Hozjan).
 42. No witness, from either the SCC or from CHC, offered a written statement of what fee structure SCC used when persons wanted to use or rent space in the SCC building for various events.
 43. SCC prepared a statement of its cash flows for 2004, but not for 2003. Applicant Ex. 23; Tr. pp. 164-77 (testimony of John Zerdin (Zerdin), SCC's treasurer and member of its board of directors, regarding Applicant Ex. 23).
 44. SCC filed a Form 990 with the IRS for 2003. Tr. pp. 186-88 (Zerdin).
 45. SCC provides services and financial assistance to CHC and to its friars to assist them in the maintenance of the St. Mary's building and grounds. Tr. pp. 116-17 (Hozjan), 164-66 (Zerdin); *see also* Applicant Ex. 27.

46. The services SCC members have provided to CHC have included mowing the grass on the exempt parcel, maintaining and making repairs to the St. Mary's chapel and former residence facilities, purchasing and installing new storm windows, and arranging for the design, purchase and installation of a new heating and air conditioning system for the chapel. Tr. pp. 116-18 (Hozjan). Further, the SCC donated \$18,000 in 2004 to purchase lawn mowers for the CHC, which SCC member/volunteers used to maintain the CHC and SCC grounds. Applicant Ex. 27; Tr. pp. 165-66 (Zerdin).

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).³ One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides, in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

³ Article IX, § 6 of the Illinois Constitution of 1970 provides:
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. Art. IX, § 6 (1970).

- (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 Department denied an exemption for the property at issue after determining that the property was not in exempt use. Department Ex. 1. Thus, and pursuant to PTC § 15-40, CHC has the burden to show, *inter alia*, that the property was actually and exclusively used for religious purposes during the period at issue. 35 ILCS 200/15-40; Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248.

Issues and Analysis

I first address whether the parcel were leased or used with a view to profit. The rule to follow when, as is the case here, the property at issue is leased by the owner to another, was described by the Illinois appellate court in Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919, 637 N.E.2d 463 (1st Dist. 1994).

Specifically, the court wrote:

*** before one looks to the primary use to which the property is used after the leasing, one must look first to see if the owner of the real estate is entitled to exemption from property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed.

Victory Christian Church, 264 Ill. App. 3d at 922, 637 N.E.2d at 465.

Here, there is no dispute that CHC is an exclusively religious organization, whose use of the property was previously determined to be exempt. Applicant Exs. 17, 25. The

change in use triggering this instant dispute is based on CHC's lease of the property to SCC. Tr. pp. 82-85 (Fr. Chemazar), *see also id.*, pp. 197-200 (colloquy regarding the proffer, and subsequent denial of admission, of a Department rebuttal exhibit).

In Childrens Development Center v. Olson, 52 Ill. 2d 332, 288 N.E.2d 388 (1972), the Illinois Supreme Court was asked to review the taxability of property leased by the owner, School Sisters of St. Francis (Sisters), a religious corporation, to the Childrens Development Center (Center), a not-for-profit corporation. *Id.*, at 333, 288 N.E.2d at 389. In that case, the parties agreed that Childrens, the lessee, was an exclusively charitable organization, and they further agreed that the lessee used the property exclusively for charitable purposes. *Id.*, 52 Ill. 2d at 334-35, 288 N.E.2d at 390. Thus, the Court had no trouble concluding that:

*** it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, 'with a view to profit,' the tax-exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income. Following the leasing the primary use to which the property was devoted was serving the tax-exempt charitable purpose of Childrens.

Childrens Development Center, 52 Ill. 2d at 336, 288 N.E.2d at 391. Here, in contrast, there *is* a dispute regarding both the nature of the lessee, and the nature of the use to which the property was put after the lease.

Before I address those disputes, however, I first acknowledge that when a property owner leases some of its property to another, the very act of leasing the property constitutes a use of the property by the owner/lessor. First Presbyterian Church of Dixon

v. Zehnder, 306 Ill. App. 3d 1114, 1117, 715 N.E.2d 1209, 1211 (2d Dist. 1999) (where religious organization leased property for one time rent of one dollar, court held that “[i]t is clear that [the owner/lessor] did not use the property for profit.”); Victory Christian Church, 264 Ill. App. 3d at 922, 637 N.E.2d at 465 (property owned by an individual and leased to a church for exclusively religious purposes was nevertheless leased by owner with a view a profit). What the Illinois Supreme Court in Childrens did not address, no doubt because the facts of that case did not manifest such an issue, is a situation where the religious organization’s lease may have been made with a view to profit.

Just as in Childrens, so too CHC’s lease of the property to SCC was not a use of the property, by CHC, with a view toward profit. 35 ILCS 200/15-40. Father Chemazar testified that CHC leased the property to SCC for a term of 99 years, with an annual rent of \$100. Tr. pp. 50-51 (Fr. Chemazar). The property conveyed by lease, he continued, amounted to approximately 8 to 10 acres of land. *Id.* Father Chemazar characterized the annual rent CHC charged under the lease as a token payment (Tr. p. 50), and testified that CHC did not intend to profit from its lease of the land to SCC. Tr. p. 51. The testimony on these final two points constitutes Father Chemazar’s lay opinions regarding the effect of certain facts, which opinions, by themselves, do not bind me. *See In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1016, 679 N.E.2d 393, 403 (1st Dist. 1997) (weight to be given admissible lay opinion testimony must be decided by finder of fact). Nevertheless, the Department does not dispute any aspect of Father Chemazar’s testimony regarding the facts underlying those conclusions. Indeed, Department counsel stated during oral arguments that the \$100 annual rent “could be considered ... de minimus.” After taking into account the undisputed facts regarding the annual rent and property conveyed by the

lease, I conclude that CHC did not lease the property to SCC with a view toward profit. First Presbyterian Church of Dixon, 306 Ill. App. 3d at 1117, 715 N.E.2d at 1211.

The question, then, is whether CHC's lease of the property to SCC "serve[d] a tax-exempt purpose ... [even] though the use may [have] involve[d] an incidental production of income." Childrens Development Center, 52 Ill. 2d at 336, 288 N.E.2d at 391. The exempt use claimed is religious. The first logical inquiry regarding that question, then, is whether SCC, itself, is organized and operated exclusively for religious purposes.

CHC never expressly asserts that SCC is organized and operated exclusively for religious purposes. Instead, it focuses on arguing that the property is used exclusively for religious purposes, without specifically addressing the nature of the agent that purports to exercise such a use. "Whether an entity has been organized and operated exclusively for religious purposes is determined from its charter, bylaws, and actual method and facts relating to its operation." Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 774, 506 N.E.2d 341, 349 (4th Dist. 1987).

The Department argues the evidence that was introduced establishes that SCC is not an exclusively religious organization. *See* Tr. pp. 208-09 (closing argument). It also argues that I should not conclude that the property was used exclusively for religious purposes because applicant offered no documentary evidence of SCC's economic activities regarding its use of the property during the year at issue, 2003. Tr. pp. 209-10 (closing argument). Both arguments help to refocus on the fact that while it is CHC's application for exemption, it is SCC's use of the property that is at issue. Childrens Development Center, 52 Ill. 2d at 336, 288 N.E.2d at 391 ("... it is the primary use to

which the property is devoted after the leasing which determines whether the tax-exempt status continues”); Leonardi v. Chicago Transit Authority, 341 Ill. App. 3d 1038, 1043, 793 N.E.2d 880, 884 (1st Dist. 2003) (“A lease provides a lessee with exclusive possession of the leased premises”).

SCC’s organizational documents do not reflect that, when exercising its stated purpose of “providing and operating adequate facilities for the benefit of its members to carry on ... [various activities]”, the religious activities are intended to predominate over the “cultural, literary, social, educational, charitable and athletic activities.” Applicant Ex. 6, p. 3; *see also* Fairview Haven v. Department of Revenue, 153 Ill. App. 3d at 774, 506 N.E.2d at 349. In fact, the only evidence offered to show that SCC was an exclusively religious organization was Father Chemazar’s testimony, offered while answering foundation questions regarding the introduction of Applicant Exhibit 15. That exhibit includes the IRS letters issued to CHC and to SCC. Tr. p. 62 (Fr. Chemazar). Specifically, Father Chemazar was asked the following questions and gave the following answers:

Q: Now, I’m going to show you Group Exhibit 15. Father Blasé, is the Commissariat exempt from sales tax and state income tax?

A: Yes.

Q: And from federal income tax?

A: Federal tax. This is — this is the letter from the Internal Revenue Service for all those who are listed in the Catholic directory who are the 501(c)(3) institutions.

Q: Okay. And then there is — following that is a letter to the Slovenian Cultural Center. Who’s that from?

A: This is the IRS also and they also have their exemption, federal tax exemption.

Q: So both the Commissariat and the [SCC] are exempt from federal taxes?

A: Yes.

Q: As a religious organization?

A: Yes.

Tr. pp. 61-62 (Fr. Chemazar).

The documentary evidence, however, does not support a conclusion that the IRS determined that both CHC and SCC were exempt from federal tax laws for the same reasons, or that the IRS determined that both entities were the same type of § 501(c)(3) organizations. The IRS letter to SCC states, in pertinent part, “we [i.e., the IRS] have determined that you are exempt from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).” Applicant Ex. 15, p. 3. In contrast, CHC received its exemption via a letter sent to the United States Conference of Catholic Bishops. *Id.*, pp. 1-2. That letter provides that “we conclude that the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in *The Official Catholic Directory* for 2003 are exempt from federal income tax under Section 501(c)(3) of the Code.” Applicant Ex. 15, p. 1. The CHC is listed within *The Official Catholic Directory* as one of the “Religious Institutes of Men” (Applicant Ex. 21), but there is no documentary evidence that SCC is or was one of the “religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in *The Official Catholic Directory*” Applicant Ex. 15.

Further, the letter issued to SCC includes a paragraph that begins with this sentence: “In the heading of this letter we have indicated whether you must file Form 990, Return of Organization Exempt from Income Tax.” Applicant Ex. 15, p. 2. The

heading of that letter states that SCC was required to file the Form 990 (*id.*, p. 1), and Zerdin testified that SCC did so for the year at issue. Tr. p. 186 (Zerdin). The letter issued to the United States Conference of Catholic Bishops, in contrast, does not contain the paragraph pertaining to the filing of Form 990 (Applicant Ex. 15, p. 1), for the simple reason that organizations such as “[a] church, an interchurch organization of local units of a church, a convention or association of churches, an integrated auxiliary of a church (such as a men's or women's organization, religious school, mission society, or youth group)”, are not required to file such returns. *See* <http://www.irs.gov/pub/irs-prior/i990-ez--2003.pdf> (PDF copy of 2003 Form 990 instructions) (last viewed on April 5, 2006). Since SCC must file a Form 990 and the CHC is not required to file one, I reject the suggestion that the IRS considered it and the CHC to be the same type of 501(c)(3) organization.

I cannot presume that SCC is organized and operated exclusively for religious purposes, or for any other exclusively charitable purposes. Chicago Bar Assoc. v. Department of Revenue, 163 Ill. 2d 290, 301, 644 N.E.2d 1166, 1171-72 (1994) (“[T]axation is the rule. Tax exemption is the exception.”); *see also* Chicago Patrolmen’s Assoc. v. Department of Revenue, 171 Ill. 2d 263, 664 N.E.2d 52 (1996) (“The burden of proving the right to exemption rests upon the party seeking it.”). One of applicant’s chief witnesses, moreover, acknowledged that SCC had previously been denied an exemption regarding its leasehold possession and use of the property for a prior year (Tr. pp. 82-84 (Fr. Chemazar)), and counsel for applicant acknowledged that the Department’s decision in that matter was “essentially because it felt that the [SCC] was a secular organization.” Tr. p. 202 (closing argument). While that prior determination does not control any issue

in this matter (Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 417 N.E.2d 1039 (1st Dist. 1981)), it does reinforce that applicant retains the burden to show why SCC's use of the property is exempt for a subsequent year. The record, in short, does not support the conclusion that the SCC is, itself, an exclusively religious organization.

Proceeding now to the issue of use, the Department argues that the property was not used exclusively for religious purposes, in part, because Zerdin, the SCC member who prepared SCC's 2004 cash flow statement that was admitted at hearing, testified that that the net income SCC received during that year was "profit." Tr. pp. 175 (Zerdin), 207-08 (closing argument); *see also* Applicant Ex. 23. When being questioned about that exhibit, Zerdin was asked the following questions and gave the following answers:

Q: All right. So you received about 160,000 [in cash from all sources] and then ended up with a net [i.e., Net Funds Increase] of \$13,000?

A: Yes.

Q: Would you call that a profit?

A: That's — yes, I would. It's more income than expense. I'm an accountant and that would be income. It's not a loss.

Q: Okay. Let me put this way. Does the operation of the center — do you operate — as part of the [SCC] organization, do you operate the center with the view to making a profit or —

A: No. We'd really just like to cover our costs and not have to borrow money. Last year, you know, we paid half of the real estate taxes, and you could see it was almost like \$38,000. And so, you know, we like to cover our costs and, you know, I'm glad we are able to for the last year.

Tr. pp. 175-76 (Zerdin).

A careful reading of the record shows that Zerdin agreed that SCC's "Net Funds Increase" could be called a profit because SCC had a net *increase*, and not a net decrease, in the amount of cash collected, versus the amount of cash it spent, during the annual period. Tr. p. 175 (Zerdin). In other words, he would consider it a profit as opposed to a loss. But Illinois courts do not consider an organization's mere receipt of excess income to mean that it is using property primarily with a view toward profit, as that term is used in Illinois's various property tax exemption statutes. Rather, courts have generally construed profit to refer to some private gain or benefit inuring to a person connected with the organization that is not afforded to others who are not so connected. DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901, 532 N.E.2d 1116, 1119-20 (2d Dist. 1988) (*citing* Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157, 233 N.E.2d 537 (1968); School of Domestic Arts & Science v. Carr, 322 Ill. 562, 569, 153 N.E. 669 (1926)). After considering Zerdin's testimony in full, I do not consider his conclusion that SCC's net income constituted "profit" binds SCC on the issue of whether SCC used the property with a view toward profit.

Similarly, I do not accept as conclusive Zerdin's testimony that SCC did not operate the property with a view toward profit. Tr. pp. 175-76 (Zerdin). In general, a fact-finder determines the weight to be given opinion testimony after reviewing the facts upon which the opinion is based. In re Estate of Roeseler, 287 Ill. App. 3d at 1016, 679 N.E.2d at 403. In a tax case, where mere testimony is offered on one of the ultimate issues, and that testimony is not supported by entries in books and records regularly kept regarding the period and transactions at issue, the fact-finder is free to disregard it. *See, e.g.,* Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 239

(1st Dist. 1981) (testimony that was not corroborated with documentary evidence was insufficient to show that taxpayer was entitled to claimed exemption). Here, applicant wants me to write a recommendation “that states that since the inception of the property, it has been exempt under Section 15-40” (Tr. pp. 206-07 (closing argument)), yet the only financial documents introduced regarding SCC’s use of the property consists of a single cash flow statement that SCC prepared to record activities that took place *after* the year at issue. It submitted no documentary evidence of its financial activities undertaken during the year at issue, such as, for example, a copy of the Form 990 that Zerdin said SCC filed for 2003.

By pointing out CHC’s failure to produce documentary evidence regarding SCC’s financial activities regarding the property, I am not concluding that SCC used the property with a view toward profit. Rather, I conclude that applicant did not bear its burden to show that SCC did not use the property with a view toward profit. Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 246, 777 N.E.2d 700, 709 (1st Dist. 2002) (court considers the absence of evidence in the record regarding a particular issue to weigh in the Department’s favor because the applicant claiming the exemption has the burden of proof).

Applicant’s argument why SCC’s use of the property should be adjudged exclusively for religious purposes is crystallized in the following argument:

I think we have shown that this property is used in furtherance of the [SCM] in conjunction with the [CHC] and in cooperation with the [SCC]. These three entities have together formed a parish, in essence. Even though it may not be called that and may not conform to that language under the canonical law, it truly acts as a parish, as a community, as a religious community. And what it

does is no different than any other ethnic-based community
— religious community in Chicago.

Tr. p. 203 (closing argument). Thus, CHC's argument is that the SCC uses the property exclusively for religious purposes because it is part of the group that together comprises what could be called the St. Mary's parish.

I cannot agree. Its association with the SCM and the CHC does not imbue the SCC with the same essential qualities of those two exclusively religious organizations. The SCM was created by the Archdiocese, pursuant to papal law. Applicant Ex. 18, arts. 1-3. The SCM operates pursuant to the direction of the Archdiocese (Applicant Ex. 19, arts. 2, 4-5), and the Archdiocese operates under the authority of the Vatican, the source of papal law. *See* Applicant 18, art. 1. The SCC, in contrast, is not controlled by the SCM, the CHC, or the Archdiocese. Applicant Ex. 6 (Articles of Incorporation) (requiring 3 of 15 directors to be members of the Franciscan order). Nor does the SCC's association with SCM and CHC change the fact that outside observers may distinguish between the activities of the two distinct types of organizations. For example, just as the IRS has determined that SCC must file a Form 990 annually while CHC need not, Illinois has previously determined that CHC (*sub nom* St. Mary's Friary, or Slovenian Franciscan Fathers) is exempt under Illinois law as an exclusively religious organization (Applicant Ex. 16), whereas there was no evidence offered to show that the SCC is similarly exempt under Illinois law.

Another reason why I distinguish between SCC, on one hand, and CHC and SCM, on the other, is that, by leasing the property, CHC has relinquished exclusive possession of the property to SCC. I will not ascribe the religious activities of the former to the latter when there exists such a dearth of documentary evidence regarding SCC's use of

the property during the year at issue. Leonardi v. Chicago Transit Authority, 341 Ill. App. 3d at 1043, 793 N.E.2d at 884. Further, the Custos of the CHC, Father Chemazar, testified that religious services are conducted within the SCC building less than a handful of times during a year, which hardly reflects a primarily religious use of the property. Tr. pp. 47-48, 86 (Fr. Chemazar); *see also id.*, pp. 108-09, 123 (Hozjan); Community Renewal Society v. Department of Labor, 108 Ill. App. 3d 773, 778-80, 439 N.E.2d 975, 978-79 (1st Dist. 1982) (discussing Illinois Supreme Court's interpretation of statutory term "religious purpose").

Finally, the Department argues that the property was not used exclusively for religious purposes because the evidence established that the SCC rented out the SCC building for secular or cultural purposes, such as for birthday and/or anniversary parties. Tr. pp. 208-09 (closing argument). While that is true (see especially, Tr. pp. 138-44 (Fr. Ogorevc)), the bigger problem lies with the anecdotal nature of the witnesses' testimonies regarding the use of the property during the year at issue. *E.g.* Tr. pp. 59-50 (use of property was "about the same as we had at St. Stephens"), 78-81 (Fr. Chemazar). The record contains no regularly kept calendar(s) of the activities conducted at the SCC building for 2003. Nor does it contain any regularly kept financial records that detail SCC's activities regarding its use of the property during that year. The one financial record that was admitted, the 2004 cash flow statement, did not relate to 2003, and by Zerdin's own testimony, the SCC did not create a cash flow statement for 2003. Tr. p. 163 (Zerdin). I return, again, to the absence of books and records to support the nature of SCC's use of the property, because the SCC is not a church or a religious order whose description of the nature of its activities as being religious is given deference due to the

first amendment. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d at 772-73, 506 N.E.2d at 348 (discussing interplay of state exemption schemes, religion, and the first amendment). Because the CHC has not established that the SCC is an exclusively religious organization, and because the CHC failed to introduce documentary evidence of the SCC's activities conducted on the property during 2003, I conclude that applicant has not established that the property is used exclusively for religious purposes during 2003.

Conclusion:

I conclude that CHC has not satisfied its burden to show that the property leased to SCC was used exclusively for religious purposes for 2003. Therefore, I recommend that the Director finalize the Department's tentative denial of CHC's application for a property tax exemption, and that the property remain taxable for all of 2003.

Date: 4/17/2006

John E. White
Administrative Law Judge