

PT 03-3

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**GRACE EVANGELICAL
LUTHERAN CHURCH**

v.

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

**A.H. DOCKET # 01-PT-0006
DOCKET # 00-23-29
P.I. # 09-18-01-385-001**

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: David R. Reid, Reid Law Offices for Grace Evangelical Lutheran Church.

Synopsis:

The hearing in this matter was held to determine whether Edgar County Parcel Index No. 09-18-01-385-001 qualified for exemption during the 2000 assessment year.

Jerry Klug, Pastor of Grace Evangelical Lutheran Church, (hereinafter referred to as the "Applicant"); Tom Patchett, member of applicant and the Werner Foundation Board; Glenn Corers, president's administrative assistant in education of the Lutheran Church of Missouri Synod, Central Illinois District; Amy Farmer, director of the Grace Lutheran Child Development Center, Werner School; Jana Tyler, member of applicant and president of the Board of Education; Lisa Roush, parent of children that attend applicant's facility; Kay Rechert, member of applicant; and Jackie Swango of Eastern Illinois University School of Family and Consumer Sciences, Child Resources and Referrals, were present and testified on behalf of applicant.

The issue in this matter is whether applicant used Edgar County Parcel Index No. 09-18-01-385-001 for exempt purposes during the 2000 assessment year. After a thorough review of the facts and law presented, it is recommended that the requested exemption be granted from March 13, 2000 through December 31, 2000. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Edgar County Parcel Index No. 09-18-01-385-001 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the request for exemption of the subject parcel from the Edgar County Board of Review. The board recommended granting the requested exemption. The Department denied the request finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. The Clara & Spencer Werner Foundation, Inc. (hereinafter the "Foundation") was formed by two members of applicant's congregation in 1953. Applicant's board and the board of the foundation are made up of virtually the same people, although the foundation is a separate legal entity from applicant. The foundation contributes to various Lutheran organizations throughout the country. (Applicant's Ex. No. 21; Tr. pp. 17-19, 43, 48-52)

4. The by-laws of the foundation were revised on August 20, 1999. The objectives of the foundation are:

To receive and administer funds for scientific, educational and charitable purposes, all for the public welfare, and for no other purpose, and to that end to take and hold, by bequest, devise, gift, purchase, or lease, either absolutely or in trust for each of the objectives and purposes or any of them, any property, real, personal, or mixed, without limitation as to amount or value, except such limitations, if any, as may be imposed by law; to sell,

convey, and dispose of any such property and to invest and re-invest the principal thereof, and to deal with and expend the income therefrom for any of the before mentioned purposes, without limitation, except that all funds expended must be contributed to a Lutheran church or charity, or must be expended in association with or in cooperation with such Lutheran church or charity, or except for such limitations, if any, as may be contained in the instrument under which such property is received; to receive any property, real, personal, or mixed, in trust, under the terms of any will, deed of trust, or other trust instrument for the foregoing purposes or any of them (but for no other purposes), and in administering the same to carry out the directions and exercise the powers contained in the trust instrument under which the property is received, including the expenditure of the principal, as well as the income, for one or more of such purposes, if authorized or directed in the trust instrument under which it is received; to receive, take title to, hold, and use the proceeds and income of stocks, bonds, obligations, or other securities of any corporation or corporations, domestic or foreign, but only for the foregoing purposes, or some of them; and, in general, to exercise any, all and every power for which "Illinois Not for Profit Corporation Act" for scientific, educational and charitable purposes, all for the public welfare, can be authorized to exercise, but not any other power. Not[sic] part of the activities of this corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. (Applicant's Ex. No. 3)

5. Applicant's congregation came to the foundation board and asked the foundation to build a preschool. The foundation requested that applicant conduct a feasibility study as to: (1) whether it was desired by the congregation; (2) whether the congregation would support the idea; and (3) whether the membership of the congregation would be increased. (Tr. pp. 14, 17)

6. Applicant found that a day care facility was needed in the community. (Tr. pp. 15-17, 42, 92)

7. Applicant's congregation voted to acquire property to construct an adequate structure with appurtenances for the purpose of providing the congregation and community with a childcare center and preschool. Applicant owns the subject property. The 13,856 square building located on the property, known as the Werner School, is used for a day care and preschool center that opened on March 13, 2000. (Dept. Ex. No. 1; Applicant's Ex. Nos. 1, 6, 20; Tr. pp. 59, 70)

8. The day care facility built on the subject property is located right next to applicant's church complex. Approximately 80 children, from infant through five years of age attend the center. (Applicant's Ex. Nos. 5, 8; Tr. pp. 23-24, 38, 46)

9. Applicant realized that a child care center would not be self supporting. The foundation agreed to help support the center for \$100,000 per year until the foundation could raise enough endowment funds¹ to be able to support this area of applicant's ministry. (Tr. pp. 17, 43-44, 49-52, 118)

10. The foundation donated money to applicant to build the day care center.² In 1999, applicant took out a million-dollar loan with the backing of the foundation to finish the project. The center opened on March 13, 2000. (Dept. Ex. No. 1; Tr. pp. 19, 79)

11. Applicant's annual registration for childcare, only, at the center is \$25.00 per child and \$50.00 per family. For pre-school, only, the fee is \$15.00 per child and \$25.00 per family. For childcare and preschool it is \$40.00 per child and \$65.00 per family. (Applicant's Ex. No. 7)

12. Applicant's child care fee structure³ in 2000 is as follows:

	<u>Weekly Full Day Tuition</u>		<u>Weekly Half Day (0-5 hours)</u>		<u>Daily/Drop In Tuition</u>	
	<u>Prepay</u>	<u>Post-Pay</u>	<u>Prepay</u>	<u>Post-Pay</u>	<u>0-5hrs</u>	<u>5 hrs Plus</u>
Infants	\$108	\$118.75	\$54	\$59.25	\$15	\$25
Toddlers	\$90	\$118.75	\$50	\$59.25	\$12	\$23
Transition	\$90	\$108	\$50	\$54	\$12	\$23
Three's	\$80	\$86.25	\$40	\$43	\$11	\$20
Four's	\$80	\$86.25	\$40	\$43	\$11	\$20
Five's/Kg.	\$80	\$86.25	\$40	\$43	\$11	\$20

Prepay Fee: Due by Monday a.m. of the childcare week.

Post-Pay Fee: Due by Monday a.m. of the week following childcare.

¹ The amount needed in the endowment fund and its creation were not discussed at hearing.

² Applicant, in its exhibits and testimony, refers to the day care center/pre-school as the Grace Lutheran Child Development Center, the Werner School, the school, and CDC. For convenience, I will refer to it as the "center".

³ Applicant submitted two Family Handbooks for the center. (Applicant's Ex. Nos. 7, 15). The director of the center in 2000 was not Amy Farmer. It is reasonable to conclude that Applicant's Exhibit No. 7 reflects the charges for 2000 as it was prepared by another director. Ms. Farmer was the director listed in Applicant's Ex. No. 15, which did not contain a tuition schedule.

Childcare Family Discount: 1st child – full fee (youngest child), 2nd plus children – 5% discount for each child. This applies to **WEEKLY FULL DAY AND WEEKLY HALF-DAY TUITIONS ONLY.** (Applicant’s Ex. No. 7) (emphasis in the original)

13. Preschool tuition at the center for 3-year-olds for the Tuesday and Thursday classes – 2 hour sessions is \$50.00 monthly. With weekly full day childcare the monthly fee drops to \$35. For 4-year-olds for the Monday, Wednesday, and Friday classes – 2½ hour sessions- the fee is \$70.00 per month. With weekly full day childcare the monthly fee drops to \$55.00. (Applicant’s Ex. No. 7)

14. Tuition includes the costs of daily morning snacks, afternoon lunches, and afternoon snacks for the child. (Tr. p. 82)

15. The center is open from 6:00 a.m. until 6:00 p.m. (Applicant’s Ex. No. 7)

16. Applicant submitted an income/expense statement for January 2000 through December 2000 showing total income of \$240,629.97 and total expenses of \$232,608.39. There is no line item breakdown on the income/expense statement⁴. (Applicant’s Ex. No. 14)

17. The center received three checks in 2000 from the foundation. A check in the amount of \$100,000 was dated May 3, 2000. On November 17, 2000 another check was given for \$10,000. On December 18, 2000 a third check was issued for \$10,000. Noted on the November check was “partial subsidy.” (Applicant’s Ex. No. 16; Tr. pp. 47-48)

18. On July 6, 2000, the foundation paid the bank \$250,000 to cover the center’s mortgage payment. (Applicant’s Ex. No. 16; Tr. p. 47)

19. The mission of applicant is “to worship joyfully the Triune God, to share the Gospel of Jesus Christ and God’s truths taught in the Holy Scriptures, and as Christian people, to

⁴ Applicant also submitted an analysis of financials for January – June 2002. The income shown on that statement was from tuition, DCFS [Department of Children and Family Services] fees, Federal Food Reimbursement, Setzer Memorial Fund (a fund set up in 2001 for families in need of help; Tr. p. 84), church donations, envelope donations, Foundation grants, Lutheran Brotherhood, endowment fund, interest, and other. (Applicant’s Ex. No. 13)

minister to the needs of humanity.” The mission of the center is “to assist Grace Congregation in sharing the Gospel of Christ as we nurture and care for children and families in the Paris area.”

(Applicant’s Ex. No. 7)

20. Needs of the center are published in applicant’s bulletins given out at church services. Volunteers from applicant’s church do laundry, rock babies, prepare food, and help at the center. Ladies of applicant’s church made a baby blanket for each child at the center.

(Applicant’s Ex. Nos. 9, 10; Tr. pp. 31, 69-70, 97)

21. Applicant’s members make private donations to the center for its needs. The donations are separate from the donations given to applicant’s church. (Applicant’s Ex. No. 19; Tr. pp. 107-111)

22. The Lutheran Bible curriculum entitled “Alive” is used for the day care and preschool classes. The Lutheran Church of Missouri Synod, on its campus at Concordia University, is about to offer the first doctrine in the United States in early childhood education. In addition, chapel is held for the center’s participants in applicant’s church once a week.

(Applicant’s Ex. Nos. 11, 18; Tr. pp. 27, 38-39, 56-57, 63-64, 68-69)

23. Teachers at the center write out weekly lesson plans, which are posted outside the classrooms. The lesson plans are followed in all the areas of the center including the rooms for infants and toddlers. (Applicant’s Ex. No. 18; Tr. pp. 72, 86-87)

24. The children that attend the center are from a variety of religious backgrounds. Applicant does not discriminate based upon race, color, national or ethnic origin, religion, or sex.

(Applicant’s Ex. No. 7; Tr. p. 76)

25. The Christmas program for the center is held in applicant’s church. Preschool graduation is also held in the church. Children attending the center are included in applicant’s vacation Bible School program. (Tr. pp. 26-27, 97)

26. Applicant does not have a written policy regarding fee waivers or fee reductions based upon need. However, if applicant becomes aware of a family's financial problems, it has been applicant's policy to cover that family's costs at the center. (Tr. pp. 27-28, 78)

27. A general call is given to applicant's congregation if a family is in need of funds to cover the day care/school costs at the center. Individual members of applicant's congregation respond to that call. In addition, applicant announces its fee waiver policy to individuals and groups touring the center. (Applicant's Ex. No. 19; Tr. pp. 111, 119-120)

28. The center is licensed by the State of Illinois Department of Children and Family Services as a preschool and childcare facility. The license is for 98 children in the building on the subject premises. (Applicant's Ex. No. 7; Tr. p. 88)

29 The center has been used for training sessions and workshops offered by Eastern Illinois University School of Family and Customer Sciences, Child Resources and Referral. Child Care Resources and Referral is part of the state of Illinois child care network which is funded through the Illinois Department of Human Services and covers six counties including Edgar county. It monitors the activities at the center and refers families to applicant's center. (Tr. pp. 112-113, 117)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the

claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Applicant requests a property tax exemption as a religious school pursuant to the exemption found at 35 **ILCS** 200/15-40 or as a charitable organization pursuant to the exemption found at 35 **ILCS** 200/15-65(c). (Applicant's Brief)

The religious property tax exemption is found at 35 **ILCS** 200/15-40. That portion of the statutes exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, . . .

Although applicant asserts the building on the subject parcel is a school that is religious in nature, the facts in this matter show that in fact the building is used, primarily, as a day care facility. Day care centers cannot be organized and operated exclusively for educational purposes because the State of Illinois does not provide or mandate education for children under the age of five. Rogy's New Generation v. Department of Revenue, 318 Ill.App.3d 765 (1st Dist. 2000). This is particularly true concerning this center because applicant admits through its testimony that some of the children in the center are infants, (Tr. pp. 38, 82, 87) children that are too small or too young to receive religious instruction. The term "a religious purpose" as used in the constitution exempting from taxation property used for religious purposes means use of property by a religious society or body of persons as a place for public worship. Any religious worship or instruction at this center is incidental to its main purpose, that being as a day care center open to persons regardless of religious persuasion. A school, within the meaning of the constitutional

provision, is a place where systematic instruction is given by methods common to schools and institutions of learning. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). Therefore, the subject parcel does not qualify for a property tax exemption as a religious school under 35 **ILCS** 200/15-40.

In the alternative, applicant requests an exemption pursuant to the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation 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.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

Illinois courts have recognized that religious organizations may use properties for charitable purposes, thereby fulfilling their charitable missions and ministries. First Presbyterian Church of Dixon v. Zehnder, 306 Ill.App.3d 1114 (2nd Dist. 1999). Applicant is a religious organization using the subject property to provide childcare, a need it has identified in the community.

The charitable exemption found at 35 **ILCS** 200/15-65 applies to institutions of public charity. In Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old Peoples Home") the Illinois Supreme Court acknowledged the following

definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893) “... a charity is a gift to be applied consistently with existing laws, 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.”

The courts have interpreted this definition by observing that all institutions of public charity share the following distinctive characteristics:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses;
- 6) and the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Applicant has no capital stock or shareholders. The center receives money from tuition payments, the foundation, the Department of Children and Family Services, and charitable contributions from members of applicant. Applicant established that without the support of the church and foundation, applicant’s expenses at the center would exceed its income. (Applicant’s Ex. Nos. 12, 13) Therefore, no profit or dividends are earned and the center derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its mission. Applicant does not provide a gain or profit in a private sense to any person connected with the center.

If a family is unable to pay the tuition required or registration fees, applicant will waive those fees if the need is made known. Applicant established that fees have been waived or covered by donations from applicant's congregation. Applicant does not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits applicant dispenses at the center. Applicant, therefore, uses the center for charitable purposes.

The center was opened on March 13, 2000. No evidence was offered to establish how long it took to build the center or what steps were necessary to get the license from DCFS. The foundation donated money to the applicant to build the center. It is unclear when that happened. Applicant took out a million dollar loan in 1999 with the backing of the foundation to finish the project. No exhibits or evidence were submitted to substantiate the timing of the loan in 1999 or the previous donation for the building from the foundation. However, applicant has established that the center began its operation on March 13, 2000.

For the foregoing reasons, it is recommended that Edgar County Parcel Index No. 09-18-01-385-001 be exempt from property taxation for the period of March 13, 2000 through December 31, 2000 or for 81% of the 2000 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: February 21, 2003