

PT 06-16
Tax Type: Property Tax
Issue: Charitable Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 04-PT-0030
v.)	PIN 11-14-07-406-004
)	
PAXTON DAY CARE CENTER)	Tax Year 2003
)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Charles W. Pacey of Pacey & Pacey Lawyers, P. C. for Paxton Day Care Center.

Synopsis:

This case concerns whether a parcel of property located in Ford County that is owned by Paxton Day Care Center (hereinafter “applicant” or “Center”) is exempt from taxes for the year 2003. The applicant alleges that the property qualifies for an exemption under section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is owned by a charitable organization and used exclusively for charitable purposes. The Department of Revenue (hereinafter “Department”) contends that the applicant has not met either the ownership or the use requirement for the charitable

exemption. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on December 11, 1972. It operates a full service day care that offers quality care for children ranging in age from 6 weeks to 10 years. (Dept. Ex. #2)
2. The applicant's articles of incorporation state that it is organized exclusively for charitable, religious, educational, and scientific purposes. Its bylaws state that its purpose is as follows:
 - To provide safe, healthy and educationally oriented child care services to community parents and children;
 - To seek to constantly improve its services and to keep them relevant to community needs;
 - To play a role in area-wide child care matters, particularly with regard to expansion and improvement of the program. (Dept. Ex. #2; App. Ex. #5)
3. On August 6, 2003, the applicant purchased the property located at 200 N. Elm Street in Paxton. The applicant had previously leased this property, which has one building with one floor. Its rooms include a small office, a kitchen, and four rooms that are used for the children. (Dept. Ex. #1, 2, pp. 19, 31)
4. The applicant is open Monday through Friday from 6:00 a.m. to 5:30 p.m. The applicant serves breakfast, lunch, and an afternoon snack every day of operation. (Dept. Ex. #2, p. 15)

5. The Board of Directors membership consists of at least five parents of children enrolled at the Center, plus at least five other persons representing the community. (Dept. Ex. #2, p. 16)
6. The Board meetings are held a minimum of once a month to discuss matters concerning the Center; they are held more often as needed. The role of the Board is to review and approve policies for the Center, hire the Director, oversee hiring and firing of staff, oversee Center funding and disbursements, and act as a liaison between the Center and the community. (Dept. Ex. #2, p. 16)
7. The State of Illinois Department of Children and Family Services (hereinafter “DCFS”) has licensed the Center and monitors the program on a regular basis. DCFS has set a limit on the total licensed capacity and the maximum group size according to the age group of the children. (Dept. Ex. #2, p. 15)
8. The maximum number of children that can be served at the site at 200 North Elm is 55. The applicant has another site where the limit is 25. (Tr. p. 8)
9. The applicant is inspected by DCFS every year and receives a new license every four years. (Tr. p. 8)
10. The applicant does not have any geographical boundaries for the families and children that it serves. (Dept. Ex. #2, p. 15)
11. The enrollment procedure includes first contacting the Center Director for an appointment to visit. Then the parent and child must visit for at least one half-hour in order to give the parent an opportunity to observe the Center’s practices and the staff the chance to observe the child’s interaction with the group. After

- that, the enrollment paperwork is discussed with the Director. (Dept. Ex. #2, p. 16)
12. Often there are no immediate openings at the Center, and the child must join a waiting list. Priorities set by DCFS determine the position of a child on the list; it is not necessarily first come, first served. Priorities may change with legislation, but the usual order is teenaged parents, recovering addict parents, protected (abused) children, low-income families, and then the next person to call. (Dept. Ex. #2, p. 16)
13. There are two types of families whose children are at the Center: private pay families and subsidized families. At the time of the hearing the applicant was serving 35 families on the property, and approximately 31% of them were private pay families and 69% were subsidized. (App. Ex. #1; Tr. pp. 13, 15)
14. When additional funds through contributions, fundraisers and grants are available, the Center can offer families a sliding scale for tuition, depending on family income and size. Low-income families may be eligible for a funded program through one of the State or local agencies. (Dept. Ex. #2, p. 17)
15. The applicant has a contract with the Illinois Department of Human Services (hereinafter “DHS”) wherein DHS agrees to subsidize a portion of the child care services for low-income families.¹ (App. Ex. #1; Tr. p. 20)
16. DHS publishes parent co-payment guidelines for child care. The guidelines that were effective July 1, 2005 through June 30, 2006 state that “[p]arents who have been approved for child care benefits are required to help pay for the cost of their

¹ The applicant did not provide a copy of the contract.

child care. You MUST make a payment, called the Parent Co-Payment, to your child care provider each month.” (App. Ex. #1)

17. The guidelines further state that DHS “will pay your provider directly for the remaining child care charges up to the maximum rate. [DHS] will not pay for any child care charges over the maximum rate. * * * The amount of your parent co-payment is based on gross monthly income, family size, and number of children receiving child care. * * * If the majority of care for the month is for less than 5 hours per day for each child, the amount of the parent co-payment will be reduced by one-half.” (App. Ex. #1)
18. The following is an example of the co-payment amounts: for a family of two (one child), if the monthly income is between \$0 and 327, the monthly co-pay is \$4.33 and the weekly co-pay is \$1. If the monthly income is \$328 to \$491, the monthly co-pay is \$13.00 and the weekly co-pay is \$3.00. The highest salary range for a family of two is \$1,963 to \$2,051, where the monthly co-pay is \$212.32 and the weekly co-pay is \$49.00. (App. Ex. #1)
19. In order to qualify for a subsidy from DHS, the parent must either be working or in training (i.e., taking classes or going to school). (Tr. p. 16)
20. At the time of the hearing, the applicant had a total of 24 families that were being subsidized by DHS: seven single-parent families were earning less than approximately \$14,500 annually; eleven single-parent families were earning more than \$14,500 but less than approximately \$24,000 annually; five single-parent families were earning more than \$24,000 but less than \$31,800 annually; and one

two-income family was earning approximately \$36,000 annually. (App. Ex. #1; Tr. pp. 17-18)

21. The applicant serves three children from one of the single-parent families whose parent does not have any income but is attending school. The weekly co-pay for that parent is \$2. That parent receives a grant to attend school. (Tr. pp. 18-19)
22. Sometimes the applicant receives funding for day care services through DCFS. The applicant charges DCFS and DHS the same amount, but the family of a child that is placed at the Center through DCFS does not make a co-payment. These children are typically under foster or protective care. (Tr. p. 20)
23. At the time of the hearing, the applicant was serving 11 private pay families. The applicant had two single-parent families with an income range of \$23,500 to \$30,000, and nine two-parent families with income over \$40,000. (App. Ex. #1; Tr. p. 21)
24. The rate that the applicant charges the private pay families is virtually the same rate that it charges the State. Many of the families enter the program under the subsidized program, and the applicant keeps the rates the same so that when they stop receiving the subsidy, the rates are still affordable. (Tr. pp. 21, 33-34)
25. The applicant's handbook states that all families are expected to pay a weekly tuition fee. It also states that the amount of this fee depends upon the type of funding for the child and the family income level, and the rates are revised periodically. (Dept. Ex. #2, p. 17)

26. The applicant's tuition fee scale is as follows:

Income Range	Infant/Toddlers	Pre-school Kindergarten	School-age School Year
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			Summer Camp	
\$23,500-30,000	107.00	77.00	47.00	
\$30,000-40,000	115.00	83.00	51.00	
\$40,000 +	122.00	89.00	54.00	(App. Ex. #1)

27. The tuition fee scale states that “[s]liding scale slots are limited. Sliding Scale is only possible when fundraisers, grants, and contributions designated for this purpose are received to off set any reduction. The bottom line rate reflects the actual cost of tuition needed to operate the center.” (App. Ex. #1)
28. The tuition fee scale states that “[t]uition will be charged based on five days regardless of attendance unless the child/children have been absent the entire billed week due to an illness or planned vacation. * * * School-age rate applies only to the school year and five full days in school. During school out days and/or school closures full day rate will be charged to your account regardless of attendance. The Center will not deduct tuition for more than three weeks vacation per fiscal year.” (App. Ex. #1)
29. The handbook indicates that fees for a given week of attendance are due in full no later than Monday morning before the week’s care begins. If tuition is not paid for more than two consecutive weeks, services for the child will be discontinued. In the event a child has been disenrolled due to lack of payment, the family is placed at the end of the waiting list and the account must be paid in full in order to enroll again. (Dept. Ex. #2, p. 17)
30. The 5:30 p.m. closing time is strictly observed, and families who abuse the closing time are required to pay a late fee of \$1.00 per child for every five

minutes (or portion thereof) after 5:30 until 5:44. At the start of 5:45 p.m., the late fee increases to \$10.00 per child. There is an additional \$10.00 fee for each additional half-hour thereafter. If the family continues regular lateness, the child will be disenrolled and the family placed at the end of the waiting list. (Dept. Ex. #2, p. 17)

31. The applicant does not waive the fees for anyone who cannot pay on their own or receive subsidies from the State. The applicant does not have a policy for waiving fees for someone who is unable to pay or qualify for a subsidy. (Tr. pp. 36-37)

32. If one of the private pay families has financial difficulties and is unable to pay the fee for one or two months, the applicant would not provide services for that amount of time without receiving tuition. (Tr. p. 37)

33. The audited financial statements for the fiscal years ending June 30, 2003 and June 30, 2004 show the following income and expenses:

<u>Public Support and Revenue</u>	<u>2003</u>	<u>2004</u>
Dept. of Public Aid – regional	\$ 1,556	\$ 15,254
DCFS Title XX	177,402	120,379
Dept. of Public Aid – Title IV-A	17,273	21,324
State Bd. Of Ed. – food program	32,870	27,519
Other Income	8,763	17,539
Interest Income	801	286
Contributions	12,683	4,717
Parent Fees	<u>132,327</u>	<u>151,861</u>
Total Revenue	383,675	358,879
 <u>Expenses</u>		
Program Services	320,784	310,243
Support Services	<u>46,188</u>	<u>51,180</u>

Total Expenses	366,972	361,423
Change in Net Assets	16,703	(2,544)
(Dept. Ex. #2; App. Ex. #2)		

34. Program Services include salaries and food expense. The Support Services include other expenses such as utilities and advertising. The applicant's advertising expense for the year ending June 30, 2003 was \$52. For the year ending June 30, 2004 it was \$149. (Dept. Ex. #2; App. Ex. #2)
35. The applicant advertises through word-of-mouth, newspapers, the public access channel, and fliers that are distributed at schools, churches, and other community buildings. (Tr. p. 28)
36. For the fiscal year ending June 30, 2004, the applicant had "Cash in Bank" in the amount of \$64,304, and "Investments" in the amount of \$75,000. (App. Ex. #2; Tr. pp. 23-24)
37. The financial statements indicate that donations are received on occasion from organizations and individuals. The donors have no control over the method in which the funds are spent. At times, donations are solicited for a specific need, then funds are spent for that purpose. Fundraising is only done for these specific purposes. No funds are raised for general administration. (Dept. Ex. #2, p. 30)
38. The applicant has 17 employees: 12 full-time and 5 part-time. (Tr. pp. 28-29)
39. The Executive Director has the highest salary and receives approximately \$28,000 annually. The Assistant Director receives approximately \$18,000 annually. The applicant's highest paid teacher earns \$9.25 an hour. (Tr. pp. 29-30)

40. At the Center, the infants learn basic motor and pre-language skills. The two-year-olds learn things such as social skills, toileting, eating with utensils, and basic cognitive skills. The pre-school aged children follow a curriculum and continue to focus on physical, social, emotional, and cognitive skills, including pre-reading and pre-writing skills. (Tr. pp. 10-12)
41. The applicant does not have any capital stock or shareholders. (Tr. p. 25)
42. The applicant is exempt from federal income taxes under section 502(c)(3) of the Internal Revenue Code. (App. Ex. #3)
43. The applicant is exempt from the retailers' occupation tax and use tax pursuant to a determination made by the Department. (App. Ex. #4)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity. * * *. (35 ILCS 200/15-65(a)).

Property may therefore be exempt under this section if it is (1) owned by an entity that is an institution of public charity, and (2) actually and exclusively used for charitable purposes. *Id.*; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 270 (1996); Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 156-157 (1968). Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home at 156-57. If the primary use of the property is charitable, then the property is “exclusively used” for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982).

In Methodist Old Peoples Home, the Supreme Court provided the following guidelines for determining charitable use: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose for which the property is used, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home, 39 Ill. 2d at 156-57. These factors are used to determine whether property meets the constitutional standards for a charitable purposes exemption. Eden

Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290-291 (2004). They are not requirements and are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the organization and use of the property serve the public interest and lessen the State's burden. See DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

The Department contends that the applicant is not a charity because it does not provide charity in the strict sense of the word. The Department states that the applicant receives payment in full from either the family or the government. According to the Department, the applicant may provide a useful and beneficial service to the community, but it is not a charity.

The applicant argues that it meets the guidelines in Methodist Old Peoples Home. It claims that it benefits an indefinite number of people and is limited only by the licensure requirements. In the applicant's view, it reduces the burdens of government and persuades the public to an educational conviction because there is an educational component to day care. The applicant maintains that its services provide a cheaper

method of taking care of children rather than having these families on welfare. The applicant states that it does not have capital stock, its funds are in trust for the purpose expressed in its charter, and there are no obstacles placed in the way of those who seek and would use the services. It also asserts that there is no gain or profit in a private sense to any individual, and the salaries given to the employees are reasonable.

The evidence does not support a finding that the applicant is a charitable organization or that the property is used for charitable purposes. The applicant does not have a fee waiver policy, and it does not actually waive its fees for anyone who cannot pay them. The applicant provides services only to people who can afford to pay for the services. If a family fails to make a payment for more than two consecutive weeks, whether it is a subsidized family that fails to make a co-payment or a private pay family that fails to pay, the child is disenrolled. The family is then placed at the end of the waiting list, and the account must be paid in full in order for the child to be enrolled again. The applicant charges tuition regardless of attendance (unless the child has been absent for a full week due to an illness or a planned vacation). The fundamental nature of the applicant's operation is that it does not provide services unless it receives payment for the services.

The court in DuPage County Board of Review, *supra*, found that the applicant in that case did not dispense charity to all who needed and applied for it and placed obstacles in the way of those seeking benefits because no one was afforded the benefits of the organization's services despite an inability to pay. See DuPage County Board of Review at 471. A similar finding can be made in the present case. The applicant only provides services to those who are able to pay, and therefore it does not dispense charity

to all who need and apply for it and places obstacles in the way of those seeking its benefits.

Although the applicant contends that its fees are lower than other daycare facilities in the area, the amount that the applicant charges the private pay families is virtually the same amount that it charges the State. The applicant is not offering discounted fees to its lower income families, and a co-payment is required even if their income is zero. Moreover, even if the fees were discounted, the applicant negotiated a contract with DHS to subsidize the low-income families, and one court has found similar arrangements to not be charity. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 610 (3rd Dist. 2003) (discounted care provided to patients through contracts with Medicare, Medicaid and private insurance is not charitable).

The applicant indicated that its fees are already so low that it cannot waive the charges and continue to operate. (Tr. p. 40) The applicant, however, is able to operate with the fees that it receives and does not resort to fundraising for additional revenue. Donations are solicited only for a specific need; no funds are raised for general administration. Because the applicant does not resort to fundraising to cover its operational expenses, it has made a decision to operate within the parameters of the fees that it receives.

The applicant's revenue is derived from its fees for services, and more than half of this organization's revenue is from government contracts. If the State is providing the majority of the applicant's income, then the applicant is not lessening the State's burdens, which is another consideration under Methodist Old People's Home, *supra*.

The late fees that the Center charges are indicative of a profit motive rather than a charitable one. The Center charges additional fees for failing to timely pick-up a child. If regular lateness continues, the child is disenrolled and the family is placed at the end of the waiting list. The late fees are never waived. If a parent is unable to timely pick up a child due to overtime at work, the late fee must still be paid. These penalties suggest a business-like operation and support the finding that the primary use of the property is to provide child care to those who are able to pay.

Recommendation:

For the foregoing reasons, it is recommended that the property does not qualify for the charitable purposes exemption.

Linda Olivero
Administrative Law Judge

Enter: May 22, 2006