

PT 07-22

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**

v.

**TRI CITY AREA YMCA
OF GRANITE CITY**

Applicant

Docket No. 06-PT-0024

Tax Year 2006

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John T. Papa of Callis, Papa, Hale, Szewczyk & Danzinger, P. C. for the Tri City Area YMCA of Granite City

Synopsis:

The Tri City Area Young Men's Christian Association ("applicant" or "YMCA") filed an application for a property tax exemption for the year 2006 for a parcel of property located in Madison County. The County Board of Review recommended that the exemption be granted, and the Department of Revenue ("Department") disagreed with the Board's determination. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. The applicant alleges that it is entitled to a charitable purposes exemption pursuant to section 15-65 of the Property Tax

Code (35 ILCS 200/1-1 *et seq.*) on the basis that the property is owned by a charitable organization and used exclusively for charitable purposes. The Department agrees that the property is owned by a charitable organization but contends that the property is not used for charitable purposes. The applicant uses the property to operate a daycare facility. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 15, 2001, the applicant began renting a building located at 1730 West Seventh Street, Granite City, Illinois from the Tri City Regional Port District (“lessor”). The building is approximately 5,000 square feet and is referred to as the Tri City YMCA River’s Edge Childcare Development Center (“Childcare Center”). (Dept. Ex. #3, 4)
2. The building is located on a former military base, and it was built specifically to be used as a daycare for military families. The lessor subsequently acquired the base and approached the YMCA about operating a daycare. (Tr. pp. 19-20)
3. The lease agreement indicates that during 2006 the YMCA was to pay rent to the lessor in the amount of \$10,000 per year, payable in monthly installments of \$833.33. The lease agreement also indicates that the YMCA will pay all real estate taxes applicable to the property. (Dept. Ex. #3; Tr. p. 48)
4. According to the YMCA’s Constitution and Bylaws, its purpose includes the following:

The purpose of this Corporation is the development of Christian personality and the building of a Christian society through the promotion of the spiritual, intellectual, social and physical welfare

and development of men, women, boys, and girls of the Tri-City Area who wish to be united by a common loyalty to Jesus Christ.

* * *

In accomplishing the purposes of this Corporation, all policies and practices will provide that eligibility for membership, participation in programs and composition of committees, boards, and staffs shall be without discrimination on the basis of religious preference, race, color, sex, or national origin. (Dept. Ex. #5)

5. The applicant operates a daycare at the Childcare Center that is open from 6:00 a.m. to 6:00 p.m. Monday through Friday. (Dept. Ex. #2; App. Ex. B)

6. The policy book for the Childcare Center includes the following:

Philosophy: Our philosophy at River's Edge Child Development Center is to insure the positive development of the child's self image, as well as god [sic] cognitive, social, and physical development.

Goals: Our goals are to provide children with a safe and nurturing environment and interesting activities. Also we encourage children to explore within their own intellectual parameters, and to experience healthy social interactions with their peers. (App. Ex. B)

7. The policy book also contains the following purpose statement:

The purpose of our program is two-fold. The first objective is to provide children with programs that will encourage character development, growth, and respect for each other. The second objective is to provide, affordable childcare so parents are able to support their families and increase the quality of their lives.

We do not discriminate against any child or family based upon race, creed, religion, or financial status. (App. Ex. B)

8. The YMCA's application packet for the Childcare Center states the following on the front page: "You will receive a policy book when you return this packet."
(Dept. Ex. #7(D))

9. In August 2006, the applicant had a total of 36 children at its daycare. It is licensed to care for 43 children. (Dept. Ex. #7(1); Tr. p. 25)
10. At the Childcare Center, the applicant accepts children between the ages of 6 weeks and 6 years. The fees for children under the age of 2 are \$150 per week or \$30 per day (2 day minimum). For children ages 2 through 6, the fee is \$100 per week or \$25 per day (2 day minimum). If two or more children are enrolled full time, there is a 15% discount for the additional children. (Dept. Ex. #2; App. Ex. B)
11. The weekly fees hold a child's spot at the center. Except in the case of an extended illness credit or a holiday closing, the applicant does not give a credit for absences. This also applies to children attending on a part-time basis. If a child attends less than the assigned partial days, a credit will not be given for the days missed. (App. Ex. B)
12. The applicant expects payment on the first day of the week that a child attends, but will allow a grace period until Friday. The payment is considered late if it is not in the payment box by 2:00 on Friday afternoon. Delinquent accounts are assessed a \$5 late fee. (App. Ex. B)
13. The fee for late pick-up is \$5 for every 15 minutes after 6:00 p.m. The applicant allows a one-time late pick up for each family with no charge. (App. Ex. B)
14. The policy book includes the following regarding delinquent accounts:

If an account remains delinquent for more than thirty days, we reserve the right to terminate your child's enrollment. You will receive a letter of intent to terminate, at which time you will have a chance to bring your account up-to-date. After that, we will provide you with the names of three other centers, and ask that you not bring your child back until the account is paid in full. Please

be aware that accounts that are two weeks delinquent are turned over to the YMCA for review. After thirty days, it is up to the discretion of the YMCA on whether to turn the account over to the collection agency. (App. Ex. B)

15. The policy book also states as follows:

The Children's Home and Aid Society of Illinois ["CHASI"] provides a childcare subsidy for families who may need assistance in paying childcare costs. Interested parties can pick up an application from the office on Johnson Road. We must fill out the provider information on those forms. CHASI clients must provide their caseworkers with appropriate work schedules and pay stubs in order to maintain eligibility. In addition, they must keep their co-payments to us current. Any days used for childcare not covered by CHASI will become the client's responsibility to pay for. (App. Ex. B)

16. With respect to CHASI clients, the YMCA's additional policy includes the following: "If the family is a CHASI participant, approval from CHASI must be received PRIOR to the child's first day of attendance. Co-payments to our center must be made on a timely basis, and we need to keep a copy of your work/school schedule here on file." (App. Ex. B)

17. The applicant also has children who are subsidized by the Department of Children and Family Services ("DCFS"). A co-pay is not required for those children; the State of Illinois pays the applicant for them. (Dept. Ex. #7(1); Tr. pp. 62-64)

18. The following is on the rate schedule for the Childcare Center:

Low income/hardship:

We work with CHASI – Children's Home and Aid Society of Illinois – a subsidy program that pays portions of childcare costs for families that qualify. Families must submit applications to CHASI. If accepted, we only charge the families the co-payment that CHASI assigns.

Scholarships:

If a family has applied to CHASI and has been denied, a denial letter may be submitted to the YMCA along with an application for scholarship. The Executive Director will review and accept/deny the application. (Dept. Ex. #7(A); App. Ex. B)

19. The YMCA's Application for Scholarship Assistance indicates that a letter stating the reason for the request for scholarship assistance must accompany the application. An interview is required prior to the approval of the scholarship application. (Dept. Ex. #7(B))

20. The Application for Scholarship Assistance includes the following on the bottom of the first page:

If this application is for child care, you must have been denied Title XX benefits from the Department of Human Services. Please attach your denial letter with this application. Your application cannot be processed until you submit a denial form.

Have you ever applied for scholarship assistance before at the YMCA?

If yes, which YMCA?

What volunteer service did you provide?

How many volunteer hours did your [sic] provide? (Dept. Ex. #7(B))

21. The second page of the Application for Scholarship Assistance includes the following question: "What volunteer service can you provide to the YMCA?" (Dept. Ex. #7(B))

22. In a letter sent to the Department in August 2006, the applicant included the following paragraph:

We have granted scholarships on overdue balances left by families who have been disqualified suddenly by CHASI. In such cases, parents have often tried to pay the entire bill by themselves and have found they could not do so causing the family to withdraw

from the Center, leaving bills that the YMCA will then scholarship. (Dept. Ex. #7(1))

23. The YMCA's income and expenses for the fiscal year ending December 31, 2004

were as follows:

Public Support

United Way Allocations	\$ 77,400
Contributions	181,354
Madison County Probation Mentoring	13,178
Total Public Support	271,932

Other Revenue

Program Services	301,672
Membership Dues	65,871
Investment Income	1,411
Special Events	3,680
Merchandise Sales	566
Gain on Sale of Fixed Assets	6,500
Miscellaneous	4,477
Total Other Revenue	<u>384,177</u>

Total Public Support and Other Revenue 656,109

Expenses

Salaries and Related Expenses	330,767
Liability Insurance	24,362
Utilities	53,939
Merchandise for Resale	406
Office Supplies	3,870
Interest Expense	1,497
National "Y" Dues	9,527
Mowing	1,073
Special Events	2,918
Postage	629
Program Supplies and Expenses	25,703
Telephone	2,043
Rent	10,000
Building Repairs, Maintenance, and Supplies	10,821
Donation	1,400

Miscellaneous	3,967
Depreciation	31,389
Total Expenses	<u>\$514,311</u>
Change in Net Assets	\$141,798
(Dept. Ex. #6)	

24. Since 1991, the YMCA has been operating a latchkey program. Under this program, the YMCA goes to three of the local grade schools and offers childcare for the children at those schools. (Tr. pp. 15-18)

25. Under the latchkey program, the children may be dropped off at 6:30 a.m., and the applicant will keep the children in a designated area (e.g., gymnasium or cafeteria) and offer structured programming until school starts. After school care is also provided until 6:00 p.m. (Tr. pp. 15-18)

26. The latchkey program is licensed under DCFS and inspected on a regular basis. Fees are charged for the children who attend. (Tr. pp. 17, 34)

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 ownership and 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 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).

According to the applicant, the Department's determination to deny this exemption was based on the belief that with respect to the daycare facility, the YMCA is acting in an *ultra vires* manner; i.e., the YMCA, in essence, is acting as a for-profit organization. The applicant maintains that the daycare facility is not operated for a profit and is simply an extension of the services that the YMCA has already been providing at the schools through the latchkey program. The Department acknowledges the YMCA is a charitable organization, and the applicant believes it is operating the daycare within the

nature of its charter. The YMCA claims it relieves the burdens of the taxpayers by providing care and programs for children.

The YMCA argues that the Department has not used the correct legal basis for determining a charity. In the applicant's view, the correct legal analysis is set forth in the case of People v. YMCA of Chicago, 365 Ill. 118 (1937). That case concerned whether a tax should be paid on the personal property of the YMCA located in its hotel. The State argued that the operation of the hotel was *ultra vires* the corporation, and it was not a charitable undertaking. The court disagreed, finding that the operation of the hotel was necessary to achieve the YMCA's charitable corporate purpose.

The applicant has noted the following language used by the court in YMCA of Chicago, supra:

A charity, in a legal sense, may be more fully defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education [or] religions, * * * by assisting them to establish themselves for life * * * or otherwise lessening the burdens of government. [citations omitted] Charity, in law, is not confined to the relief of poverty or distress or to mere almsgiving, but embraces the improvement and promotion of the happiness of man. A charity is a gift to the general public use which extends to the rich as well as to the poor. The principal and distinctive features of a charitable organization are that it has no capital stock and no provision for making dividends or profits for private gain. It derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter. YMCA of Chicago at 121-122.

The applicant also notes that in the case of Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498 (2004), the Supreme Court cited YMCA of Chicago, supra, with approval and included the following:

An institution does not lose its charitable character by reason of the fact that the recipients of its benefits who are able to pay are required to do so,

where no profit is made by the institution and the amounts so received are applied in furthering its charitable purposes * * *. Quad Cities at 511.

The YMCA believes that charging fees to use the daycare, therefore, does not preclude the exemption, and the YMCA may charge fees when the money is available. The YMCA claims it has a clearly expressed policy of providing scholarships to those who are unable to pay, and it does not violate its charitable nature by accepting payments from CHASI and DCFS.

The applicant asserts that under the test set forth in YMCA of Chicago, *supra*, it must be determined whether the primary purpose of the institution is to make a profit or whether it is to devote the profits to charitable purposes. The applicant claims that it is not making a profit for a non-charitable use. The applicant contends that the operation of this daycare has shown a \$4,000 profit during only one of the last three years, and the money is put into the YMCA funds. According to the applicant, the money is used for general YMCA purposes or for the improvement of the daycare.

The Department claims the YMCA did not provide sufficient evidence to show it is entitled to the exemption, and the property is not being exclusively used for charitable purposes. The Department maintains that the applicant has not met most of the guidelines in Methodist Old Peoples Home, *supra*. According to the Department, the applicant does not benefit an indefinite number of people or reduce the burdens of government because the only fee reduction allowed by the applicant is simply writing off bad debt. The Department states that many of what the YMCA calls scholarships are given only after the child is already gone, and writing off bad debt is not charity. See Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998). The Department asserts that charity is not dispensed by the YMCA; it is

dispensed by the government through CHASI and DCFS. The Department believes the YMCA is receiving full payment through the government agencies and co-pays from the families.

The Department asserts that the funds are not derived mainly from public or private charity, and the two-year-old financial statement does not indicate what part of the contributions went to the daycare facility. The Department maintains that the funds are primarily from daycare fees paid by parents, CHASI and DCFS. The Department claims that allowing scholarship applications to be denied by the executive director does not fit within the definition of charity being dispensed to all who need and apply for it.

The Department also states that there are obstacles placed in the way of those who need or would avail themselves of the charity. In addition to the charity possibly being denied by the executive director, each child must apply for government funding and be denied before he or she can apply for a scholarship. Other obstacles include late fees and requiring fees to be paid in full before a child can attend. Furthermore, the child's enrollment can be terminated, and unpaid fees may be placed with a collection agency after only 30 days. Any fees not covered by CHASI or DCFS are the parents' responsibility.

As mentioned previously, the applicant must establish its entitlement to an exemption by clear and convincing evidence, and all doubts are resolved in favor of taxation. See City of Chicago, *supra*. Because the Department agrees that the property is owned by a charitable organization, the only issue in this matter is whether the YMCA uses the property for charitable purposes. The YMCA has failed, however, to present

sufficient evidence to meet its burden of proof concerning its charitable use of the property.

The legal principles that the applicant refers to in YMCA of Chicago, *supra*, were reiterated by the Supreme Court in Methodist Old Peoples Home, *supra*. The court cited the YMCA of Chicago case for the proposition that charging fees to those who are able to pay does not destroy the charitable character of an organization. See Methodist Old Peoples Home at 158. The court also listed the guidelines that have been consistently applied in charitable exemption cases, including the YMCA of Chicago case, to determine whether the use of property is charitable. Methodist Old Peoples Home at 156-157.

The applicant has failed to present sufficient evidence to establish that it meets most of the guidelines in Methodist Old Peoples Home, *supra*. Whether the daycare derives its funds mainly from public and private charity cannot be determined from the record. The only financial statements presented were for the fiscal year ending December 31, 2004, and the statements do not include a breakdown of the finances for the daycare. The applicant indicated that \$301,672 received during 2004 for program services, which is listed under “Other Revenue,” is mostly income from the daycare and latchkey service. (Tr. pp. 56-57) The applicant did not, however, submit any information concerning the actual amount of money generated from the daycare facility. The applicant claims that the daycare has shown a \$4,000 profit during only one of the last three years, but it did not present financial documents to support this. The applicant contends that any excess money is put back into the YMCA’s funds, but the fact that the money may ultimately be used to serve the YMCA’s charitable purposes does not automatically entitle the property

to an exemption. See Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2nd Dist. 1988). The YMCA must still establish that the use to which the property is devoted is for charitable purposes. *Id.*

The evidence presented raises doubt that the YMCA, through the use of the daycare, gives charity to all who need and apply for it. Before receiving a scholarship, the family must first be denied by CHASI, and an interview is required prior to the approval of the scholarship. The executive director determines whether to accept or deny the application, but the YMCA did not indicate what guidelines he uses to make that determination. The application for scholarship also asks the family to state what volunteer services they can provide to the YMCA. (Dept. Ex. #7(B)) A potential applicant may infer from this question that volunteer services are expected in return for the scholarship. Because charity is considered to be a gift (see YMCA of Chicago, *supra*; Methodist Old Peoples Home, *supra*), asking a family to provide volunteer services in return for the scholarship is contrary to the notion of a gift and inconsistent with the definition of charity.

The YMCA did not provide copies of the scholarship applications that it has received for the daycare, and it is not clear that the amounts the YMCA claims were scholarships during 2006 should be considered charity rather than bad debt expense. The YMCA provided the names of children who received scholarships, the amount of the scholarship, and the reason for it. The amount and reasons¹ are as follows:

\$135.41	Sudden relocation
80.00	Sudden unemployment
86.67	Inability to pay
86.66	Inability to pay/relocate
554.72	Inability to pay

¹ The names of the children are omitted due to confidentiality concerns.

56.00	Inability to pay
406.00	Inability to pay
8.66	Inability to pay
510.00	Inability to pay
370.00	Closed DCFS/inability to pay
300.00	CHASI denied/inability to pay
135.00	2 nd Child Discount
660.00	2 nd Child Discount
<u>200.00</u>	Aiding tuition/military
Total \$3,589.12	(Dept. Ex. #7)

The applicant did not provide additional information concerning why it granted these scholarships. The phrase “inability to pay” was not explained and could mean the amount was simply written off because it was not paid. It does not seem likely an amount such as \$8.66 was awarded as a result of a scholarship application; it seems more likely that it was a bad debt expense.² It is also not likely that scholarship applications were completed for the expenses of \$135.41, which was due to “Sudden relocation,” and \$86.66, which was due to “Inability to pay/relocate” because relocating is generally not a reason for providing charity. The applicant’s statement in a letter sent to the Department in August 2006 also suggests that at least some of these scholarships were bad debt expenses and not charity:

We have granted scholarships on overdue balances left by families who have been disqualified suddenly by CHASI. In such cases, parents have often tried to pay the entire bill by themselves and have found they could not do so causing the family to withdraw from the Center, leaving bills that the YMCA will then scholarship. (Dept. Ex. #7(1))

According to this statement, the failure of some families to pay their bills caused them to withdraw from the daycare, and then the YMCA wrote off the expense. If the daycare is

² With the exception of the last two scholarships for \$660 and \$200, the remaining scholarships were for children with different last names, so presumably these scholarships were for different families and the amount of \$8.66 was written off for one family.

actually being used for charitable purposes, then a family should not have to leave the daycare due to an inability to pay.

The applicant indicated that in August 2006, 18 of the 36 children who were attending the daycare were receiving subsidized care through either CHASI or DCFS. (Dept. Ex. #7(1)) The amount of money the YMCA received from these organizations was not given, but if the State is providing the majority of the applicant's income through subsidies, then the applicant is not lessening the State's burdens, which is another consideration under Methodist Old People's Home, *supra*. In addition, although it is unclear what type of contractual agreements the YMCA has with these organizations, one court has found that discounted care provided through contracts with Medicare, Medicaid, and private insurers was not charity. See Riverside Medical Center v. Department of Revenue, 342 Ill. App. 3d 603, 610 (3rd Dist. 2003).

Other facts that raise doubts concerning the charitable use of the property include the following: the YMCA charges a \$5 fee if payment of the weekly tuition is late, and it charges \$5 for every 15 minutes after 6:00 p.m. that the parent is late picking up a child.³ If an account is delinquent for more than 30 days, the YMCA may terminate the child's enrollment, and the account may be turned over to a collection agency. In addition, the YMCA charges tuition regardless of attendance (except in the case of an extended illness credit or holiday closing). Because the evidence presented by the YMCA is not sufficient to meet its burden of proving its charitable use of the property, the YMCA's request for an exemption must be denied.

³ A one-time late pick up is allowed for each family with no charge.

Recommendation:

For the foregoing reasons, it is recommended that the exemption for the year 2006 be denied.

Linda Olivero
Administrative Law Judge

Enter: October 9, 2007