

**PT 10-12**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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

**v.**

**ORTHODOX CHRISTIAN ALUMNI  
ASSOCIATION,  
Applicant.**

**No. 09-PT-0045  
Real Estate Exemption**

**For 2008 Tax Year  
P.I.N.: 46-21-18-107-013  
46-21-18-107-014**

**Champaign County Parcels**

**Julie-April Montgomery  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Sofia G. Sianis on behalf of Orthodox Christian Alumni Association; Paula M. Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:**

The Illinois Department of Revenue (“Department”) issued two “Denials of Non-homestead Property Tax Exemption” (“Denials”) on March 19, 2009 to Orthodox Christian Alumni Association (“Applicant”) for the 2008 tax year. The basis of the denials was twofold. The Department found that the real estate identified by Champaign County Parcel Index Numbers (“P.I.N.”) 46-21-18-107-013 and 46-21-18-107-014 had neither exempt ownership nor exempt use in 2008. Dept. Ex. No. 1. Applicant protested

the Denials and requested a hearing in the matter. Applicant proffered testimonial and documentary evidence at the hearing held on April 30, 2010.

The issue to be decided was whether Applicant was entitled to a religious, charitable or educational exemption for these properties. December 11, 2009 Pretrial Order. Subsequent to the evidentiary hearing, the parties submitted post hearing briefs<sup>1</sup> in lieu of closing arguments. Following the submission of all evidence and a review of the record, it is recommended that the Department's Denial for: 1) P.I.N. 46-21-18-107-013 be affirmed and 2) P.I.N. 46-21-18-107-014 is affirmed in part and denied in part. In support thereof, are made the following findings of fact and conclusions of law.

**FINDINGS OF FACT:**

1. On March 19, 2009, the Department denied Applicant's Application for Non-homestead Property Tax Exemption for the tax year 2008 for Champaign County parcels with the P.I.N.s 46-21-18-107-013 and 46-21-18-107-014 on the basis that these properties had neither exempt ownership nor exempt use for the tax year 2008. Dept. Ex. No. 1, p. 7.
2. P.I.N. 46-21-18-107-013, located at 709 S. Second Street, Champaign, Illinois, represents a parking lot ("Parking Lot"). Applicant Ex. Nos. 2 (Warranty Deed), 3 (property photos); Tr. pp. 14, 16.
3. P.I.N. 46-21-18-107-014, located at 112 E. John, Champaign, Illinois, represents land with a building called the "Orthodox Christian Center" ("Center"). Applicant Ex. Nos. 2-3; Tr. pp. 14, 16, 26.

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<sup>1</sup> Applicant's brief is identified as "App. Br." and the Department's as "Dept. Br."

4. The Center is a three story building with a basement. Applicant Ex. No. 4 (building floor plans), Tr. p. 15.
5. The first floor of the Center has a kitchen, two staff rooms, a general eating area, general activities area, appliance area and toilet. *Id.*
6. The second and third floors of the Center each have seven rooms that are used as living residences and toilet. *Id.*
7. Students occupy the residences at the Center and must “be enrolled and attending class at the University of Illinois.” Dept. Ex. No. 2 (room contract); Tr. p. 14.
8. The basement of the Center has a chapel, conference room, utility room, two staff rooms, wash room and toilet. Applicant Ex. No. 4; Tr. pp. 15, 55, 60.
9. The chapel in the Center’s basement is the “Chapel of Saint Philip the Apostle.” Applicant Ex. Nos. 7 (Applicant’s website page), 11 (June 17, 2009 letter of Parish Council President); Tr. pp. 39, 82.
10. The chapel in the Center conducts regular liturgical services every Tuesday. Applicant Ex. Nos. 8 (“About the OCF” information sheets), 11; Tr. pp. 38-39, 56.
11. The Center has been granted the status of University of Illinois-Certified Housing. Applicant Ex. Nos. 5 (University August 3, 2005 letter that recommended Applicant for certification), 6 (University of Illinois-Certified Housing Inspection Schedule for 2007-2008); Tr. pp. 14, 17, 28, 31.
12. Applicant’s purpose is:  
  
to give sponsorships, scholarships, financial support and guidance to Orthodox Christians attending the University of Illinois at Champaign/Urbana. Applicant Ex. No. 1 (Articles of Incorporation), Tr. p. 11.

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aiding and assisting the ministry to the Orthodox Christian Students which also include the Orthodox Christian Fellowship of the University. Applicant Ex. No. 1 (By-Laws), Tr. p. 14.

13. Applicant's President and Vice-Presidents "may execute for the corporation certificates for its shares." *Id.*
14. Applicant filed its Articles of Incorporation under "The General Not For Profit Corporation Act of 1986." Applicant Ex. No. 1.
15. For the year 2008, Applicant's income, year to date through November 2008, was \$108,018.62. Dept. Ex. No. 3 (income and expense statement); Tr. p. 59.
16. \$51,085, or 47%, of Applicant's 2008 income was derived from room rentals. *Id.*
17. \$2,105, or 2%, of Applicant's 2008 income was derived from the rental of parking spaces. *Id.*
18. \$24,228.48, or 22%, of Applicant's 2008 income was derived from fund raising and single gifts. *Id.*
19. \$3,433.40, or 3%, of Applicant's 2008 income was derived from sustaining gifts. *Id.*

**CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article

IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption bears 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.*

The test for evaluation of entitlement to a property tax exemption was espoused in Turnverein 'Lincoln' v. Board of Appeals of Cook County, 358 Ill. 135 (1934), which stated that it is the “primary use to which the property is devoted, and not its secondary or incidental use [that] is controlling.” *Id.* at 141.

The intention of a corporation, as owner of the property for which exemption is sought, is an important consideration in the determination as to whether the grant of an exemption is proper and such intent can be gleaned from that entity's certificate of incorporation, charter and bylaws. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 368, 372 (1944).

While the intention to be involved in exempt activities is considered an important element necessary for the grant of an exemption, such intent must, in fact, be borne out by the actual existence, on the property, of the stated exempt activities. Morton Temple

Association, Inc. Department of Revenue, 158 Ill. App. 3d 794 (1984). In Morton, a Masonic organization was denied the charitable exemption for property taxes because it was found to use the property primarily for the benefit of members, performing incidental acts of charity, and as such, its use of the property was inconsistent with its charter's expression of an intention to be "organized exclusively to promote and conduct charitable activities." *Id.* at 796. The court reaffirmed that an analysis of one's activities must occur to determine if the entity seeking exempt status is as it purports to be in its charter or other documents which express its intent. The court further stated "wording of [one's] governing legal documents evidencing an intention to use its property exclusively for [exempt] purposes do[es] not relieve such an institution of the burden of proving that its property actually and factually is so used." *Id.* See, Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149,153 (1968) (denied the charitable exemption to the operator of an old folks home noting "that the general tenor of health and financial requirements set forth in plaintiff's bylaws are at odds with its chartered purpose of providing 'proper accommodation and care for the sick and homeless aged'").

Pursuant to constitutional authority, the General Assembly has enacted sections of the Property Tax Code ("Code") (35 ILCS 200/1-1, *et seq.*) which provide exemptions for school or educational purposes pursuant to section 15-35, religious purposes pursuant to section 15-40, charitable purposes pursuant to section 15-60 and parking areas pursuant to section 15-125. 35 ILCS 200/15-35, 40, 60, 125.

Applicant posited no argument, at hearing or in its brief, as to why the Parking Lot was entitled to an exemption from real estate taxes. As to the property that housed

the Center, Applicant asserted that it was entitled to exemption from property tax because the Center “was used for religious, educational and charitable purposes.” App. Br. p.1.

**I. P.I.N. 46-21-18-107-014: the Center**

**Education Exemption**

Section 15-35 of the Code provides:

Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any State of the United States. Also exempt is:

- (a) property of schools which is leased to a municipality to be used for municipal purposes on a not-for-profit basis;
- (b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations;
- (c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes;
- (d) ...property...on or adjacent to... the grounds of a school, if that property is used by an academic, research or professional society, institute, association or organization which serves the advancement of learning in the field or fields of study taught by the school and which property is not used with a view to profit;
- (e) property owned by a school district...; and...
- (f) ...property of a corporation, which is an exempt entity under paragraph (3) of Section 501(c) of the Internal Revenue Code...used by the corporation for the following purposes: (1) conducting continuing education for professional development of personnel in energy-related industries; (2) maintaining a library of energy technology information available to students and the public free of charge; and (3) conducting research in energy and environment, which research results could be ultimately accessible to persons involved in education. 35 ILCS 200/15-35.

Whether there is a primary use of property for purposes of education requires a determination as to whether: 1) the intent of the entity seeking the exemption is for an educational purpose; 2) said educational purpose is actually occurring on the property for which exemption is sought; 3) the educational purpose's intent/activity is the exclusive use to which the property is devoted; and 4) the property's use does not contemplate use "with a view to profit." Goodman, *supra* at 371, 374-375.

Applicant avers that it is entitled to an education exemption pursuant to section 15-40 of the Code because the Center represents property used for "school and religious purposes." App. Br. p. 6. Applicant further alleges that because it provided private certified housing for the University of Illinois -- Champaign/Urbana it provided an educational purpose. App. Br. p. 1. The Department answer is that Applicant did not posit arguments as to what parts of the education exemption stated in section 15-35 of the Code pertained to Applicant, and as such, Applicant failed to bear its burden that the Center qualified for the education exemption. Dept. Br. p. 5. The Department is not only correct that Applicant espoused no arguments with respect to the exemption provisions of section 15-35 of the Code but it should also be noted that Applicant would not have qualified for exemption pursuant to this section.

Subsections a, b, and e of section 15-35 of the Code require the property in question be owned by a school or school district. Applicant is neither a school nor school district. Hence, Applicant would not be able to meet all the requirements necessary to have been entitled to an exemption under these subsections.

Subsection c of section 15-35 of the Code requires Applicant demonstrate it was used for educational purposes. Applicant's stated purpose does not mention education. To the contrary, article 4 of Applicant's Articles of Incorporation state Applicant's purpose is "to give sponsorships, scholarships, financial support and guidance to Orthodox Christians attending the University of Illinois at Champaign/Urbana." Applicant Ex. No. 1. In addition, article II of Applicant's By-Laws state its purpose is "aiding and assisting the ministry to the Orthodox Christian Students which also include the Orthodox Fellowship of the University." *Id.* Testimony presented by Applicant as well as Applicant's brief state its primary purpose was ministry. Tr. pp. 19, 54, 63, 77-78; App. Br. p. 1. Furthermore, Applicant's presentation of testimony that it had "an hour of either religious discussion or education" (tr. p. 40) following its Tuesday night free meals is insufficient to establish the conduct of educational activities on the property. Applicant has failed to present clear and convincing evidence that its primary purpose and use of the property was educational.

Subsection d requires the property be utilized to advance learning in fields of study taught by the school without a view to profit. Applicant presented no evidence that it advanced any studies of the University.

Subsection f requires the property be used by a 501(c)(3) corporation for purposes related to energy-related industries that included maintenance of a free library and research available to persons involved in education. Applicant did not establish that it had been recognized as a 501(c)(3) corporation or that it provided the requisite energy related activities.

Applicant failed to sustain its burden of entitlement to the education exemption pursuant to section 15-35 of the Code with clear and convincing evidence.

### **Religious Exemption**

The Code also provides:

- (a) Property used exclusively for:
  - (1) religious purposes, or
  - (2) school and religious purposes...as long as it is not used with a view to profit.
- (b) Property that is owned by
  - (1) Churches or
  - (2) Religious institutions or
  - (3) Religious denominationsand that is used in conjunction therewith as housing facilities provided for ministers...their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations...also qualifies for exemption. 35 ILCS 200/15-40 (a)-(b).

Illinois case law defines religious use as the “use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelist Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession, 249 Ill. 132, 136 (1911).

Applicant argues that the Center was used for exclusively religious purposes because “the sole purpose for purchasing and using this property was the maintenance of a religious presence in proximity to the University.” App. Br. p. 5. The Department counters that “only the chapel meets the requirement of being used for religious purposes [however] there was no evidence that any religious activity took place” (Dept. Br. p. 7) elsewhere so as to establish that the Center was exempt pursuant to section 15-40(a) of the Code. *Id.* The Department further points out Applicant could not qualify for

exemption under section 15-40(b) inasmuch as the Center did not house ministers or similar church officials as a condition of their employment. Dept. Br. pp.7-8. Again, the Department is correct.

Documentary and testimonial evidence was presented to establish that the Center's chapel was a completely separate space used for religious services. Applicant Ex. No. 4; Tr. pp. 15, 38-40, 55-56. However, there was scant evidence of other religious activity elsewhere in the Center. While the record revealed that Priests were available every Tuesday "to talk, for Confession, for counseling, or simply to enjoy a cold Pepsi" (Applicant Ex. No. 8), there was no showing of whether and how often each of these activities, in fact, occurred at the Center. In addition, there was only testimony that there was religious instruction, or bible study. Tr. pp. 16, 61. Hence, the Department is correct when it states, for the first time in its brief, that only the chapel qualified for the religious exemption as a place used exclusively for religious purposes pursuant to section 15-40(a) of the Code.

Applicant also failed to qualify for the religious exemption pursuant to Section 15-40(b) of the Code on two accounts. First, there was no showing that the Center was owned by a religious entity. To the contrary, the owner of the Center was an alumni association. Second, the Center was not shown to have been used as housing for ministers or other similar church officials. In fact, it was primarily students, not church officials, who were stated to be residents of the Center. Tr. pp. 19, 29-30, 45-56, 58. Thus, Applicant could not have qualified for the religious exemption espoused in section 15-40(b) of the Code, save the chapel.

### **School and Religious Purposes Exemption**

Applicant argues that it qualified for the school and religious purposes exemption found in section 15-40 of the Code because the Center “represents a type of ownership which incorporates a religious and a school purpose by providing a religious environment in conjunction with Certified Housing for the University Illinois.” App. Br. p. 6. In support of its argument Applicant cites Baptist Student Foundation at the U. of I. v. Department of Revenue, a 1997 administrative case. PT 97-31. Applicant states an exemption was awarded to Baptist Student Foundation (“Foundation”) because of its “use as Private Certified University Housing and based on the stated purpose of religious and educational use in their articles of incorporation.” App. Br. p. 6. While Applicant is correct as to the reasons for the Foundation’s receipt of a property tax exemption, it is wrong to assume that its situation was akin to that of the Foundation.

The administrative law judge concluded the Foundation was organized for religious and school purposes for two reasons. The first was because that applicant’s articles of incorporation provided that its purpose was “to provide a church home and social center for Baptist students while at the University, to win students to Christ and His Church, and to train future Baptist leaders through a religious education program which will supplement the studies which students get in a State University.” Baptist Student at 7. Applicant did not have such an explicit articulation of a religious and educational purpose in its articles of incorporation. In fact, Applicant articulated no educational purpose in its articles of incorporation or by-laws.

The second basis for finding the Foundation’s entitlement to a property tax exemption was the “operation of the University Baptist church and the student housing ministry” *Id.* at 7. The administrative law judge found there was an intent to continue

university students' religious education through the operation of the "University Baptist Church, with a worshipping congregation, educational bible studies and the various ministries of a church...[and] the housing ministry, which consist[ed] of three...university residences." *Id.* at 3. These residences were found to have held regular bible studies and devotions, assigned big brothers and sisters to freshmen as prayer partners, and required adherence to "Christian environmental rules." *Id.* Applicant did not establish that it conducted similar activities, outside of the chapel in the basement, at the Center.

The administrative law judge also found two of the three Foundation residences were classified as certified housing facilities by the university, and as such, were required to give preference to registered full time university students, receive university approval of the university trained staff residing in such residences, as well as submit to fire, safety and kitchen inspections. In this matter, while the room contract stated only university students would be residents of the Center, Applicant admitted non-students were in residence in 2008. Tr. p. 61. There was no showing that university trained and approved staff resided at the Center. But there was evidence that Applicant was subject to university inspections. In addition, the Foundation residences' costs were found to have been among the lowest on campus and assisted a university that did not have enough residence halls for undergraduate students. Baptist Student at 4. Applicant made no presentation at hearing of being among the lowest cost residences on campus or that the university was in need of the Center as a residence.

Applicant failed to establish that it had a religious and educational purpose, as well as, religious and educational operations at the Center akin to the Foundation so as to qualify for exemption pursuant to section 15-40 of the Code.

### **Charitable Exemption**

In addition, the Code provides an exemption for property of an institution of public charity that is “actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit.” 35 ILCS 200/15-65a.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) sets forth the guidelines for what constitutes an institution of public charity. These guidelines are that the entity: 1) benefit an indefinite number of people for their general welfare or in some way reduces the burdens of government; 2) has no capital, capital stock, or shareholders, and does not profit from the enterprise; 3) earns no profit or dividends, but rather derives its funds mainly from private and public charity, and holds them in trust for the objects and purposes expressed in the organization's charter; 4) does not provide gain or profit in a private sense to any person connected with it; 5) dispenses charity to all who need and apply for it; 6) places no obstacles in the way of those seeking the benefits. Korzen, *supra* at 156-157.

Applicant alleges that it met all of the Korzen criteria by its charitable provision of housing to students along with “ministry for students of the Orthodox faith in proximity to the university including religious instruction, discussion, counseling, confession and the presence of a Priest.” App. Br. p. 8. The Department asserts that the Center’s provision of student housing did not qualify as an activity that would have been deemed subject to the charitable exemption. Dept. Br. pp. 9-11. Once more the Department is correct.

As previously stated, Applicant’s primary purpose, as stated in its documentation and testimony, was ministry. There was no mention of charitable activities in

Applicant's corporate documents or web pages. Applicant Exhibit Nos. 1, 7 and 12 (web pages). There was testimony that "on Tuesday nights and once a month at a minimum on Saturdays we'll do a philanthropic activity throughout the community." Tr. p. 40. However, the record fails to reflect that charitable activities actually occurred on the property.

Applicant argues that its ministering, counseling, usage of the chapel and access to Priests were available to all. App. Br. pp. 6-7. However, Applicant's documents state Applicant's purpose was directed towards, and as such limited to, the university's "Orthodox Christians." Applicant Ex. No. 1. In addition, the documentation presented at hearing does not clearly support a finding that Applicant provided ministering, counseling, chapel usage and access to Priests to all who may have sought such services.

Applicant testified that it was an Illinois not-for-profit that had no capital or capital stock (tr. p. 12) but provided no testimony or documentation as to whether or not it had shareholders earning profits or dividends. Moreover, Applicant's by-laws provided that it could "execute for the corporation certificates for its shares." Applicant Ex. No. 1. This provision was not explained at hearing, and as such, it is unclear whether Applicant had or could have had corporate stock/shares.

Applicant argues that its primary source of funds was private and public donations. Twenty-five percent (25%) of Applicant's funding in 2008 was derived from fund raising, single gifts and sustaining gifts while forty-seven percent (47%) of its income for the same period was the result of room rentals. Dept. Ex. No. 3. In addition, two percent (2%) of Applicant's 2008 income was the result of parking fees. *Id.* Thus, the record does not sustain Applicant's position on this point.

No clear and convincing evidence was presented to establish that Applicant's funds were held in trust for the objects and purposes expressed in Applicant's articles of incorporation and by-laws or that no gain or profit, in a private sense, was provided to individuals connected to Applicant.

Applicant alleges it dispensed housing to anyone who was in need that applied. Applicant further alleges that it had a fee reduction policy that assisted those with a demonstrated financial need and that no student who sought such assistance was turned down in 2008. Tr. pp. 30, 32, 34. But Applicant admitted that such a policy was not part of its articles of incorporation and by-laws nor its room rental contracts. Applicant presented testimony that there was an amendment to its room rental contract that was not explicit in the types of assistance available because "it's just entirely on an as-available basis, so...can't make a carte blanche statement at the beginning of the year what's available until...see what needs present themselves." Tr. p. 36. Testimony was also given that Applicant maintained copies of the signed room rental contracts and reduction agreements but these documents were not proffered at the hearing. Tr. p. 48. Moreover, Applicant admitted that "because [its] resources are limited, if somebody said I can't afford any rent, we would probably have to say we can't do that." Tr. p. 35. While Applicant presented testimony that fee reductions were given in 2008, Applicant could not definitely state that all students that requested assistance in 2008 received such aid. Tr. p. 34. Applicant also provided testimony that it provided housing to two individuals who were not students in exchange for services. Tr. p. 58. Hence, the record does not clearly support Applicant's assertion that it dispensed housing to all that applied and were in need.

Applicant avers that it created no obstacle to those seeking its benefits because the Center was open to “non-Orthodox students...[and a]ll students were informed of the fee waiver policy before initiating a contract and no students who asked for assistance were turned away.” App. Br. p. 8. But as previously stated, no documentation was presented in support of this assertion.

The Department asserts that “the rental fees charged to residents of the [C]enter clearly present an obstacle...[because] reductions were contingent upon available resources...[for which] there was no guarantee ...[funds] would be available. Dept. Br. pp. 10-11. In support of this argument the Department cites Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987), where a charitable property tax exemption was denied the lessor of independent living units despite the assertion that there was partial funding for individuals who could not afford the full fee. The court reasoned that “there was no guarantee that such funding would be available nor...alleviate the fact that the applicants are expected to have sufficient funds. Additionally, nowhere in the corporate charter is the corporation required to accept those who do not have sufficient funds to pay.” *Id.* at 772. Like the lessor in Fairview Haven, Applicant admits it could not have housed those who were unable to pay any rent and even those who may have only been in need of a rent reduction could not be guaranteed assistance because funds were “entirely on an as-available basis.” Tr. p. 36.

Applicant argues that its primary use of the property was for the “charitable purpose of providing a ministry.” App. Br. p. 8. “[U]nder Illinois law, charity ‘is not confined to the relief of poverty or distress or to mere almsgiving’ but may also include gifts to the general public.... It is a fundamental principle of law, however, that a gift is ‘a

voluntary, gratuitous transfer of property by one to another,’ and that ‘[i]t is essential to a gift that it should be without consideration’....When...[the activity is] for a fee, consideration is passed....therefore [the activity] would not qualify as a gift. If it were not a gift, it could not be charitable.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 400-401 (2010).

The current matter has not shown there was the relief of poverty or distress or even mere almsgiving. In addition, reduced rental charges, which were not clearly and convincingly shown to have been both the policy of and to have in fact occurred at Applicant’s Center denote a record with insufficient evidence to demonstrate there was charitable activity.

Applicant provided no case law nor has any been found that states a ministry or the provision of a ministry is deemed to be charity. The terms ministry and charity are not synonyms for one another. Ministry is a part of religion and while a ministry can perform acts of charity, Applicant did not show that acts of charity occurred for the year in question. Applicant Ex. No. 1; Tr. pp. 13, 19, 63.

It should also be noted that case law has found an important element of charity to be reduction of a burden upon government. Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696, 706-707 (4<sup>th</sup> Dist. 1988). Applicant seems to agree because it posits that the Center eased the burden of government by its provision of “Private Certified University Housing and other charitable assistance to the community.” App. Br. p. 9. However, Applicant provided no evidence there was reduction of a government burden. A statement of the existence of a reduction of a governmental burden does not establish that such did in fact occur.

## **II. P.I.N. 46-21-18-107-013: the Parking Lot**

### **Parking Areas Exemption**

Section 15-125 of the Code states:

Parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which the qualifies for exemption, are exempt. 35 ILCS 200/15-125(a).

The Parking Lot was denied exemption because it lacked exempt ownership and exempt use. Applicant presented evidence that showed pictures of the Parking Lot. Applicant Ex. No. 3. The Department produced the contract which reflected the provision of parking by Applicant for a fee. Dept. Ex. No. 2. However, Applicant presented no other evidence, testimonial or documentary, with regard to the Parking Lot. Moreover, as previously stated, Applicant has not shown that it was: 1) used for an exempt purpose as provided by the Code; 2) owned by a school, religious or charitable institution; and 3) not operated for a profit. Therefore, Applicant has failed to sustain its claim, by clear and convincing evidence, that the Parking Lot was entitled to an exemption of any sort – educational, religious or charitable -- and as such no basis exists upon which to reverse the Department's denial for exemption of this parcel from property taxes.

**Recommendation:**

For the reasons stated, it is recommended that the denial for exemption of the Parking Lot be affirmed while the exemption for the Center is denied except for that portion, in the basement, which was used exclusively as a chapel.

August 24, 2010

Julie-April Montgomery  
Administrative Law Judge