

**PT 11-08**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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

v.

**WEB INNOVATIONS & TECHNOLOGY**  
**SERVICES, INC.**

**Applicant**

**Docket # 10-PT-0003**

**Tax Year 2009**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Kurt J. Schafers of Cosgrove Law, LLC for Web Innovations & Technology Services, Inc.

Synopsis:

Web Innovations & Technology Services, Inc. (“applicant” or “WITS”) filed applications for property tax exemptions for the year 2009 for two parcels of property located in Vermilion County. WITS recycles and refurbishes electronic equipment and contends that its property is owned by a charitable organization and is used exclusively for charitable purposes pursuant to section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Vermilion County Board of Review (“County”) recommended that the two parcels be exempt. The Department of Revenue (“Department”) disagreed with

the County's decision and found that the property is neither owned by a charitable organization nor used for charitable purposes. The applicant timely protested the Department's decision. The parties waived their right to an evidentiary hearing and agreed to have the case decided based on the documents submitted.<sup>1</sup> After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. WITS was organized as a Missouri non-profit corporation on November 19, 2001. (Joint Stip. #1)
2. WITS began its operations in St. Louis, Missouri. On June 1, 2007, the applicant received as a donation two parcels of property located in Danville, Illinois at 1507 N. Bowman Avenue and 1017 Griggs Street. (Joint Stip. #2)
3. The articles of incorporation state that WITS was formed for the following purpose: to provide low cost/free technology and services to college students who cannot afford it. (Joint Stip. #3)
4. To fulfill its purpose, WITS began to receive donations of computers and electronics, which it refurbished. In order to keep the non-usable parts out of the landfills, WITS decided to recycle the parts (which are not biodegradable and sometimes toxic). Through the recycling process, WITS could generate money to pay its operating expenses. (SUMF #6)

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<sup>1</sup> The documents include Joint Stipulations of Fact ("Joint Stip."), WITS's Statement of Undisputed Material Facts ("SUMF"), WITS's Statement of Undisputed Material Facts for the Year 2009 ("SUMF '09"), and a Joint Stipulation to Waive Formal Hearing wherein the Department agreed that it does not dispute the truth of the matters set forth in the SUMF and SUMF '09. With its Reply to the Department's Response brief, WITS included a "Supplemental Statement of Undisputed Facts for 2009," along with a supplemental affidavit. Nothing in the record, however, indicates that the Department agrees to the facts in the Supplemental Statement, and no documentation was submitted to support the facts in the affidavit. The facts in the Supplemental Statement, therefore, are not included in the Findings of Fact.

5. WITS has no members, and its assets are to be distributed to the Humane Society or to another charitable organization upon its dissolution. (SUMF #5)
6. The applicant's mission statement as provided in a document entitled "corporate summary" is as follows:

To keep reusable materials out of the landfill and improve technology awareness and availability to the underserved through recycling/refurbishing and educational opportunities using recycled and refurbished technologies. (Joint Stip. #4)

7. The "Our Mission" section on the applicant's website in 2008 read as follows:

Re-use:

WITS ... is dedicated to underserved populations and nonprofits. Through education and training, we can empower all populations to become more productive in their environments while saving the landfills. Our goal is to be run and staffed by students/Mentors with a "pass it on" value. Everyone will have the opportunity to get complete computer systems and peripherals free or for an incredibly affordable rate. We also offer free computers for those who are desperately in need to do something to continue their education or for career advancement.

We are dedicated to getting everyone the basic physical and intellectual resources they need to compete in today's world. Through learned values in teaching and being taught, the youth will have an understanding of the value of giving and receiving in a peer environment.

We do not discriminate by age, race, sex or ethnicity. We only ask that each person who gets involved in our training donate their time to teach others what they have learned.

Recycling:

Any materials that cannot be reused are recycled onsite at our recycling facility. We do this by offering at-risk men and women who cannot get [sic] jobs otherwise a chance to contract with us. These men and women learn the skills needed to demanufacture and appropriately recycle all nonreusable materials.

WITS offers many services to businesses that not only enhance the community efforts, but also assist businesses with appropriate recycling of their electronic, business, office, medical and industrial equipment. (Joint Stip. #5)

8. WITS accepted the following items for recycling at its Danville location: computers, monitors, printers, cables, peripherals, networking equipment, servers, phones, clocks, home electronics, small appliances, a/v equipment, white goods (washers, dryers, etc.), medical and diagnostic equipment, electrical cabling, industrial machinery and equipment, lawn equipment, tools, old mowers, tillers, air conditioners, refrigerators, humidifiers, old motors, transformers and other electrical equipment, car and lead-containing batteries and items, software, DVD/CD, and tapes of all kinds. WITS also recycles plastic products, paper and clothing. (Joint Stip. #6; SUMF '09 #35)
9. All non-reusable materials or materials that cannot be refurbished are demanufactured or recycled. Demanufacturing includes taking it apart and either reusing the parts or sending them to other recyclers. WITS has a 0% landfill policy, which means its policy is to keep everything out of landfills. (Joint Stip. #7)
10. WITS is compensated for some items (such as circuit boards, cables, cords, power supplies and drives) that it brings to other vendors to recycle. WITS sells all of its scrap to end processors who pay WITS on a per pound basis. Any money that WITS collects through its operations goes back into WITS. (Joint Stip. #8; SUMF '09 #46, 47)

11. For other items (such as monitors, televisions, and appliances with lead or mercury) WITS must pay vendors who are certified by the EPA to process the items appropriately. (Joint Stip. #9)
12. WITS charged a hazardous material fee of \$5 for computer monitors and appliances for businesses. The price for TV's was \$10 for up to 23 inches, \$15 for up to 40 inches, and \$20 for over 40 inches. All monitors and large appliances were \$5 for residents and non-profits (residents and non-profits did not have to pay a fee for appliances smaller than a microwave). Businesses pay \$5 for all appliances. The fee for air conditioners, refrigerators, humidifiers, and other Freon containing devices was \$5. The fee for washers, dryers, dishwashers, and furnaces was also \$5. (Joint Stip. #10; SUMF '09 #38)
13. The fees charged for the recycling of these products were used by WITS to pay vendors who specialize in the recycling of products which contain toxic chemicals (such as monitors, televisions, and appliances with lead or mercury). WITS charged a fee to individuals and non-profits that was less than what WITS had to pay to the end recycler. (SUMF '09 #39)
14. WITS did not request any fees from the library, schools, seniors, veterans, and disabled individuals for items containing toxic chemicals, even though WITS was still required to pay the fees. (SUMF '09 #40)
15. During 2009, WITS would waive the fees for recycling if someone would inform WITS that they were unable to pay the fee. No proof was required of inability to pay. However, WITS was unable to do this for cathode ray tubes ("CRTs") (e.g., television sets and computer monitors) because the amount of the fee charged by

- the end recycler of the CRTs for the disposal of the toxic waste contained therein was too large. WITS could not recoup this amount from any other funding source and remain an ongoing and viable entity. (SUMF '09 #41)
16. Individuals who donated items for recycling received a "Proof of Donation" which allowed them to take a tax deduction. (SUMF '09 #37)
  17. WITS charged a fee of \$30 for pickup service, which included a box truck and two men for up to a 20 mile radius of its Danville, Illinois property. Any pickup over 20 miles would have to call for a quote. WITS picked up from schools, churches, and non-profits free of charge. (Joint Stip. #11; SUMF '09 #43)
  18. During 2009, WITS recycled approximately 6.5 million pounds of electronics of which approximately 1,750,000 pounds were collected in and demanufactured at the Danville location. (SUMF '09 #36)
  19. During the first three quarters of 2009, WITS sold refurbished computer systems for \$75.00. At the end of the third quarter the price was reduced to \$50.00 due to the economic downturn. During 2008, the price was \$100, and WITS sold four of these computers. All funds from the sales go back into the operations of WITS. (SUMF #44; SUMF '09 #44)
  20. WITS generates its funding from the following three primary sources: (1) monetary donations and grants; (2) selling some of its refurbished electronics; and (3) selling scrap materials generated as a result of the recycling process, which generates the majority of its funding. (SUMF '09 #45)
  21. WITS incurs expenses through its operations in the form of compensation to workers, maintenance, utilities, supplies, etc. WITS has paid individuals who

- demanufacture and remanufacture electronics, and it has paid administrative personnel. (SUMF '09 #48, 51)
22. During 2009, individuals or organizations donated approximately \$19,639.00 because they were either recycling an item for which WITS was charged a fee by the end recycler or they simply wanted to make a donation to WITS. (SUMF '09 #42)
23. For the year 2009, Form 990, Return of Organization Exempt From Income Tax, which was filed for WITS, shows income from "Contributions and grants" in the amount of \$95,000, income from "Program service revenue" in the amount of \$382,123, and investment income of \$21, which totals \$477,144 for income.<sup>2</sup> (SUMF '09 #53, 54, 57; Ex. #1-1)
24. The total expenses for WITS for the year 2009 as shown on Form 990 were \$500,145, which resulted in a loss of \$23,001. (SUMF '09 #58, 60; Ex. #1-1)
25. For the year 2008, Form 990-EZ that was filed for WITS shows income from "Contributions, gifts, grants, and similar amounts received" of \$201,675.<sup>3</sup> It also shows "Gross sales of inventory, less returns and allowances" of \$217,617, "cost of goods sold" of \$230,341 for a net gross profit of \$41,277 and total revenue in the amount of \$242,952. (SUMF #53, 54, 56, 57)
26. The total expenses for WITS for the year 2008 as shown on Form 990EZ were \$283,780, which resulted in a loss of \$40,828. (SUMF #58, 60; Ex. U)

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<sup>2</sup> The "Contributions and grants" includes the amount received from cash donations, money derived from specific events, and the thrift shop value of the items donated for recycling. (SUMF '09 #53) The "Program service revenue" is income received from selling the unusable parts of the recycled items as well as refurbished items. (SUMF '09 #54)

<sup>3</sup> This amount includes cash donations, money derived from specific events and the thrift shop value of the items donated for recycling. (SUMF #53)

27. During 2009, the amount that WITS generated at its St. Louis location from selling refurbished items was approximately \$16,000. During 2008, this amount was approximately \$15,000. (SUMF #55; SUMF '09 #55)
28. Angela Haas, the applicant's president, has not received a salary for her time dedicated to WITS. No one gains any profit from WITS's operations. (Joint Stip. #18; SUMF '09 #49, 50)
29. WITS has partnerships with Bryant Industries, Community Resource, KVCB, and Big R Rentals where these organizations allow WITS to use their heavy duty equipment and vehicles, such as forklifts or trucks, free of charge. (SUMF '09 #52)
30. During 2009, WITS offered the following programs at its Danville, Illinois location:
- a. Free Computer Program: Participants are asked to provide volunteer hours in exchange for a computer. However, WITS realizes that not everyone can participate in the program to provide hours. Therefore, there are opportunities WITS offered under those circumstances that allowed for a donation.
  - b. The Youth/Teen Program: High school juniors/seniors ages 16-18 on lunch or low-income programs who had been accepted into a college or university and maintained a B+ average or better for at least one year could receive a free computer.
  - c. Seniors and Veteran Technology Program: This project offered seniors and veterans free computers in exchange for making phone calls and contacts from home.
  - d. Disaster Victims Recovery Program: Sponsored by the American Red Cross, low income and uninsured disaster victims received a certificate to come into WITS's facility and receive two or three free electronic items/components to help rebuild lives. (SUMF '09 #21)

31. The Free Computer Program was advertised on the applicant's website as follows:

The Free Computer Program Orientation date is set for the first Saturday of every month at 10 a.m. Please call 314-382-6340.

Participants are asked to provide volunteer hours in exchange for their computer. Recipients may participate in the Program to upgrade their computer to a [sic] by volunteering at Earth Day and Americas Recycles Day events.

We realize that not everyone can participate in the program to provide hours. There are opportunities we can offer under those circumstances that allow for a donation to your family. Please call the Program office to find out more. (SUMF '09 #22)

32. WITS asked people to donate volunteer hours in the form of answering phones or making phone calls, sending out faxes to businesses and non-profit organizations, helping out at a collection event, demanufacturing donated items, and cleaning at the WITS Danville location. (SUMF '09 #23)

33. In order to receive a computer, a person must complete an application wherein the individual is asked what hours he or she is available to donate. A resume is required if the person plans to do any office work or make phone calls from home with the exception of collecting fax numbers. (SUMF '09 #24; Ex. #2-3)

34. During 2008, WITS asked for a \$5 donation with the application, but WITS did not ask for the donation during 2009. (SUMF '09 #26)

35. A person who applies for a computer receives a "WITS Free Computer Program Information" package that includes the following:

While we realize that everyone may not be able to participate program [sic] by donating hours, we do constantly need help getting the word out about the Free Program so that we can reach people in need. We do have special circumstances in which we can waive the program requirements so that you can receive a donated refurbished computer from us. (SUMF '09 #25)

36. WITS held a consistent policy of waiving service hours for those who are not able to donate hours. Individuals who applied but were unable to donate hours could still obtain a free computer by providing proof of inability to donate hours in the form of either (1) proof of low income status; (2) disability/veteran status or physician letter for special circumstances; or (3) a letter requesting special consideration. (SUMF '09 #28)
37. The letter requesting special consideration is an evaluation of whether the person requesting the computer has a reason for being unable to donate service hours. The reason for this requirement is that when WITS first began the Free Computer Program at its St. Louis location, it did not ask for any volunteer hours, and it learned that people who received free computers were then selling them for extra cash. Because that did not further WITS's mission, WITS began offering a computer for the donation of service hours. (SUMF '09 #29)
38. During 2009, no one was turned away from the Free Computer Program because they stated that they were unable to donate service hours. (SUMF '09 #33)
39. During 2009, 50 people received free computers. Of those people, 20 donated service hours. The remaining 30 people did not donate hours and received their computers through the "Computers for Christmas Giveaway." This was a program where someone who was in need and not able to donate hours was provided a free computer by a letter requesting special consideration. These individuals did not submit an application to take part in the Free Computer Program. (SUMF '09 #30)

40. During 2009, WITS donated a computer to the Keep Vermilion County Beautiful, the Danville Lutheran School, and the Danville Baptist Church. (SUMF '09 #34)
41. WITS disseminated a brochure into the community that explains its programs. The brochure was placed at local businesses. The brochure does not indicate that service hours may be waived for those who are unable to provide them. (SUMF '09 #20; Ex. P)
42. The information on its brochure was created for its St. Louis operations. The brochure indicates that some programs are not available in Illinois, but it does not specify which ones are not available. (Joint Stip. #16)
43. The applicant's website is at [www.witsinc.org](http://www.witsinc.org). During 2009, the website had a separate section for its St. Louis, Missouri operations and its Danville, Illinois operations. (Joint Stip. #17; SUMF '09 #7)
44. The property located at 1507 Bowman has two buildings. During the first half of 2009, approximately 25% of one building was used 3 days a week for the sales of refurbished electronics. During the latter half of 2009, this area was used 5 days a week for the same thing. The remaining part of the building was used to provide free training for the refurbishing of electronics and computers.<sup>4</sup> (SUMF '09 #61, 62, 64)
45. The majority of the other building located at 1507 Bowman was used for the demanufacturing of electronics. A portion of the building was used for storage, free of charge, by USAgain, a for-profit organization that sells used clothing. In

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<sup>4</sup> Youths from the Peer Court Alternative Community Service Program and referrals for mandatory community service from the judicial system participate in this training for community service hours. (SUMF '09 #62)

August 2009, USAgain stopped using this space. In October 2009 WITS began using this space for its household recycling program.<sup>5</sup> (SUMF '09 #65, 66)

46. There are also two buildings located at the Griggs Street location. One building is a garage-type building and is used to store WITS's box truck and lawn equipment. The other building has two levels, and during 2009 50% of the lower level was used by WITS for storage. The other 50% of the lower level was used free of charge by the Danville Broncos Wrestling team through the spring of 2009. The upper level has a conference room and office space. During 2009, the conference room was used by WITS for meetings and for the free computer program orientation held on the first Saturday of every month (except holidays, then the second Saturday). The office space was used to store antique equipment needed to start a computer museum. (SUMF '09 #67, 68, 69)

47. The applicant has no capital, capital stock, or shareholders and is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS on July 10, 2002. (Joint Stip. #19)

#### CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). “[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People

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<sup>5</sup> In October 2009 Vermilion County discontinued its household recycling program, and WITS began accepting household items free of charge. The items include paper, magazines, books, cardboard, cans, plastic bottles, and plastic tubs. (SUMF '09 #66)

ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. "The burden is a very heavy one." Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) ("Provena I"); see also Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes 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. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

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 relevant 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.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property....35 ILCS 200/15-65(a), (b).

Property may be exempt under subsection (a) if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen’s Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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 (1<sup>st</sup> Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987).

To be exempt under subsection (b) of section 15-65, the property must be (1) owned by an organization that uses the property exclusively for the distribution, sale or resale of donated goods and uses all the income to support the charitable activities, whether or not the activities occur on the property; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. WITS does not use the property primarily for the distribution of donated goods because it first demanufactures the donated items. Nevertheless, even if it were assumed that WITS meets the statutory requirements of subsection (b), in Eden Retirement Center, Inc., *supra*, the Supreme Court indicated that in addition to meeting the statutory requirements, the applicant must also meet the constitutional standards for a charitable purposes exemption. *Id.* at 290-291.

The Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization 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) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to

any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as “a gift to be applied ... 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.” *Id.*

It must first be noted that the evidence presented by WITS is not sufficient to determine whether the property is owned by a charitable organization. Because the Department denied this exemption on the basis that there is neither exempt ownership nor use, the applicant must establish that both the owner of the property and the use of the property meet the criteria set forth in Methodist Old Peoples Home, *supra*. See Chicago Patrolmen’s Association, *supra* at 271; Small v. Pangle, 60 Ill. 2d 510, 515 (1975). The evidence presented primarily concerns charitable activities that took place on the Danville property, which is the property in question, but the applicant also has operations in St. Louis. Although the St. Louis property is not at issue in this matter, the use of that property and the applicant’s charitable practices relating to that property are relevant for determining whether WITS is a charitable organization. See Provena I, *supra* at 393. The applicant’s financial information, alone, is not sufficient to make this determination; the charitable practices at all of the applicant’s property must be considered. *Id.*

WITS did not present any evidence concerning charity that it provided at the St. Louis location, and without that evidence, it cannot be found that WITS is a charitable

organization. Because this exemption is given only if both ownership and use are charitable, and the ownership element has not been established, the exemption must be denied on this basis. Nevertheless, the applicant has also failed to meet its evidentiary burden of showing that the operations at the Danville facility meet most of the guidelines in Methodist Old Peoples Home, *supra*.

WITS meets one factor because it does not have capital, capital stock, or shareholders, but it does not meet the factor concerning funding; WITS does not derive its funds mainly from public and private charity. WITS believes that it meets this factor because it derives its funds from “a variety of creative sources” and uses the funds to further its goals and purpose. (App. Mem. p. 16) WITS contends that the fact that it derives the majority of its funding through recycling revenue “should be of no consequence.” *Id.* WITS argues that its major funding source should, instead, bolster its claim for an exemption because WITS is turning someone else’s trash into its funding source. Rather than asking for cash donations, WITS asks for electronic items that would otherwise be tossed in a dumpster. These items that normally would pollute the environment are demanufactured and sold, and the funds are used to educate individuals so the recycling process can continue. WITS, therefore, believes that it meets this factor.

Despite WITS’s averments, the stipulated facts indicate that the majority of its funding is from the sale of scrap materials that are generated as a result of the recycling process. Revenue from selling scrap materials does not constitute public or private charity. Although recycling electronic items benefits our environment, the facts indicate that it is through the recycling process, not public or private charity, that WITS generates enough money to pay its operating expenses. In addition, how the money is used does

not determine whether there should be an exemption. Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill. App. 3d 679, 697 (5<sup>th</sup> Dist. 2008); Cook Communications Ministries v. Department of Revenue, 345 Ill. App. 3d 753, 763 (2<sup>nd</sup> Dist. 2004); Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2<sup>nd</sup> Dist. 1988). The actual activities on the property must be considered. *Id.*

WITS correctly states that the funding factor is not, by itself, dispositive. See Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4<sup>th</sup> Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010) (“Provena II”) (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967)). The Provena II court stated that the criteria of dispensing charity to all who need and apply for it and placing no obstacles in their way “go to the heart of what it means to be a charitable institution.” Provena II at 750. In addition, the factor that the property is used exclusively for charitable purposes is the *sine qua non* of the exemption. *Id.* at 743. The facts in the present case, however, do not clearly and convincingly show that WITS meets these criteria.

The facts indicate that the Danville property is primarily used for operating a recycling business, and the acts of charity are merely incidental. WITS is similar to any business that also provides charity as part of its normal operations. WITS charges people who want to discard their various electronic items, and then WITS either reuses the parts or sells them. The primary use of the property is not to provide charity; its primary use is to operate a recycling business from which it makes money in a manner similar to for-profit recycling businesses.

WITS claims that its recycling activities qualify as a charitable activity because they improve the environment and lessen the burdens of government. In Provena II,

however, the court reaffirmed that charity is a “gift” to be applied for the benefit of an indefinite number of persons or in some way reducing the burdens of government. *Id.* at 750. “‘Charity’ is an act of kindness or benevolence.” *Id.* The general recycling process, which primarily involves demanufacturing or refurbishing items and selling the materials, is not, *per se*, a charitable activity because it does not involve a gift, and WITS actually receives compensation for these activities.<sup>6</sup> WITS is primarily engaged in a money-generating business, and its charitable acts are not enough to find that the property is primarily used for charitable purposes.

One of the few charitable activities that WITS performed on the property during 2009 was providing free computers to certain people who needed them. Of the 50 people who received “free” computers during 2009, however, 20 of them donated service hours. Those 20 computers cannot be considered charity because a gift is “a voluntary transfer of property by one to another without any consideration or compensation therefor.” In re Estate of Berbecker, 277 Ill. App. 201 (1<sup>st</sup> Dist. 1934). Requiring a person to provide services in return for a computer is contrary to the definition of a gift and, therefore, not charity. It is also noteworthy that the service that a person provides for a computer includes promoting the applicant’s recycling business.

In addition, charity is not merely helpfulness, but generosity; “[t]o be charitable, an institution must give liberally.” Provena II, at 750. During 2009, WITS gave 30

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<sup>6</sup> WITS also refers to the Electronic Products Recycling and Reuse Act (415 ILCS 150/1 *et seq.*), where the General Assembly recognized that electronic products are the fastest growing portion of the solid waste stream, and the reuse and recycling of obsolete electronic products is preferred over incineration or disposing of them in a landfill. 415 ILCS 150/5(a)(5). The purpose of the Act is to set forth procedures by which the recycling and processing for reuse of electronic devices will be accomplished in Illinois. 415 ILCS 150(5)(b). Although the Act includes, *inter alia*, goals for recycling or reuse and penalties for manufacturers who fail to achieve those goals, the Act does not indicate that recycling and refurbishing are, *per se*, charitable activities. In addition, nothing in the Act limits its provisions to either for-profit or not-for-profit entities; it applies to any entity that is recycling.

computers to people who did not donate service hours, and it also donated a computer to a school, a church, and to Keep Vermilion County Beautiful. During the last quarter of 2009, which was when the 30 computers were given away, WITS was selling refurbished computers for \$50. WITS, therefore, gave away 30 computers valued at approximately \$50, which was \$1,500 worth of charity. Even if the other three computers that were given away were valued at \$75, which was the price of a refurbished computer during the first three quarters of 2009, the additional amount of charity given away would have been \$225. These amounts are not significant in comparison to the revenue of WITS, which totaled \$477,144 for the year 2009.

The facts state that WITS held a consistent policy of waiving service hours for those who were not able to donate hours, but the facts do not indicate that during 2009 WITS actually used this policy. The 30 people who received free computers and did not donate service hours received their computers through the “Computers for Christmas Giveaway” program and did not submit an application for the “Free Computer” program. As the Department indicated in its response, the fact that the only computers given away without service hours resulted from a specific program seems to indicate that the applicant’s general policy of waiving service hours is not adequately conveyed to the public.<sup>7</sup> The only places where the general policy was advertised were on the applicant’s website, which requires access to a computer to see it, and the “Free Computer Program Information” package, which is received after a person completes an application for a computer. Failing to adequately advertise a fee waiver policy is considered an obstacle in the way of those seeking charity. See Riverside Medical Center v. Dept. of Revenue, 342

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<sup>7</sup> The public was apparently adequately notified of the “Computers for Christmas Giveaway,” but the record does not indicate how this program was advertised.

Ill. App. 3d 603, 608 (3<sup>rd</sup> Dist. 2003). This does not, however, automatically warrant denying the exemption. See Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068 (1<sup>st</sup> Dist. 2000). In Randolph Street Gallery, the court found that during the years in question, the applicant had an undisputed and consistent fee waiver policy, and the applicant actually used it. In the present case, although WITS had a general policy of waiving the service requirement, during 2009 it was not actually used; other than through the “Computers for Christmas Giveaway,” WITS did not give a computer to anyone while waiving the service hours.

Some of the other charitable activities that WITS performed during 2009 include charging a reduced recycling fee to individuals and non-profits and not charging a fee to certain entities, individuals, or those who are unable to pay it. WITS did not notify the public of this fee waiver policy, and it is unclear whether it was actually used during 2009. The few charitable acts performed on the property simply do not warrant a finding that the property is primarily used for charitable purposes.

The applicant undoubtedly provides an important service for the community. The applicant’s operations are laudable, but laudable acts do not necessarily constitute charity. See Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956). As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The evidence presented in this case falls short of showing clearly and convincingly that the property is owned by a charitable organization and is used for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption be denied.

Linda Olivero  
Administrative Law Judge

Enter: March 31, 2011