

PT 13-06

Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use
Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

WEST SIDE CHRISTIAN CHURCH,
APPLICANT

No. 11-PT-0006 (10-84-124)
Real Estate Exemption
Sangamon County
P.I.N.S. 14-29-376-010,
14-29-326-023
For the 2010 Tax Year

Kenneth Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Joel Oster, Alliance Defending Freedom, on behalf of West Side Christian Church; Mr. Robin Gill, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether Sangamon County parcels, identified by P.I.N.S. 14-29-376-010 and 14-29-326-023 (hereinafter the “subject property”) qualify for exemption from 2010 real estate taxes under either 35 ILCS 200/15-40, “Religious Purposes,” or 35 ILCS 200/15-65, “Charitable Purposes.” The controversy arose as follows: On November 9, 2010, West Side Christian Church (hereinafter “West Side” or Applicant) filed a PTAX-300-R, “Application for Religious Property Tax Exemption,” with the Sangamon County Board of Review requesting exemption from 2010 real estate taxes for religious purposes. The County Board of Review recommended that a partial year exemption be granted. On February 25, 2011, the

Illinois Department of Revenue (“Department”) disagreed with the Board’s determination finding that the subject property was not in exempt use in 2010. On April 21, 2011, the Applicant timely protested the Department’s decision. At a pre-trial conference held on March 14, 2012, it was determined that the issue to be tried was whether the subject property was exempt for either religious or charitable purposes. West Side operates “Christian Day Care Center” (hereinafter “CDCC”) on the subject property. An evidentiary hearing was held on September 7, 2012 before Administrative Law Judge Ted Sherrod,¹ and with testimony from Jeremiah Auble, Pastor, Eddie Lowen, Lead Minister, and Deborah Carter, Director of Early Education for the Association of Christian Schools International.² Following a review of the evidence and the arguments, it is recommended that the matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in 2010. Dept. Ex. No. 1.
2. West Side purchased the subject property, 400 Bruns Lane in Springfield, by warranty deed on March 26, 2010. CDCC began operating on the subject property in June of 2010. Tr. pp. 54-55; Dept. Ex. No. 1.
3. On January 27, 2006, West Side was exempted from sales taxes in the State of Illinois as an institution “organized and operated exclusively for religious purposes.” Dept. Ex. No. 1.

¹ ALJ Sherrod was unable to write this Recommendation.

² Deborah Carter’s evidence deposition was admitted into evidence at the hearing as Applicant’s Ex. No. 1. Tr. pp. 7-8. In this Recommendation, references to the evidence deposition will be noted as “ED.”

4. West Side operates CDCC on the subject property from 7:00 a.m. to 5:30 p.m., Monday through Friday. The minimum age for enrollment is two years and the maximum age is five. Dept. Ex. No. 1.
5. CDCC was incorporated on May 31, 1984, under the Illinois Not-For-Profit Corporation Act. CDCC's "Mission Statement" states that its primary purpose "is to provide superior quality care for each child enrolled with a Christ-centered, love motivated, well structured program, seeking to encourage social interaction, intellectual stimulation, spiritual direction, physical development and emotional growth, while promoting a positive self esteem. This will not only prepare the child for elementary school, but all of life." Tr. pp. 46-48; App. Ex. No. 22.
6. CDCC operates under "Bylaws," revised March, 1998. The Bylaws require that CDCC's Directors be members of West Side. The Chairman of the Board must be an elder of West Side. There are currently three Directors. Tr. pp. 48-51; App. Ex. No. 19.
7. Parents do not have to be members of West Side in order to enroll their children in CDCC. If CDCC is full, it may "try and give preference to active participants at West Side or one of our sister churches." As of the time of the evidentiary hearing, there was no waiting list for entry to CDCC. CDCC does not track how many enrolled children are members of West Side. Children do not have to be Catholic or Protestant to enroll. Parents who enroll their children are not asked to sign a statement that they share CDCC's religious beliefs. Tr. pp. 74-77, 104-105; ED pp. 56-57.

8. CDCC charges the following fees: 5 full days (total care) up to 9.5 hours of care per day, \$156/week; 3 full days (total care) up to 9.5 hours of care per day, \$106/week; 2 full days (total care) up to 9.5 hours of care per day, \$71/week; “Half Day Pre-School Program,” morning session, 8:00 a.m. to 11:30 a.m., \$280/month. “All tuition charges are payable regardless of holiday or personal schedules.” Children who have attended CDCC for one year shall receive one week no-charge tuition (as long as the child does not attend CDCC during the week) beginning the second year. “A non-refundable fee of \$50/child is payable during Fall registration.” A 10%, 15%, and 20% discount in tuition is given to the second, third, and fourth child enrolled, respectively. CDCC is open for “total care” 12 months/year. Each “total care” child receives a “State approved Class A hot lunch plus a morning and afternoon snack.” Dept. Ex. No. 1.
9. CDCC charges the following late payment fees: \$5 after the first week that an account is delinquent; \$25 after the second week that an account is delinquent; an additional \$25 will be charged after the third week that an account is delinquent and the child’s enrollment at CDCC will be terminated. In addition, parents agree “to pay any additional charges related to the cost of collection (including but not limited to collection agency charges, reasonable attorney fees, court costs, certified letter fees, handling fees, etc.).” Tr. pp. 86-87; Dept. Ex. No. 1.
10. CDCC requests payment on the first day of each month “as a practical cash flow matter.” The “Parent Handbook” states that CDCC understands that circumstances may arise that cause financial hardships. “Whenever possible, CDCC will work with parents in these special circumstances to manage their

- account, provide financial aid, and/or assist parents with applying for needs-based childcare assistance through the State of Illinois.” Tr. pp. 71-72; App. Ex. No. 22.
11. CDCC charges a \$5 “late pick-up fee” for each additional 15 minute increment that a parent fails to pick up a child by 5:30 p.m. A child may be dismissed from CDCC if a “third offense” occurs within a year of the anniversary date of enrollment in CDCC. A \$5 late pick-up penalty will be assessed for half-day pre-school children after 11:30 a.m. Dept. Ex. No. 1.
 12. CDCC’s unaudited “Statement of Activities” for December 31, 2010, shows “Total Revenue” of \$403,899, of which 99.7% is “Tuition and Fees.” CDCC had “Expenses” of \$594,257, resulting in a “Net Loss” for the year of \$190,358. The \$190,358 deficit amount was “paid by depleting CDCC reserves.” Tr. pp. 52-60, 91-93; Dept. Ex. No. 1; App. Ex. No. 21.
 13. In 2010, one child at CDCC received a partial fee waiver. Enrollment at CDCC in that year was between 30 and 80 students, with the enrollment variation due to the move into the new building located on the subject property. Tr. pp. 84-85.
 14. CDCC’s “Charitable Policy,” written in “the early part of 2011,” (after the 2010 tax year at issue in these proceedings) states as follows: CDCC “waives fees on holidays for children receiving financial assistance from [Illinois] Department of Human Services. There are 13 day care children who receive this assistance.” “CDCC allows families of need to enroll in a 4 day program at the rate of \$125/week.” There is one child enrolled in daycare who currently receives this assistance. “There are no pre-school children receiving assistance at this time.” “The leadership team of CDCC does provide need based financial assistance.”

- “As of 1/27/11, there were 64 children enrolled at CDCC. Two children were enrolled in pre-school and 62 children were enrolled in day care.”³ Tr. pp. 65-71, 88-91; Dept. Ex. No. 1.
15. CDCC’s “Parent Handbook,” in effect in the year at issue, under the section entitled “Financial Information,” states that “as a ministry to families, CDCC understands that circumstances may arise that cause financial hardships. Whenever possible, CDCC will work with parents in these special circumstances to manage their account, provide financial aid, and/or assist parents with applying for needs-based childcare assistance through the State of Illinois. Based on financial need, CDCC will waive holiday fees for families attending CDCC with the help of State of Illinois childcare assistance.” Tr. pp. 80-81; App. Ex. No. 23.
16. CDCC requires its teachers to be Christian. If teachers are fully Christian, “children will become like their teacher.” The “Instructional Staff Application” for employment requires the applicants to tell where they worship, how regularly they worship and how active they are in worship. Applicants must sign a “CDCC Statement of Faith” and sign a “Moral Integrity Form,” with regard to their lifestyle. Tr. pp. 30-33, 51-52; ED pp. 32-38; App. Ex. No. 10.
17. Students at CDCC complete a “Bible Journal,” which is an “active part of the instruction.” The Journal requires students to draw pictures regarding trust in Jesus, sharing, following Jesus, how to be more like Jesus, thanking Jesus and

³ App. Ex. No. 23, consisting of pages 25 and 26 of Dept. Ex. No. 1, was admitted without objection by the Department. Tr. pp. 70-71. The document is entitled “Application and Fee Waivers/Financial Assistance Policy” and the document was “revised, January, 2012.” Because the exemption in this case is for 2010, I have not considered the January, 2012, document in this Recommendation but instead have relied on a document entitled “Charitable Policy,” submitted with West Side’s original application for 2010 exemption, included in Dept. Ex. No. 1.

- growing in God's love. Parents get to keep the Journal as a keepsake. The Bible Journal allows a child to have time to reflect "that wonder, of who God is." Tr. pp. 34-37; ED pp. 38-41; App. Ex. No. 11.
18. Students are taught about the good Samaritan, the burning bush and how to show love for Jesus. Tr. pp. 38-41; ED pp. 41-43; App. Ex. Nos. 12 and 13.
19. A "Lesson Plan" shows sessions for "Bible" with a discussion of "Joseph's Coat of Many Colors," and relating this story to forgiveness, using Joseph's coat to match fabric squares, math patterning, decorating Joseph's coat, modern day forgiveness, and puzzles as they relate to the Bible story. Another lesson plan shows a discussion of the story of Jesus calming a storm and relating this to weather. Tr. pp. 42- 46; ED pp. 44-48; App. Ex. Nos. 14, 15 and 16.

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 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 (1st 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). 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.

West Side purchased the subject property, 400 Bruns Lane in Springfield, by warranty deed on March 26, 2010. CDCC began operating on the subject property in June of 2010. Tr. pp. 54-55; Dept. Ex. No. 1. West Side operates CDCC on the subject property from 7:00 a.m. to 5:30 p.m., Monday through Friday. The minimum age for enrollment is two years and the maximum age is five. Dept. Ex. No. 1.

West Side is exempt from sales taxes in the State of Illinois as an institution “organized and operated exclusively for religious purposes” as of January 27, 2006. Dept. Ex. No. 1. Having an exemption from sales tax, however, is not determinative of whether an applicant is entitled to an exemption from property taxes. Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 389 (2010).

RELIGIOUS EXEMPTION:

Pursuant to its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, which allows exemptions for religious purposes or school and religious purposes and provides, in part, as follows:

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit.

35 ILCS 200/15-40.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

In Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (4th Dist. 2008), the court found that a daycare and preschool that was operated by Faith Builders Church did not qualify for a property tax exemption. The Faith Builders Church had purchased a building that was previously used as a daycare and was not adjacent to the church. The court stated that it was reasonable to find that the property was not primarily used for religious purposes or religious instruction and noted as follows:

Infants, toddlers, and preschoolers have an extremely limited capacity for assimilating theological concepts. With children so young, the supervising adults' primary purpose, from 6 a.m. to 6 p.m., will inevitably be day care – and Faith Builders' descriptive literature reflects that reality. In a list of 11 tasks and activities, religion appears once. Arguably, that is because the children are simply too young for sustained religious instruction and their primary need is day care. *Id.* at 1045.

The court also stated as follows:

In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion. A church could open a restaurant, for instance, and because waiters attempted to evangelize customers while taking their orders, the restaurant would be exempt. But the operation of a restaurant is not necessary for evangelism and religious instruction, although, like any other social activity, it can provide the occasion for those religious purposes. The same could be said of a day-care facility. Day care is simply not a 'religious purpose' within the commonly accepted definition of that term. *Id.* at 1046.

The facts in West Side are similar to those in Faith Builders Church. A "Lesson Plan" for week 30 lists several daily secular activities in addition to the religious ones. Under "Everyday Literacy," students look at vocabulary words, trace an X on paper, read a story and "ask what happens next," and use the "ABC Flipchart." Lunch activities include looking at books and puzzles. App. Ex. No. 14.

Additionally, CDCC's "Mission Statement" states that its primary purpose "is to provide superior quality care for each child enrolled with a Christ-centered, love

motivated, well structured program, seeking to encourage social interaction, intellectual stimulation, spiritual direction, physical development and emotional growth, while promoting a positive self esteem. This will not only prepare the child for elementary school, but all of life.” Tr. pp. 46-48; App. Ex. No. 22. As the Mission Statement demonstrates, the primary use of the property is provide superior quality care for each child enrolled. This is not traditionally a “religious purpose” within the commonly accepted meaning of that term. Many of the purposes listed in the Mission Statement, such as encouraging social interaction, intellectual stimulation, physical development and emotional growth, are also purposes of non-religious and for-profit daycare centers. See also Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4th Dist. 1987) (operation of retirement home allows church to engage in evangelization but is not primarily religious and does not qualify for religious purposes exemption). There is no evidence in the record of West Side that any religious services are conducted on the subject property. Mr. Lowen testified that the subject property is not used for “activities other than day care activities.” Tr. p. 106.

Parents do not have to be members of West Side in order to enroll their children in CDCC. There was testimony that if CDCC were full, it may “try and give preference to active participants at West Side or one of our sister churches.” As of the time of the evidentiary hearing, there was no waiting list for entry to CDCC. CDCC does not track how many enrolled children are members of West Side. Children do not have to be Catholic or Protestant to enroll. Parents who enroll their children are not asked to sign a statement that they share CDCC’s religious beliefs. Tr. pp. 74-77, 104-105; ED pp. 56-57. Apparently, CDCC is open to children of all faiths and backgrounds. It would be

illogical to conclude that the subject property is primarily used for religious purposes, as required by 35 ILCS 200/15-40, when the parents and children enrolled may be indifferent, or even hostile, toward religion.

The court in Faith Builders Church also considered whether the daycare and preschool qualified as a “school” within the meaning of sections 15-40(a) and 15-35 of the Property Tax Code.⁴ The court noted that there is a two-part test for determining whether property is used as a school for purposes of the property tax exemption. In order to qualify, an institution’s course of study must: (1) fit into the general scheme of education founded by the State and supported by public taxation, and (2) substantially lessen what would otherwise be a governmental function and obligation. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957). The court in Faith Builders Church noted that in determining whether the first element has been met, “courts have been inhospitable towards granting a school exemption to schools whose curriculum d[o] not consist of traditional subject matter common to accepted schools and institutions of learning....” citing Chicago & Northeast Illinois District Council of Carpenters Apprentice & Trainee Program v. Department of Revenue, 293 Ill. App. 3d 600, 608 (1st Dist. 1997). The Faith Builders Church court found that there was no evidence that the daycare and preschool offered curricula consisting of traditional subject matter common to accepted schools; the property, therefore, did not qualify for the school exemption. *Id.* at 1047. See also Rogy’s New Generation, Inc. v. Department of Revenue, 318 Ill. App.

⁴ Section 15-35 provides, in part, as follows: “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 ... (b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes.” 35 ILCS 200/15-35(b).

3d 765 (1st Dist. 2000) (daycare not exempt because Illinois does not mandate education for children under the age of 5 and there is no corresponding public tax burden).

The same reasoning applies in the present case. CDCC's program does not fit into the general scheme of education funded by the State. Also, because preschool education is not mandated, there is no corresponding tax burden that CDCC can lessen. In Faith Builders Church, the Appellate Court concluded that "day care is simply not a 'religious purpose' within the commonly accepted definition of that term." *Id.* at 1046. West Side does not present a compelling reason for me to reach a different conclusion. West Side's request for an exemption on the basis that CDCC is used for "religious" or "school and religious purposes" must, therefore, be denied.

CHARITABLE EXEMPTION:

Pursuant to its constitutional authority, the General Assembly also 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.... 35 ILCS 200/15-65(a).

Property may be exempt under this subsection 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*.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Illinois Supreme Court articulated the criteria and guidelines for resolving the constitutional question of whether an organization is actually an institution of public

charity. These guidelines are: (1) the organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the organization has no capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the charity is dispensed to all who need and apply for it; (4) the organization 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 (5) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government. In addition to these factors which are used to assess whether an institution is charitable, an Applicant, in this case West Side, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157. Courts consider and balance the criteria and guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Com'n on Accreditation of HealthCare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965).

In looking at the Korzen factors, CDCC does not derive its funds mainly from public and private charity. CDCC's unaudited "Statement of Activities" for December 31, 2010, shows "Total Revenue" of \$403,899, of which 99.7% is "Tuition and Fees." Tr. pp. 52-60, 91-93; Dept. Ex. No. 1; App. Ex. No. 21. Nearly all of CDCC's income was from tuition and fees rather than public or private donations. The Department has conceded that West Side has no capital, capital stock or shareholders and that "nothing indicates that private inurement occurred during the 2010 assessment year." Department's Legal Brief, p. 5.

I am unable to conclude from this record that the other Korzen factors are met by CDCC. CDCC's "Charitable Policy," written in "the early part of 2011," (after the 2010 tax year at issue in these proceedings) states as follows: CDCC "waives fees on holidays for children receiving financial assistance from [Illinois] Department of Human Services.⁵ There are 13 day care children who receive this assistance." "CDCC allows families of need to enroll in a 4 day program at the rate of \$125/week." There is one child enrolled in daycare who currently receives this assistance. "There are no pre-school children receiving assistance at this time." "The leadership team of CDCC does provide need based financial assistance." "As of 1/27/11, there were 64 children enrolled at CDCC. Two children were enrolled in pre-school and 62 children were enrolled in day care." Tr. pp. 65-71, 88-91; Dept. Ex. No. 1. There is no further explanation in the record for this "Charitable Policy." It seems feasible that CDCC has to waive fees on holidays for children receiving financial assistance from the Illinois Department of Human Services in order to encourage parents receiving this assistance to enroll their children at CDCC.

Mr. Auble testified that from 1998 to 2011, "we had a total of eight children attend CDCC at no cost." Tr. pp. 67-68. It is unclear from the record if any children attended CDCC "at no cost" in 2010, the year at issue in this proceeding. Mr. Auble testified further that "other families received financial aid through the center, the discount to tuition, which ranged from 10 percent to 60 percent during those times based on what

⁵ The actual provision in the "Parent Handbook" states that "based on financial need, CDCC will waive fees for families attending CDCC with the help of State of Illinois childcare assistance." App. Ex. No. 22. The "based on financial need" phrase was not explained at the evidentiary hearing, and it is unclear if parents who receive State of Illinois childcare assistance must also show financial need in order to have holiday fees waived.

the particular circumstances of that family were.” Tr. p. 68. No documentary evidence was offered to support the charity given to the eight children above or the children receiving the 10 to 60 percent discounts.

Mr. Auble testified that if parents are unable to make payments to CDCC, CDCC will work with them to obtain “needs-based childcare assistance through the State of Illinois.” “...Because families in Illinois can apply for a need-based financial assistance through Community Child Care Connection, which is State of Illinois childcare assistance, most families, even who are needy, have support to be able to participate in our center.” Tr. p. 67. Mr. Lowen testified that CDCC is on the west side of town, “which is a more affluent side of town,” “There are fewer people who live within reach of the day care who would need assistance, and [Mr. Auble] testified accurately that there are programs that help those people.” Tr. p. 102. I am unable to conclude that funding of child care by the State of Illinois constitutes a fee waiver or “charity” attributable to CDCC. Additionally, it would be difficult to recommend a charitable property tax exemption for an “affluent” area, where few people need child care assistance because they have access to assistance from the State.

Mr. Auble did not know how many children received a full fee waiver in 2010. He testified that one child received a partial fee waiver. Enrollment at CDCC in that year was between 30 and 80 students, with the enrollment variation due to the move into the new building located on the subject property. Tr. pp. 84-85. It is not exactly clear from the record what charity CDCC gave away in 2010, either in terms of the total number of children assisted or dollars of tuition waived. I cannot determine from the record whether

CDCC's charity in 2010 was dispensed to all who needed and applied for it or that the benefits derived from CDCC's charity were for an indefinite number of persons.

Mr. Auble was asked at the hearing if CDCC had a fee waiver or financial assistance policy posted inside the facility. "Or how would potential parents or children that wanted to attend the facility, but how would they have found out about the fee waiver and financial assistance policy?" He responded that, "in communication with our director or assistant director, if they would have indicated that there was financial need, that would have been discussed at that time." "We're a small center, small ministry, and it's a community of faith. And, you know, these kinds of things are discussed pretty openly and freely with people as they have need." Tr. p. 82.

CDCC's "Parent Handbook," in effect in the year at issue, under the section entitled "Financial Information," states that "as a ministry to families, CDCC understands that circumstances may arise that cause financial hardships. Whenever possible, CDCC will work with parents in these special circumstances to manage their account, provide financial aid, and/or assist parents with applying for needs-based childcare assistance through the State of Illinois." Tr. pp. 80-81; App. Ex. No. 23. This provision appears to apply to parents with children already enrolled at CDCC. It is unclear how parents looking to enroll their children at CDCC would know that financial assistance, other than assistance with applying for need-based childcare to the State of Illinois, would be available. Additionally, "a non-refundable fee of \$50 per child is payable during Fall registration." Dept. Ex. No. 1. There is no testimony in the record that this "admission and registration fee" was ever waived for parents with financial need looking to enroll their children.

The non-refundable \$50 registration fee and the lack of a clear financial assistance provision in the “Parent Handbook” for potential enrollees suggest that there are obstacles in the way of those who may need CDCC’s charitable benefits. Failing to adequately notify the public of a fee waiver policy or free services is considered to be an obstacle in the way of those seeking charity. In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272, 281 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” Similarly, in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” In the instant case, the record does not show that the “general public,” looking to enroll their children in day care, would know that free or discounted care was available from CDCC in 2010.

In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), *aff’d*, 236 Ill. 2d 368 (2010) the court stated that the factors of dispensing charity to all who need and apply for it and placing no obstacles in their way “are essential criteria; they go to the heart of what it means to be a charitable institution.” In the instant case, the record does not clearly and convincingly show that CDCC meets these guidelines.

Finally, I am unable to conclude that West Side's exclusive and primary use of the CDCC subject property is for charitable purposes. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Korzen at 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 (1st 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 (3rd Dist. 1987).

The primary use of the subject property is as a fee-for-service day care center. CDCC derives the majority of its funding from tuition and fees in accordance with the following fee schedule: 5 full days (total care) up to 9.5 hours of care per day, \$156/week; 3 full days (total care) up to 9.5 hours of care/per day, \$106/week; 2 full days (total care) up to 9.5 hours of care per day, \$71/week; "Half Day Pre-School Program," morning session, 8:00 a.m. to 11:30 a.m., \$280/month. "All tuition charges are payable regardless of holiday or personal schedules." Children who have attended CDCC for one year shall receive one week no-charge tuition (as long as the child does not attend CDCC during the week) beginning the second year. A 10%, 15%, and 20% discount in tuition is given to the second, third, and fourth child enrolled, respectively. CDCC is open for "total care" 12 months/year. Dept. Ex. No. 1.

CDCC charges the following late payment fees: \$5 after the first week that an account is delinquent; \$25 after the second week that an account is delinquent; an additional \$25 will be charged after the third week that an account is delinquent and the

child's enrollment at CDCC will be terminated. In addition, parents agree "to pay any additional charges related to the cost of collection (including but not limited to collection agency charges, reasonable attorney fees, court costs, certified letter fees, handling fees, etc.)." Tr. pp. 86-87; Dept. Ex. No. 1.

CDCC requests payment on the first of each month "as a practical cash flow matter." Tr. pp. 71-72; App. Ex. No. 22. CDCC charges a \$5 "late pick-up fee" for each additional 15 minute increment that a parent fails to pick up a child by 5:30 p.m. A child may be dismissed from CDCC if a "third offense" occurs within a year of the anniversary date of enrollment in CDCC. A \$5 late pick-up penalty will be assessed for half-day pre-school children after 11:30 a.m. Dept. Ex. No. 1.

These payment and penalty provisions suggest a business-like operation rather than a charitable one and support the finding that the primary use of the property is not charitable, but rather, is to provide child care to those who are able to pay for this service. Additionally, the payment and penalty provisions seem to be "lacking in the warmth and spontaneity indicative of a charitable impulse" and "more related to the bargaining of the commercial market place." Korzen at 158. See also Faith Builders Church, *supra*, (tuition, late fees, and disenrollment for failing to pay suggest a business relationship more than a religious one).

CDCC may provide an important service for the community, but laudable operations do not necessarily constitute charity. Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934). As previously mentioned, exemption provisions must be strictly construed, and all doubts

must be resolved in favor of taxation. City of Chicago, supra. The party claiming the exemption must prove by clear and convincing evidence that it is entitled to the exemption. The evidence presented falls short of showing clearly and convincingly that the subject property qualifies for a charitable exemption.

RECOMMENDATION:

For the foregoing reasons, it is recommended that the Applicant's exemption request be denied and that Sangamon County P.I.N.S. 14-29-376-010 and 14-29-326-023 not be exempt for the 2010 assessment year.



Kenneth Galvin
Administrative Law Judge

Enter: July 26, 2013