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NOS. 4-12-0749, 4-12-0907 cons.

FILED
August 28, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WEB INNOVATIONS & TECHNOLOGY SERVICES, INC.,	)	Appeal from
	)	Circuit Court of
Plaintiff-Appellant,	)	Sangamon County
v. (No. 4-12-0749)	)	No. 11MR298
THE DEPARTMENT OF REVENUE,	)	
Defendant-Appellee.	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.
	)	
	)	
WEB INNOVATIONS & TECHNOLOGY SERVICES, INC.,	)	Appeal from
	)	Circuit Court of
Plaintiff-Appellant,	)	Vermilion County
v. (No. 4-12-0907)	)	No. 11MR109
THE DEPARTMENT OF REVENUE and THE	)	
VERMILION COUNTY BOARD OF REVIEW,	)	Honorable
Defendants-Appellees.	)	Karen E. Wall,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* Decisions by the Department of Revenue, denying taxpayer's requests for charitable exemptions from the Retailer's Occupation Tax Act and the Property Tax Code, were not clearly erroneous.
- ¶ 2 Plaintiff, Web Innovations & Technology Services, Inc. (WITS), sought administrative review of decisions by defendant, the Department of Revenue (Department), to deny its requests for charitable exemptions under the Retailers' Occupation Tax Act (35 ILCS 120/2-5

(West 2008)) and the Property Tax Code (35 ILCS 200/15-65 (West 2008)). In separate cases, the circuit courts of Sangamon and Vermilion Counties rejected WITS's arguments and affirmed the Department's decisions. WITS appeals, arguing the Department erred in denying its requests for charitable tax exemptions. WITS's claims were consolidated on appeal. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The facts are largely undisputed. WITS recycles and refurbishes electronic equipment. On November 19, 2001, it was organized as a Missouri non-profit corporation and began its operations in St. Louis, Missouri. On June 1, 2007, WITS received a donation of two parcels of property located on Bowman Avenue and Griggs Street in Danville, Illinois. It also began operating at those locations. Its articles of incorporation state its purpose is "to provide low cost/free technology and services to college students who cannot afford it." Further, its mission statement is "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."

¶ 5

WITS generated funding from three primary sources: (1) monetary donations and grants, (2) selling refurbished electronics, and (3) selling its scrap to end processors who paid WITS on a per pound basis. Through the recycling process, WITS generated money to pay its operating expenses. All money generated by WITS's operations goes back into the corporation. Its president, Angela Haas, does not receive a salary. WITS has no capital stock or shareholders, and no one gains a profit from its operations. Money generated by selling refurbished electronics constitutes only a small portion of WITS's funding and the majority of its funding is gained from the sale of scrap materials generated as a result of the recycling process. On July 10, 2002, the

Internal Revenue Service (IRS) made a determination that WITS was exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3) (2000)).

¶ 6 WITS accepted a wide variety of electronic items at its facilities, including computers, monitors, printers, cables, peripherals, networking equipment, servers, telecommunications items, phones, clocks, home electronics, small appliances, audiovisual equipment, washers, dryers, medical and diagnostic equipment, cabling and communications, 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, software, digital video discs (DVDs) and compact discs (CDs), and tapes. All nonreusable material and material that could not be refurbished was demanufactured or recycled. WITS has a 0% landfill policy, meaning its policy is to keep everything out of landfills.

¶ 7 WITS received compensation for some electronic items (including circuit boards, cables, cords, power supplies, and drives) that it took to other vendors for recycling. For electronic items that contained toxic chemicals, WITS had to pay vendors who specialized in the recycling of such products. It charged a hazardous material fee in connection with those items, including a fee of \$5 for computer monitors, business appliances, air conditioners, refrigerators, humidifiers, washers, dryers, and furnaces and from \$10 to \$20 for televisions.

¶ 8 WITS's fees for individuals and nonprofit organizations were less than what it was required to pay the end recycler. Residents and nonprofit organizations were not required to pay a fee for appliances smaller than a microwave and WITS did not request any fees from libraries, schools, seniors, veterans, and disabled individuals. Further, WITS waived fees for those who

were unable to pay. It did not require proof of inability to pay. However, WITS was unable to waive fees associated with electronic items like televisions and computer monitors that had cathode ray tubes because the amount of the fee charged by the end recycler for those items was too large. Individuals who donated items received a "proof of donation," which allowed them to take a tax deduction.

¶ 9 In 2009, WITS recycled approximately 6.5 million pounds of electronics. Approximately 1,750,000 pounds of electronics were collected at WITS's Danville facilities. During the first three quarters of 2009, WITS sold its refurbished computer systems for \$75. During the last quarter, it reduced its price to \$50 due to the economic downturn.

¶ 10 In 2009, WITS's income included \$95,000 from contributions and grants; \$21 from investments; and \$382,123 from "program service revenue," which included income WITS received from selling the unusable parts of recycled and refurbished items. Revenue from its Danville location totaled \$46,270. That amount included approximately \$18,886 in recycling revenue; \$12,309 in cash donations and recycling fee requests; \$7,330 in special event cash donations and recycling fee requests; \$2,656 in tech repair fees; and \$5,089 in the sale of refurbished items. At its St. Louis facility, WITS generated approximately \$16,000 from selling refurbished items. Its total income for 2009 was \$477,144 and its total expenses were \$500,145, resulting in a loss of \$23,001.

¶ 11 At its Danville location, WITS offered several programs, including (1) the Free Computer Program, which offered participants a computer in exchange for volunteering service hours; (2) the Youth/Teen Program, which offered a free computer to high school students that met certain requirements; (3) the Seniors and Veteran Technology Program, which offered

seniors and veterans free computers in exchange for making phone calls; and (4) the Disaster Victims Recovery Program, which was sponsored by the American Red Cross and permitted low income and uninsured disaster victims to receive two or three free electronic items or components. In connection with the Free Computer Program, WITS had a policy of waiving service hours for those unable to donate their time upon proof of inability in the form of (1) proof of low income status, (2) disability/veteran status or physician letter for special circumstances, or (3) a letter requesting special consideration.

¶ 12 The Free Computer Program was advertised on WITS's website. It also disseminated a brochure, explaining its programs. The brochure did not indicate that service hours could be waived for those unable to provide them. In 2009, 50 people received free computers. Of those people, 20 donated service hours and the remaining 30 donated no hours and received their computers through a "Christmas Giveaway" program. In 2009, WITS also donated computers to the Keep Vermilion County Beautiful organization, the Danville Lutheran School, and the Danville Baptist Church.

¶ 13 In 2009, the Department denied WITS's requests for charitable exemptions from retailer's occupation and property taxes. WITS requested a hearing before the Department. Ultimately, the parties agreed to waive a formal hearing and presented the cases to an administrative law judge (ALJ) through the submission of documents and stipulations of fact. On March 11, 2011, the ALJ entered recommendations for disposition in connection with WITS's exemption requests.

¶ 14 In both cases, the ALJ recommended WITS's requests for charitable exemptions under the Retailer's Occupation Tax Act and the Property Tax Code be denied, finding WITS

failed to establish either that it was a charitable organization or that it used its Danville properties primarily for charitable purposes. Initially, she noted that activities at all of WITS's locations were relevant to a determination of whether WITS was a charitable organization and entitled to tax exemptions. The ALJ found WITS should have, but failed, to present evidence of charitable acts at its St. Louis location. Nevertheless, the ALJ also determined that WITS failed to meet its evidentiary burden with regard to evidence it presented regarding its Danville location. The ALJ relied upon the following findings: (1) the majority of WITS's funding was from the sale of scrap materials that were generated as a result of the recycling process rather than through public or private charity, (2) the primary use of WITS's Danville properties was to operate a recycling business from which it made money rather than to provide charity, (3) the recycling process is not a charitable activity because it did not involve a gift and WITS received compensation from its activities, (4) giving away computers in exchange for service hours by the recipient did not constitute charity, (5) the number and value of computers WITS gave away or donated in 2009 without an exchange for services was insignificant in comparison to its revenue for the same year, and (6) WITS failed to adequately advertise its fee-waiver policy resulting in an obstacle to those seeking charity. On April 27, 2011, notices of decision were entered in each case, stating the Department's director had accepted the ALJ's recommendations.

¶ 15 On June 20, 2011, WITS filed a complaint for administrative review in Vermilion County, challenging the Department's decision to deny its request for a charitable property tax exemption. On June 21, 2011, WITS filed a complaint for administrative review in Sangamon County, challenging the Department's decision to deny its request for a charitable exemption from the retailer's occupation tax. On July 16, 2012, the circuit court in the Sangamon County

case made a docket entry, showing it denied WITS's complaint for administrative review. On August 24, 2012, the circuit court in the Vermilion County case entered an order, finding no error in the ALJ's application of law to the facts and upholding the Department's denial of a property tax exemption.

¶ 16 WITS appealed the circuit courts' decisions and, on appeal, the matters were consolidated.

¶ 17 II. ANALYSIS

¶ 18 On appeal, WITS argues it is a charitable organization which puts its property to primarily charitable use, entitling it to exemptions from both the retailer's occupation tax and property tax.

¶ 19 In proceedings for administrative review, this court's role is to review the Department's administrative decision rather than that of the circuit court. *OKO, LLC v. Illinois Department of Revenue*, 2011 IL App (4th) 100500, ¶ 31, 959 N.E.2d 663. "The appropriate standard of review concerning administrative decisions is contingent upon whether the question being reviewed is one of fact, law, or both." *OKO*, 2011 IL App (4th) 100500, ¶ 31, 959 N.E.2d 663. "When an administrative agency's factual findings are contested, the court will only ascertain whether such findings of fact are against the manifest weight of the evidence." *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386-87, 925 N.E.2d 1131, 1143 (2010) (*Provena II*). Questions of law are subject to *de novo* review. *Provena II*, 236 Ill. 2d at 387, 925 N.E.2d at 1143.

¶ 20 "Yet a third standard governs when the dispute concerns the legal effect of a given set of facts, *i.e.*, where the historical facts are admitted or established, the rule of law is undis-

puted, and the issue is whether the facts satisfy the statutory standard." *Provena II*, 236 Ill. 2d at 387, 925 N.E.2d at 1143. Such circumstances present mixed questions of law and fact and the agency's determination will be set aside only where it is clearly erroneous. *Provena II*, 236 Ill. 2d at 387, 925 N.E.2d at 1143. The clearly erroneous standard is " 'significantly deferential' " and "[a]n administrative decision will be set aside as clearly erroneous only when the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Provena II*, 236 Ill. 2d at 387-88, 925 N.E.2d at 1143.

¶ 21 As stated, in this case, the facts presented were largely undisputed. The question for review is whether those facts entitle WITS to charitable exemptions from the Retailer's Occupation Tax Act and the Property Tax Code. These circumstances present a mixed question of law and fact. We review the Department's decisions for clear error.

¶ 22 "Under Illinois law, taxation is the rule" and "[t]ax exemption is the exception." *Provena II*, 236 Ill. 2d at 388, 925 N.E.2d at 1143. "Statutes granting tax exemptions must be strictly construed in favor of taxation." *Provena II*, 236 Ill. 2d at 388, 925 N.E.2d at 1144. "The burden of establishing entitlement to a tax exemption rests upon the person seeking it" and he or she must prove their entitlement by clear and convincing evidence. *Provena II*, 236 Ill. 2d at 388, 925 N.E.2d at 1144.

¶ 23 Section 2-5(11) of the Retailer's Occupation Tax Act (35 ILCS 120/2-5(11) (West 2008)) provides for an exemption from taxation for corporations "organized and operated exclusively for charitable *** purposes[.]" Similarly, section 15-65 of the Property Tax Code provides for charitable tax exemptions for property that is both owned by an institution of public charity and which is "actually and exclusively used for charitable or beneficent purposes, and not

leased or otherwise used with a view to profit[.]" 35 ILCS 200/15-65 (West 2008). Additionally, section 15-65(b) provides that property is exempt from taxation where a "charitable organization *** 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 *** activities of the owner, whether or not such activities occur on the property." 35 ILCS 200/15-65(b) (West 2008).

¶ 24 The supreme court has 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.' " *Provena II*, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145 (quoting *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156-57, 233 N.E.2d 537, 541 (1968)). Additionally, the distinctive characteristics of a charitable institution are that it (1) has no capital, capital stock, or shareholders; (2) 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) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; (5) 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 (6) the primary use of its property is for charitable purposes. *Methodist Old Peoples Home*, 39 Ill. 2d at 157, 233 N.E.2d at 541-42; see also *Provena II*, 236 Ill. 2d at 390, 925 N.E.2d at 1145; *Wyndemere Retirement Community v. Department of Revenue*, 274 Ill. App. 3d 455, 459, 654 N.E.2d 608, 611 (1995) (holding that although *Methodist Old Peoples Home* dealt with a property tax exemption, the guidelines set forth in that decision are also applicable in considering whether an

entity is exempt from the retailer's occupation tax).

¶ 25 Initially, WITS argues the ALJ relied upon an incorrect statement of law by stating WITS failed to meet its evidentiary burden by clear and convincing evidence. It contends that because the parties stipulated to the facts and they were undisputed there was no weighing of evidence and only application of the established facts to the controlling law. WITS reasons that therefore, "the 'clear and convincing' evidence standard is irrelevant." We disagree and note WITS appears to confuse its required evidentiary burden for showing entitlement to charitable tax exemptions with the applicable standard of review. Even though the facts WITS presented were undisputed, it nevertheless had to present sufficient undisputed facts to show that it was a charitable organization and its Danville properties were used for charitable purposes. As stated, a taxpayer has the burden of establishing entitlement to a tax exemption and must do so by clear and convincing evidence. The ALJ did not misstate WITS's burden or make an incorrect statement of applicable law.

¶ 26 Here, the ALJ determined WITS was not a charitable organization and that it did not use its property for primarily charitable purposes. On appeal, we first address whether WITS's activities were charitable. WITS alleges two separate charitable activities: (1) providing low cost and free technology and (2) recycling. The ALJ determined WITS's recycling activities did not qualify as a charitable activity and WITS challenges that finding on appeal. We find no clear error in the ALJ's decision.

¶ 27 As stated, charity is " '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.' " *Provena II*, 236 Ill. 2d at 390-

91, 925 N.E.2d at 1145 (quoting *Methodist Old Peoples Home*, 39 Ill. 2d at 156-57, 233 N.E.2d at 541). "To be for a charitable use or purpose, the gift must be a public, rather than a private, gift [citations]; it must be ' "general benevolence" ' rather than ' "personal bounty to particular individuals" ' [citations]." *Provena Covenant Medical Center v. Department of Revenue*, 384 Ill. App. 3d 734, 744, 894 N.E.2d 452, 462 (2008) (*Provena I*).

¶ 28 In *Provena I*, we rejected the contention that dispensing medical care was a *per se* charitable activity. *Provena I*, 384 Ill. App. 3d at 747-50, 894 N.E.2d at 465-67. There, the taxpayer argued it was a charitable organization, asserting it provided medical care which constituted a charitable purpose because it relieved bodies from disease, suffering, or constraint. *Provena I*, 384 Ill. App. 3d at 747, 894 N.E.2d at 464. This court concluded that charity in that context meant only uncompensated medical care and a medical-care provider had to present evidence of the amount of uncompensated medical care it dispensed. *Provena I*, 384 Ill. App. 3d at 747-50, 894 N.E.2d at 465-67. We stated as follows:

" 'Charity' " is an act of kindness or benevolence. [Citation]. There is nothing particularly kind or benevolent about selling somebody something. 'Charity' is 'generosity and helpfulness[, esp[ecially] toward the needy or suffering' (Merriam-Webster's Collegiate Dictionary 192 (10th ed. 2000))—not merely helpfulness, note, but generosity. 'Generosity' means 'liber[ality] in giving.' Merriam-Webster's Collegiate Dictionary 484 (10th ed. 2000). To be charitable, an institution must give liberally. *Removing giving from charity would debase the meaning of charity, and we resist such an*

assault upon language." (Emphasis added.) *Provena I*, 384 Ill.

App. 3d at 750, 894 N.E.2d at 467.

Additionally we concluded that "a gift is, by definition, free goods or services" and "[o]ne can make a gift by charging nothing at all" or "by undercharging a person, that is, charging less than one's cost." *Provena I*, 384 Ill. App. 3d at 751, 894 N.E.2d at 467.

¶ 29 WITS contends it "relieves people from disease and suffering by providing recycling services which improve the environment and keep toxic materials out of landfills." The ALJ rejected this position, stating "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 received compensation for [its] activities." We agree. Like the medical care at issue in *Provena I*, WITS's recycling activities are not a *per se* charitable activity. While its activities may have a positive impact on the environment and society in general, they nevertheless do not establish "a gift."

¶ 30 As pointed out in *Provena I*, "a gift" by definition includes "free goods or services." *Provena I*, 384 Ill. App. 3d at 751, 894 N.E.2d at 467. The ALJ found WITS was compensated for its activities both in the form of fees it charged in connection with items it received and from the sale of items following the recycling process. WITS argues it provided "gifts" to the public by not charging fees for many of the items it received, charging reduced rates, or waiving fees associated with electronic items for which it charged a fee. However, WITS's evidence lacked specificity and it failed to meet its burden of showing that it gave liberally.

¶ 31 First, the electronic items that did not contain toxic substances and for which

WITS did not charge, were items that could have been disposed of or thrown away. WITS has not shown how its actions in accepting an item for recycling that would otherwise have been relegated to the garbage constitutes "a gift." Second, WITS presented no evidence regarding amounts it was charged from end recyclers for items containing hazardous substances. As a result, it cannot be determined from the record that WITS gave and gave liberally through its reduced fees and fee-waiver policy. WITS presented evidence that, in 2009, it collected \$10,804 in recycling fees for hazardous substances at its Danville facilities but presented no evidence regarding fees it was charged from end recyclers. On appeal, it points out that its expenses totaled \$55,305 but acknowledges that amount did not include the hazardous-material fees it was required to pay.

¶ 32 WITS presented no other evidence regarding "gifts" made through its recycling activities. General benefits to the public by improving the environment are insufficient to constitute "a gift" and do not warrant a finding that WITS's recycling is charitable.

¶ 33 WITS also contends its recycling activities lessened the burdens of government by "helping to address the recycling and reuse of obsolete residential electronic products." The supreme court has explained " '[t]he reason for exemptions in favor of charitable institutions is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the State to care for and advance the interests of its citizens.' " *Provena II*, 236 Ill. 2d at 395, 925 N.E.2d at 1147 (quoting *People v. Young Men's Christian Ass'n of Chicago*, 365 Ill. 118, 122, 6 N.E.2d 166, 169 (1936)).

"If a charitable institution wishes to avail itself of funds which would otherwise flow into a public treasury, it is only fitting that

the institution provide some compensatory benefit in exchange.

While Illinois law has never required that there be a direct, dollar-for-dollar correlation between the value of the tax exemption and the value of the goods or services provided by the charity, it is a *sine qua non* of charitable status that those seeking a charitable exemption be able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions." *Provena II*, 236 Ill. 2d at 395, 925 N.E.2d at 1148.

¶ 34 To support its position that its activities lessen a government burden, WITS points to the Electronic Products Recycling and Reuse Act (Recycling Act) (415 ILCS 150/5(b) (West 2010)) the purpose of which "is to set forth procedures by which the recycling and processing for reuse of covered electronic devices will be accomplished in Illinois." The Recycling Act sets forth statewide goals for recycling and reuse (415 ILCS 150/15 (West 2010)), responsibilities of the Environmental Protection Agency in monitoring compliance with the Recycling Act (415 ILCS 150/20 (West 2010)), electronic material that may not be disposed of in a landfill (415 ILCS 150/95 (West 2010)), and penalties for violations of the Recycling Act (415 ILCS 150/80 (West 2010)). However, the government, itself, has not undertaken the burden of recycling. Although WITS activities may assist in keeping some hazardous materials out of landfills, WITS has failed to identify any specific financial or other burden which the government incurs that is lessened by its recycling activities.

¶ 35 The ALJ concluded that, while WITS's recycling activities were laudable, they

were not charitable. We agree and find the record fails to show WITS presented specific evidence regarding "gifts" it made to an indefinite number of individuals through its recycling activities, that it gave liberally, or that it lessened a burden of government. The ALJ's conclusion is not clearly erroneous.

¶ 36 Having found WITS's recycling activities were not charitable, we must next determine whether WITS is a charitable organization that puts its property to primarily charitable use based upon activities of providing low cost or free technology. Clearly, providing goods and services for free or at a reduced cost meets the definition of a gift and is charitable. See *Provena I*, 384 Ill. App. 3d at 751, 894 N.E.2d at 467. Thus, we must examine these activities in light of the *Methodist Old Peoples Home* factors to determine whether WITS is a charitable organization that uses its property primarily for charitable purposes. The Department agrees WITS sufficiently met the first and fourth factors, requiring it to show it had no capital, capital stock, or shareholders and that it provided no gain or profit in a private sense to any person connected with it. Therefore, it is unnecessary to address those factors on review. The next factor for consideration is whether WITS derived its funds mainly from public and private charity and held them in trust for the objects and purposes expressed in its charter.

¶ 37 The ALJ determined the majority of WITS's funding was from the sale of scrap materials that were generated as a result of the recycling process and not public and private charity. On appeal, WITS argues the ALJ's determination was clearly erroneous. It acknowledges that it "generates the majority of its funding from the sale of scrap materials generated as a result of the recycling process." However, WITS points out that the scrap materials it sold were generated by demanufacturing *donated* electronics. WITS maintains it is of no consequence that

the materials donated were in the form of electronics rather than cash.

¶ 38 "[F]unding by charitable donations can help to establish the identity of an institution as charitable." *Provena I*, 384 Ill. App. 3d at 745, 894 N.E.2d at 463. However, "this factor, by itself, is not dispositive." *Provena I*, 384 Ill. App. 3d at 746, 894 N.E.2d at 463.

¶ 39 The record shows WITS generated funding from three primary sources: (1) monetary donations and grants, (2) selling refurbished electronics, and (3) selling its scrap to end processors, who paid WITS on a per pound basis. WITS presented evidence that, in 2009, its income included \$95,000 from contributions and grants; \$21 from investments; and \$382,123 from "program service revenue," which included income from selling the unusable parts of recycled items and refurbished items. The ALJ found revenue from selling scrap materials does not constitute public or private charity. She stated that although recycling electronics benefits the environment, the facts showed it was through the recycling process and not public or private charity that WITS generated enough money to pay its operating expenses. The ALJ's decision is not clearly erroneous.

¶ 40 WITS characterizes the items it recycled at its facility as donations, however the record shows it charged fees for a number of the items it received. Although WITS argues it had a policy of waiving fees for those individuals who could not pay the fee or charged a reduced fee, as already discussed, its evidence was insufficient to show that it utilized its fee-waiver policy in 2009, or that it brought in fees that were less than what it was required to pay to its end recyclers. The ALJ's finding that WITS derived funds mainly from recycling rather than from public or private charity was not clearly erroneous.

¶ 41 WITS also argues the ALJ erred when, relative to the funding factor, she stated

"how the money is used does not determine whether there should be an exemption." However, in its brief, WITS acknowledges the ALJ's statement was correct "to the extent the ALJ was stating that this factor *standing alone* is not dispositive of the exemption determination." Examining the ALJ's statement in the context of her decision, we find she was merely expressing that neither the funding factor nor how such money was used were determinative of an entity's entitlement to charitable tax exemptions and not that such considerations were irrelevant. The ALJ committed no error.

¶ 42 As stated, the source of WITS's funding is not dispositive of the issues presented. In reaching her decisions, the ALJ also determined WITS failed to show it dispensed charity to all who needed and applied for it, placed no obstacles in the way of those seeking charity, and used its property exclusively for charitable purposes. She stated as follows:

"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 the manner similar to for-profit recycling businesses."

¶ 43 Again, the ALJ's findings are not clearly erroneous. We agree that WITS primarily used its property for its recycling activities and the charity it did dispense, giving away

electronic items for free or at a reduced price, was minimal in comparison with those activities. In particular, the evidence reflects, in 2009, WITS recycled 6.5 million pounds of electronics and approximately 1,750,000 pounds of electronics were collected at its Danville facilities. It earned \$382,123 from selling the unusable parts of recycled and refurbished items and its total income was \$477,144. By contrast, in 2009, WITS presented evidence that it gave away only 53 computers. Of that number, 20 computers were provided in exchange for service hours from the recipient. The ALJ determined that "[r]equiring a person to provide services in return for a computer is contrary to the definition of a gift, and therefore, not charity." That finding is not clearly erroneous, particularly where WITS alleged it had a policy of waiving service hours but presented no evidence that any computers were given away pursuant to its waiver policy. Notably, 30 of the computers it gave away were the result of a "Christmas Giveaway" program and not because it waived its service-hour requirement.

¶ 44 Additionally, as the ALJ pointed out, the number of computers given away was insignificant in comparison with WITS's total revenue. WITS argues it never turned anyone away from its Free Computer Program. However, the evidence still reflects that its charitable acts, giving away free computers, were minimal when compared to its noncharitable recycling operations. The ALJ's findings were not clearly erroneous.

¶ 45 Finally, on appeal, WITS also argues the ALJ erred in finding that it was required to present evidence concerning charity provided at its St. Louis location and that it failed to present any such evidence. The ALJ determined that the charitable practices at each of WITS's locations were relevant for determining whether it was a charitable organization. She found WITS's evidence was insufficient because it did not include information about its charitable

practices at its St. Louis location. WITS contends there is no legal authority to support the ALJ's position. Additionally, it contends it presented uncontradicted evidence regarding its St. Louis operations.

¶ 46 To support her determination, the ALJ referenced *Provena II*, 236 Ill. 2d at 393, 925 N.E.2d at 1146-47. There, the supreme court noted that the property owner, Provena Hospital, who sought a charitable property tax exemption, presented detailed information regarding its subsidiary institution which operated on the subject property but presented no information as to its own charitable expenditures in the relevant tax year. *Provena II*, 236 Ill. 2d at 393, 925 N.E.2d at 1146-47. The court agreed with the Department's finding that without such information it was impossible to conclude that Provena Hospital was a charitable institution. *Provena II*, 236 Ill. 2d at 393, 925 N.E.2d at 1147. Although not directly on point, *Provena II* is instructive and the ALJ's determination is consistent with the holding therein.

¶ 47 To show its entitlement to charitable tax exemptions under both the Retailer's Occupation Tax Act and the Property Tax Code, WITS had to present clear and convincing evidence that it was a charitable organization. As discussed, determining whether WITS was a charitable organization involves considerations including the manner in which it dispenses charity and the use to which it puts its property. Such considerations necessarily involve looking at WITS as a whole and not solely considering activities at one of its two locations. The ALJ committed no error in finding charitable activities at WITS's St. Louis location were relevant to a determination of whether it was a charitable organization.

¶ 48 WITS also argues it presented sufficient evidence regarding its St. Louis location, including information about programs it offered at that location, the nature of its operations, and

amounts generated through recycling and selling of refurbished electronics. However, unlike with its Danville location, WITS failed to offer specific information regarding the charity it dispensed at that location. The ALJ's decision was not clearly erroneous.

¶ 49 Here, WITS had the burden of establishing its entitlement to charitable exemptions from both the retailer's occupation and property taxes. The record supports the ALJ's determinations that WITS failed to meet its burden and her decisions were not clearly erroneous.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the circuit courts' judgments.

¶ 52 Affirmed.