

**PT 16-01**

**Tax Type: Property Tax**

**Tax Issue: Charitable Ownership/Use**

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

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

**v.**

**ABC CO.,**

**APPLICANT**

**No. XX-ST-XXXX and  
XX-XX-XXXX (XX-XX-XXX)**

**Sales Tax Exemption and  
Real Estate Tax Exemption  
For 2012 Tax Year  
P.I.N. XXXXXXXX  
Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Edward Clancy and Ms. Sarah Mick, Nixon Peabody, LLC, and Mr. Trevor Clarke on behalf of ABC Company.; Ms. Paula Hunter and Mr. Seth Schriftman, Special Assistant Attorneys General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** On November 18, 2011, the Department of Revenue of the State of Illinois (hereinafter “Department”) issued a “Second Denial of Sales Tax Exemption” to ABC Co. (hereinafter “ABC”) denying its request that the Department issue it an exemption identification number as a charitable organization so that it could purchase tangible personal property at retail free from the imposition of retailers’ occupation tax as set forth in 35 ILCS 105/1 *et seq.* ABC protested this denial and requested a hearing.

Additionally, on May 28, 2013, ABC filed an Application for Non-homestead Property Tax Exemption with the Cook County Board of Review (hereinafter the

“Board”) seeking exemption from 2012 real estate taxes for Cook County P.I.N. XX-XX-XXX-XXX-XXXX (hereinafter the “subject property”). The Board reviewed the Application and recommended that a partial year exemption be granted. On August 8, 2013, the Department rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2012. On August 30, 2013, ABC filed an appeal of the Department’s exemption denial and requested a hearing as to whether the subject property qualified for exemption from 2012 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.

An evidentiary hearing in this consolidated matter was held on June 2 and 3, 2015, with testimony from Mr. JOSEPH, ABC Board member since 2012 and President of the Board since 2014, Mr. FRANK, mechanic at ABC in 2012 and currently General Manager, Mr. SAMS, UNIT and Pedestrian Education and Outreach Director for the City of Chicago Department of Transportation, Mr. James EAGLE, founder and full-time volunteer with ABC, Ms. KNIGHT, UNIT shop owner in the Bridgeport area, Mr. FORMAN, Executive Director at Chicago Help Initiative and Mr. LINCOLN, ABC volunteer in 2012 and Treasurer in 2015. Following a careful review of the testimony and evidence, it is recommended that the sales tax exemption and the property tax exemption be denied.

**FINDINGS OF FACT:**

1. **Sales Tax Exemption Only**<sup>1</sup>: The Department’s *prima facie* case in the sales tax exemption case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated November 18, 2011. Tr. pp. 19-20; Dept. Ex. No. 2.

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<sup>1</sup> Some Findings of Fact are only relevant for the sales tax exemption case because they occurred after the year 2012, the year at issue for the property tax exemption case.

2. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject property, located at XXXX South XXXX in Chicago, Cook County P.I.N. XX-XX-XXX-XXX-0000, was not in exempt ownership or use in 2012. Tr. pp. 18-19; Dept. Ex. No. 1.
3. ABC was incorporated under the Illinois "General Not For Profit Corporation Act" on December 16, 2003. According to its Articles of Incorporation, ABC's mission is to empower communities by engaging in activities that promote environmentalism, public health and human equality. ABC "recycles UNITS locally and delivers them to communities in need at low cost to provide sustainable development within their communities." Tr. pp. 31-32, 78-79; App. Ex. No. 2.
4. ABC's Bylaws, in effect in 2012, state that its purposes are to 1) use its real property exclusively for the distribution, sale or resale of donated goods and related activities and use all the income from those activities to support its charitable and beneficent activities, whether or not such activities occur on the property; 2) support individuals in need of a UNIT or wheelchair by diverting UNITS and wheelchairs from becoming scrap metal, repairing those UNITS for local use, and donating or selling them for below market value to encourage first-time and lower income UNIT FANS to buy and ride UNITS; 3) use the proceeds from local sales to ship recycled UNITS, wheelchairs and other useful humanitarian aid to projects in developing countries and donating UNITS and wheelchairs locally and within the United States to other charitable organizations; and 4) educate individuals and any other interested groups about UNIT safety, repair, and UNIT rules, concentrating on mechanical repair and the environmental and health benefits to UNITING. ABC has a Board of Directors

consisting of 5 to 13 members. Board members receive no compensation other than reimbursement for reasonable expenses. Tr. pp. 35-38; App. Ex. No. 3.

5. ABC's Form 990, "Return of Organization Exempt from Income Tax," for 2012 states as its "mission" that ABC "collects used UNITS to be repaired and given away to local charities and international non-government organizations." "We give away over X,XXX UNITS a year." "We work with community organizations and schools to teach young people UNIT repair, UNIT safety and UNIT physics." Tr. p. 316; App. Ex. No. 8.
6. **Sales Tax Exemption Only:** ABC's Bylaws, in effect in 2014, state that one of its purposes is to "support individuals in need of a UNIT or wheelchair, by diverting UNITS and wheelchairs from becoming scrap metal, repairing those UNITS for local use, and donating or selling them for below market value to encourage first-time and lower income UNIT FANS to buy and ride UNITS." Tr. pp. 86-88; Dept. Ex. No. 4.
7. ABC's Form 990 for 2012 shows "Contributions and Grants" of \$XX,XXX and "Program Service Revenue" of \$XXX,XXX. The Program Service Revenue is from the "resale of donated and purchased UNITS." Program Service Revenue represents 98% of ABC's "Total Revenue" of \$XXX,XXX. ABC had "Total Expenses" of \$XXX,XXX, resulting in "Revenue less Expenses" of \$XXX,XXX. Expenses include "salaries and other compensation," costs for "locks, helmets and parts," international shipping costs, and truck rental and fuel. Tr. pp. 303-304, 306-308; App. Ex. Nos. 8 and 9.
8. **Sales Tax Exemption Only:** ABC's Form 990 for 2013 shows "Total Revenue" of \$XXX,XXX, of which \$XXX,XXX (58%) is from "resale of donated and purchased UNITS," \$XX,XXX (6%) is for "service income-repair UNITS," and

\$XXX,XXX (35%) is from “contributions and grants.” The \$XXX,XXX includes UNIT donations of \$XXX,XXX (X,XXX UNITS donated in 2013 at a valuation of \$XX/UNIT). ABC had “Total Expenses” of \$XXX,XXX resulting in “Revenue less Expenses” of \$XXX,XXX. Expenses include “UNIT purchases” for \$XX,XXX. ABC purchased high-end used UNITS at market value from “UNITS for the World,” a not-for-profit organization in Virginia and ABC then resold the UNITS. Tr. pp. 330-348, 386-387, 394-397; Dept. Ex. No. 8.

9. **Sales Tax Exemption Only:** ABC’s Website, in effect in 2015, states that “[O]ur storefront features all styles of UNITS, in all sizes along with new and used accessories. We also stock a large selection of used, vintage and hard-to- find parts, and Working UNITS gear as well! All UNITS have been refurbished by our team of talented, experienced mechanics, and are sold with a limited 30 day guarantee.” The Website also states that ABC “has a full-service repair department to keep your UNIT in top condition all year long.” ABC also sells helmets and locks to the public. Tr. pp. 89-92, 102; Dept. Ex. No. 5.
10. In 2012, X,XXX UNITS were donated to ABC; X,XXX were sold by ABC and X,XXX were shipped to Nigeria, Ghana, Uganda, El Salvador, South Africa, New Orleans, Kenya, Costa Rica and Panama. The average selling price of the X,XXX UNITS was \$XXX/UNIT. One UNIT, the most expensive, sold for \$X,XXX; one UNIT, the least expensive, sold for \$XX. According to the testimony, the proceeds from the sale of UNITS “were in their entirety used to fund all the costs to collect them, repair them and to put them in the hands of recipients both in the U.S. and elsewhere.” Tr. pp. 303-304, 316, 326-330; Dept. Ex. No. 7.
11. ABC’s first floor has a loading dock, areas for UNIT storage, waiting area, UNIT service department, and a retail sales area. The retail sales area may hold up to XX UNITS “for people to look at if they would choose to purchase a lowcost well-

repaired UNIT.” The retail area is open 24 hours/week. ABC’s second floor has a UNIT storage area, UNIT repair lab, kitchen and bathroom. The basement is also used for storage of UNITS. UNITS are stored until they are ready to be repaired. No part of the building is rented. No other organization uses the space. Tr. pp. 41-44, 236-242; App. Ex. Nos. 1 and 7.

12. Some donated UNITS are repaired at ABC by professional mechanics and volunteers. The professional mechanics are paid employees and they assist the volunteers in repairing UNITS. Professional mechanics also repair UNITS for people who walk in off the street to ABC’s service area and need UNIT repair. The professional mechanics charge for this service. Tr. pp. 45-49, 200.

13. ABC picks up donated UNITS from several different states in the Midwest. ABC uses a small truck for pick-ups. Approximately 30 to 35 UNIT shops and approximately 20 businesses in the Chicago area collect UNITS for ABC.

People donating UNITS can drop the UNIT off at one of these sites and the UNIT will be stored there until ABC picks it up. Police departments and universities also donate abandoned UNITS to ABC. Some of the donated UNITS are “rusted out hulls” but ABC also gets donated mountain UNITS, road UNITS and “occasionally ... some very kind of high-end UNITS.” Mountain UNITS are usually shipped to Africa and Central America where they will be driven on rough roads and be used to get people to school, work or market. Road UNITS will usually be kept in Chicago. Tr. pp. 55-57, 62, 200-201, 207.

14. ABC’s “Local Donation Policy” states that ABC donates repaired UNITS in Chicago and the surrounding suburbs from its warehouse space and through numerous partner organizations, including veterans’ hospitals and health and human service agencies, transitional housing organizations, youth organizations, community centers and schools. “In a typical year, [ABC] donates between

XXX-XXX UNITS to individuals through this program.” Local donation recipients also receive a helmet and lock and can bring their UNIT back to ABC in the first year if the UNIT needs service. Tr. pp. 58-60, 98-100; App. Ex. No. 4.

15. ABC’s “Local Donation Policy” states that an eligible UNIT donation candidate “is inhibited from buying a UNIT due to low income or other situational barriers” and “has need for a UNIT; needs include general transportation or recreational/physical activity.” An organization or individual can contact ABC by phone, e-mail or in person to request a UNIT. The applicant must submit a referral letter written by a social worker, case manager, program manager or a representative of a relevant organization who is familiar with the applicant’s needs. The Policy states that ABC “requests \$XX to offset the costs of the program; the co-pay is frequently paid by the partner organization or waived.” The \$XX covers the helmet and the lock. Individuals requesting a UNIT may be put on a waiting list while UNITS are being repaired. Tr. pp. 58-61, 98-100, 111- 113, 116, 157, 381-383; App. Ex. No. 4.

16. ABC trains people to repair UNITS and become UNIT mechanics. There is no charge for this training. Some trainees have been hired for paying positions at ABC. Some youth groups volunteer at ABC. Some students perform required service hours at ABC. Tr. pp. 64-69.

17. Volunteers at ABC spend their time repairing UNITS that are then donated or sold in the United States. Volunteers also load the trucks for UNIT shipments to international destinations. UNITS donated in international shipments are not repaired by ABC and are shipped “as is.” Pedals are removed and handlebars are turned so more UNITS can be put into a container. Tr. pp. 126, 145, 154155.

18. If any donated UNIT is of better quality and less in need of repair, it is likely it will be resold, rather than donated. Four hours of repair time are usually spent on UNITs being resold. Tr. pp. 147-148, 156.
19. In 2007, the City of Chicago “After School Matters” program taught children how to rebuild UNITs. ABC donated 35 or 40 UNITs to each of two locations for this program. The children rebuilt the UNITs and were allowed to keep them. Tr. pp. 165-166.
20. The City of Chicago’s Streets and Sanitation Department tags and collects abandoned UNITs. ABC picks up these abandoned UNITs and stores them for 30 days during which time owners may claim them. After 30 days, ABC keeps the UNITs and may resell them. The City does not pay ABC for this service. Tr. pp. 168-172, 185-187.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant issuing ABC an exemption identification number as a charitable organization or exempting the subject property from 2012 real estate taxes for charitable purposes.

Accordingly, under the reasoning given below, the determination by the Department that ABC is not a charitable organization and that the subject property was not used for charitable purposes in 2012 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). In this case, ABC had the burden of proving, by clear and convincing evidence, first that ABC was a charitable organization and second, that ABC used the subject property for charitable purposes in 2012.

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states 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. Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code absent appropriate evidence that the subject property is owned by an entity that qualifies as an “institution of public charity” and that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

At the evidentiary hearing, ABC took the position that the applicable statutory subsections were 35 ILCS 200/15-65(a) and (b) and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). ABC's Bylaws, in effect in 2012, mirror the wording of 35 ILCS 200/15-65(b). The Bylaws state that one of ABC's purposes is to 1) use its real property exclusively for the distribution, sale or resale of donated goods and related activities and use all the income from those activities to support its charitable and beneficent activities, whether or not such activities occur on the property. App. Ex. No. 3.

This provision in ABC's Bylaws does not signify “*ipso facto*” that ABC is a charitable organization or that the subject property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004) the Supreme Court held that even if an applicant met the requirements of one of the subsections of 35 ILCS 200/15-65, the applicant still “must comply unequivocally with the constitutional requirement of exclusive charitable use.” Therefore, consideration and analysis of ABC under the Korzen guidelines is necessary for determining the “constitutional requirement” of charitable use of its property under either 35 ILCS 200/15-65(a) and (b) and

consideration and analysis of ABC under the first five Korzen guidelines (as numerated below) is also necessary for determining whether ABC is a charitable organization entitled to a sales tax exemption number.

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. 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 benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (4) the charity is dispensed to all who need and apply for it; (5) 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 (6) the exclusive (primary) use of the 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).

Based on the evidence and testimony presented at the evidentiary hearing, I conclude that ABC does not possess five of the six characteristics of a charitable organization and that the subject property is not exclusively used for charitable purposes.

ABC was incorporated under the Illinois "General Not For Profit Corporation Act" on December 16, 2003. According to its Articles of Incorporation, ABC's mission is to empower communities by engaging in activities that promote environmentalism, public

health and human equality. ABC “recycles UNITS locally and delivers them to communities in need at low cost to provide sustainable development within their communities.” Tr. pp. 31-32, 78-79; App. Ex. No. 2. **Sales Tax Exemption Only:**

ABC’s Bylaws, in effect in 2014, state that one of its purposes is to “support individuals in need of a UNIT or wheelchair, by diverting UNITS and wheelchairs from becoming scrap metal, repairing those UNITS for local use, and donating or selling them for below market value to encourage first-time and lower income UNITS to buy and ride UNITS.” Tr. pp. 86-88; Dept. Ex. No. 4.

Following is a consideration and analysis of the Korzen guidelines and whether ABC is a charitable organization and whether it used the subject property for charitable purposes in 2012.

**Korzen factor (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.** With respect to this Korzen factor, ABC has failed to prove that the majority of its funds were derived from public and private donations. Mr.

Lindsay testified that ABC “does not solicit contributions from the public other than used UNITS.” Tr. p. 293. ABC’s Form 990, “Return of Organization Exempt from Income Tax,” for 2012 shows “Contributions and Grants” of \$XX,XXX and “Program Service Revenue” of SXX,XXX. The Program Service Revenue is from the “resale of donated and purchased UNITS.” Program Service Revenue represents 98% of ABC’s “Total Revenue” of \$XXX,XXX. ABC had “Total Expenses” of \$XXX,XXX, resulting in “Revenue less Expenses” of \$XX,XXX. Expenses include “salaries and other compensation,” costs for “locks, helmets and parts,” international shipping costs, and truck rental and fuel. Tr. pp. 303-304, 306-308; App. Ex. Nos. 8 and 9.

**Sales Tax Exemption Only:** ABC’s Form 990 for 2013 shows “Total Revenue” of

\$XXX,XXX, of which \$XX,XXX (58%) is from “resale of donated and purchased  
UNITs,” \$XX,XXX (6%) is for “service income-repair UNITs,” and \$XXX,XXX (35%)  
is from “contributions and grants.” The \$XXX,XXX in “contributions and grants” includes  
UNIT donations of \$XXX,XXX (X,XXX UNITs donated in 2013 at a valuation of  
\$XX.XX/UNIT).<sup>2</sup> ABC had “Total Expenses” of \$XXX,XXX resulting in “Revenue less  
Expenses” of \$XXX,XXX. One of the Expenses was for “UNIT purchases” of \$XX,XXX.  
ABC purchased high-end used UNITs at market value from “UNITs for the World,” a notfor-  
profit organization in Virginia. ABC then resold these UNITs. Tr. pp. 330-348, 386-387, 394-  
397; Dept. Ex. No. 8.

There was considerable testimony at the evidentiary hearing by Mr. LINCOLN that  
ABC’s Form 990 for 2012 was inaccurate because no value was assigned to in-kind  
contributions of donated UNITs and the labor donated by ABC’s volunteers. Tr. p. 295.  
Mr. LINCOLN testified that he had recommended to ABC that an amended Form 990 be  
filed for 2012 that would value donated UNITs and labor at “fair market value.” Tr. pp.  
296, 299. He recommended valuing the donated UNITs in 2012 at \$XX/UNIT so that the  
total of X,XXX UNITs donated would be accounted for as an in-kind contribution of  
\$XXX,XXX. Tr. pp. 299-301. In addition, he estimated that XX,XXX labor hours were  
donated to ABC in 2012 which he would value as an in-kind contribution at \$XX/hour  
totaling \$XXX,XXX. Tr. pp. 301-302. If the 2012 Form 990 were amended for these two  
changes, there would be “Program Service Revenue” of \$XXX,XXX from the resale of  
donated and purchased UNITs and in-kind contributions of \$XXX,XXX (\$XXX,XXX in  
donated UNITs plus \$XXX,XXX in donated labor). It appears that the proposed  
amendment of the Form 990 for 2012 would put ABC more in line with the Korzen  
characteristic that the majority of funding be derived from public and private charity.

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<sup>2</sup> UNITs were not included as a “contribution and grant” in the Form 990 for 2012.

After amendment, approximately 52% of ABC's funding would be from the resale of UNITS (rather than the 98% in the Form 990 for 2012 as currently filed) and 48% would be from in-kind contributions.

The 2013 Form 990 included \$XXX,XXX as in-kind UNIT donations (X,XXX UNITS donated in 2013 at a valuation of \$XX.XX/UNIT). Dept. Ex. No. 8. However, it must be noted that Mr. LINCOLN testified that he would value the UNITS at \$XX/UNIT which would "absolutely" be "reasonable in the industry standards." Tr. p. 300. In addition, ABC's audited Financial Statements for 2013 state in the "Notes" under "Donated Services," that "hundreds of volunteers have combined to donate thousands of hours of service to further Working UNITS' charitable mission to repair, redistribute and recycle UNITS and educate the public on UNIT issues." "Their efforts have not been included in the financial statements since no objective basis is available to measure the value of their service." Dept. Ex. No. 8. However, Mr. LINCOLN testified that he would have valued this donated labor at \$XX/hour. Tr. pp. 301-302.

Mr. LINCOLN's testimony, his suggested amendments to the Form 990 for 2012, and the federally-filed Form 990 for 2013 which values the donated UNITS and donated labor at amounts completely different from what Mr. LINCOLN suggested, do not inspire me to have confidence in ABC's Form 990's for either year.<sup>3</sup> There is other testimony in the record as to the inaccuracy of ABC's financial information which will be discussed below. Taking ABC's Forms 990 as filed, I conclude that the majority of ABC's funding

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<sup>3</sup> It is difficult to understand the reasoning of having Mr. Lindsay testify about the inaccuracy of ABC's audited and federally-filed financial statements and then asking this tribunal to find ABC exempt from sales and property taxes based on the inaccurate financial data. Furthermore, Mr. EAGLE, as President of ABC, signed the Form 990 for 2012, He testified that he "reviewed" the return and believed that it was "accurate." He "thought" that the Form 990 for 2013 was also an "accurate document." Tr. pp. 383385. ABC requested that the record be kept open in this case in order to file and submit amended financial statements. I denied this request. Tr. p. 305. The initial status conference in the sales tax exemption case was February 20, 2013. The initial status conference in the property tax exemption case was October 2, 2013. The evidentiary hearing for both cases was June 2 and 3, 2015. ABC had ample time before the evidentiary hearing (2 years and 4 months in the sales tax exemption case) to amend its financial statements.

in 2012, 98%, was from the resale of donated UNITS and in 2013, 58%, is from the resale of donated UNITS and 6% is from service income from UNIT repairs.

ABC receives the great majority of its funding from selling donated UNITS and repairing UNITS. In 2012, the year at issue in the property tax case, approximately 98% of ABC's revenue is from the resale of UNITS. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603, 608 (3<sup>rd</sup> Dist. 2003), the court noted that 97% of Riverside's net revenue of \$10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution. In Small v. Pangle, 60 Ill. 2d 510, 516 (1975), the court noted that a main source of income resulting from current charges, rather than gifts, bequests and donations, did not suggest a charitable use of property.

Revenue received from selling used UNITS and from the repair of broken UNITS does not constitute public or private charity. And as the above cases indicate, the exchange of products and services for payment, at the level enjoyed by ABC, is not a "use" of property that has been recognized by Illinois courts as "charitable." Charity is an act of kindness or benevolence. "There is nothing particularly kind or benevolent about selling somebody something." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4<sup>th</sup> Dist. 2008), aff'd, 236 Ill. 2d 368 (2010).<sup>4</sup> I suggest further that there is nothing particularly kind or benevolent about selling somebody a used UNIT or charging for the repair of a broken one. In 2012, the average selling price of the X,XXX UNITS sold by ABC was \$XXX/UNIT. The most expensive UNIT sold was for

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<sup>4</sup> In this Recommendation, the Provena Appellate Court case will be cited as "Provena (1)" and the Provena Supreme Court case will be cited as "Provena (2)."

\$X,XXX. Dept. Ex. No. 7. In this case, the high percentage of revenue earned by ABC from the sale and servicing of UNITS indicates that the primary use of the subject property is not to provide charity. ABC has failed to prove that the majority of the organization's funding is from public and private charity and ABC's use of the subject property is not consistent with this characteristic of a charitable organization.

**Korzen factor (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. The Department conceded at the evidentiary hearing that ABC does not have shareholders, does not pay dividends and does not provide gain or profit in a private sense to any person connected to it. Tr. p. 399. Because of the Department's concession, I conclude that ABC possesses this Korzen factor and that ABC's use of the subject property is consistent with this characteristic of a charitable organization.**

**Korzen factor (3): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.** I am unable to conclude from the record that the benefits derived from ABC are for an indefinite number of persons. The Department caused to be admitted into evidence Dept. Ex. No. 7 entitled "UNITS Shipped vs. Sold," which was apparently tendered to the Department by ABC during discovery.<sup>5</sup> This Exhibit shows that in 2012, X,XXX UNITS were donated to ABC; X,XXX were sold by ABC and X,XXX were shipped to Nigeria, Ghana, Uganda, El Salvador, South Africa, New Orleans, Kenya, Costa Rica and

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Panama. The average selling price of the X,XXX UNITS sold was \$XXX/UNIT. One UNIT, the most expensive, sold for \$X,XXX, one UNIT, the least expensive, sold for \$XX. Tr. pp. 303- 304, 316, 326-330; Dept. Ex. No. 7.

Dept. Ex. No. 7 accounts for all of ABC's UNITS in 2012, the year for which ABC is seeking a property tax exemption. The X,XXX UNITS contributed to ABC were either

sold to paying customers or shipped out-of-state. Apparently, no one in Chicago or Illinois received a free UNIT from ABC in 2012 because all X,XXX UNITS are accounted for as either being sold or shipped out-of-state.<sup>6</sup> In 2012, the only way to get a UNIT from ABC if you lived in Chicago or Illinois was to buy it from them. Under these circumstances, it would not be reasonable to conclude that ABC provided charity to an indefinite number of persons in 2012. According to Dept. Ex. No. 7, ABC provided no charity to Chicago or Illinois residents in 2012.

Mr. FORMAN testified that “Chicago Help Initiative” serves meals to homeless and low income people in the downtown Chicago area. Chicago Help Initiative sponsored a UNIT fair with ABC donating UNITS to the people who needed them. The UNITS could be used for transportation, to look for a job or to get to a job. The UNIT was free. According to his testimony, in 2012, ABC donated XX UNITS and locks and helmets. The UNITS were lined up in the Catholic Charities’ parking lot and those requesting a UNIT could immediately take it. Everyone who requested a UNIT previous to the fair received one. If someone walked in off the street, and had not previously requested a UNIT, they were

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<sup>5</sup> ABC did not object to the admission of this Exhibit. Tr. pp. 329-330.

<sup>6</sup> Mr. Lindsay testified that when he began volunteering at ABC in 2012, he “quickly noticed that they really didn’t have an inventory management system in place. ” In 2013, he began to implement an inventory management system “so that we could keep track of the number and kind of UNITS we have. ” Tr. p. 346. The UNIT inventory, like the financial information discussed above, may be inaccurate. Unfortunately for ABC, I am forced to analyze whether the organization possesses the Korzen characteristics with the evidence admitted at the hearing, however inaccurate it may be. given a voucher that they could take to ABC and receive a UNIT. Although Mr. FORMAN testified that this UNIT fair occurred in 2012, he must be mistaken because the XX UNITS donated to the UNIT fair are not accounted for in Dept. Ex. No. 7, which shows all UNITS in 2012 as sold or shipped out-of-state. **Sales Tax Exemption Only:** According to Mr. FORMAN, in 2015, ABC donated XX UNITS at this UNIT fair. Tr. pp. 263-268, 275-277, 283-285.

There was considerable testimony at the hearing that ABC gave away UNITS other than by shipping them out-of-state. I must conclude that if ABC did give away UNITS other than through out-of-state shipments, it did this in years other than 2012. For example, Mr. JOSEPH testified that social workers, usually through a refugee resettlement, homeless organization or the Veterans Administration, may ask ABC to donate a UNIT to an individual. The social worker will usually send an e-mail to ABC that they have a client who needs transportation for school, work or medical appointments. “[The donee] gets a UNIT that works and will get them to where they need to go.” ABC also provides these individuals with a lock and helmet. Tr. pp. 51-53. Again, these donations cannot have occurred in 2012, however, because all UNITS are accounted for in Dept. Ex. No. 7.

Mr. JOSEPH also testified that ABC has a Christmas sale where they charge \$X to \$XX for a UNIT. Buyers also usually get a helmet. Tr. pp. 62-63. The Christmas sale apparently did not occur in 2012 because no UNIT sold for \$X or \$XX in that year. Dept. Ex. No. 7.

Mr. FRANK testified that in 2011, ABC donated UNITS through 18 organizations, including Bonaventure House, City of Chicago’s “After School Matters,” Howard Brown Health Center (for people in transitional housing), Mercy Housing-Austin Neighborhood, North Side Housing (for people in transitional housing), Wilderness Consortium, various Chicago Public School UNIT Clubs and PADS (for homeless people in the south suburbs). Tr. pp. 120-123; App. Ex. No. 6. Although the testimony was that UNITS were donated through these organizations in 2011, Mr. FRANK testified that it’s “pretty representative of work in 2012.” Tr. p. 123. However, I am forced to conclude that it is not representative of donations in 2012 because all UNITS in 2012 are accounted for as either sold to paying customers or shipped out-of-state. Dept. Ex. No. 7.

**Sales Tax Exemption Only:** Mr. SAMS testified that in 2014, the City of Chicago worked with ABC on a giveaway of XXX UNITS in a program called “UNITS

For NEIGHBORHOOD.” The City’s “UNIT Ambassadors” made sure that the donees could ride the UNITs and ABC then matched the donees with an appropriate UNIT. Tr. pp. 174-176.

It appears from the testimony that ABC may have made some charitable donations of UNITs to residents of Chicago in years other than 2012. However, there is no documentary evidence in the record as to the total number of UNITs donated to ABC in years other than in 2012, the number of UNITs sold in years other than 2012 and the number of UNITs shipped out-of state in years other than 2012. In addition, there is no evidence in the record as to how many people requesting a UNIT were turned away in years other than 2012. Without this evidence, I am unable to account for the disposition of ABC’s UNITs or to conclude that ABC provided charity to an indefinite number of persons in years other than 2012.

The Korzen factor at issue here also requires a consideration of whether ABC’s benefits reduce a burden on government. “The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). It is a *sine qua non* of charitable status that those seeking a charitable exemption are able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions. Provena (2) at 395. There is no credible evidence in the record of this case showing that ABC’s operations on the subject property reduce any burden on government.

Mr. JOSEPH testified that ABC reduces “the amount of UNIT waste that goes into landfills, [reduces] the number of UNITs that ... will also go to partial waste when they are only recycled and turned into scrap metal.” “We enable UNITs to live on and serve the purpose that a lot of energy went in to create them for.” Tr. pp. 33-34. He testified further

than ABC keeps UNITS out of the waste stream and fully utilizes resources that have been created. Tr. p. 71. Mr. SAMS testified that the City of Chicago would have to scrap abandoned UNITS if ABC did not pick them up. The UNITS “would go to the sign shop” and “sit there until they’re scrapped – you know, it would be a lot of work.” “Tremendous amount of work.” Tr. pp. 171-172. Mr. SAMS added that the number of complaints to “311” about abandoned UNITS is second only to complaints about potholes. “Without ABC, we would not be able to reduce [the number of complaints] to zero every year.” Tr. pp. 180-181.

Reducing waste in landfills and conserving the energy used to create UNITS are commendable but not quantifiable and not endeavors recognized by Illinois courts as “charitable.” Counsel for ABC has not referred me to, and my own research does not indicate, any Illinois statute that requires a governmental entity in this state to recycle UNITS, keep them out of landfills and/or conserve the energy used to create them.<sup>5</sup> It must also be noted here that ABC sells many of the UNITS that it keeps out of landfills and later repairs. The Supreme Court has noted that services extended for value received do not relieve the State of a burden. Provena (2) 396-397. So if the State did have a burden to keep UNITS out of landfills by recycling them, ABC would be relieving this burden “for value received” through the sale to the public of recycled UNITS. There is simply nothing of fact in the record of this case which would lead me to conclude that Illinois government would have an increased burden if ABC did not own and operate the subject property. I am unable to conclude from the record that the benefits derived from ABC are for an indefinite number

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<sup>5</sup> Unlike, for example, 415 ILCS 150/1 *et seq.*, “The Electronic Products Recycling and Reuse Act,” the purpose of which “is to set forth procedures by which the recycling and processing for reuse of covered electronic products will be accomplished in Illinois.” 415 ILCS 150/5(b). This Act lists certain electronic products that may not be disposed of in a landfill [415 ILCS 150/95] and penalties for violations [415 ILCS 150/80]. This Act does not require, however, that the State undertake the burden of recycling electronic products.

of persons or that these benefits reduce a burden on Illinois government and ABC's use of the subject property is not consistent with this characteristic of a charitable organization.

**Korzen factor (4): Charity is dispensed to all who need and apply for it.** ABC's

"Local Donation Policy" states that ABC donates repaired UNITS in Chicago and the surrounding suburbs from its warehouse space and through numerous partner organizations, including veterans' hospitals and health and human service agencies, transitional housing organizations, youth organizations, community centers and schools. The Policy states that "in a typical year, [ABC] donates between XXX-XXX UNITS to individuals through this program." Local donation recipients also receive a helmet and lock and can bring their UNIT back to ABC in the first year if the UNIT needs service.

Tr. pp. 58-60, 98-100; App. Ex. No. 4.

ABC's Local Donation Policy is not reflected in its financial data. As discussed above, in 2012, ABC collected X,XXX UNITS; X,XXX were sold by ABC and X,XXX were shipped out-of-state. Dept. Ex. No. 7. The Policy states that "in a typical year" ABC donates between XXX-XXX UNITS to individuals in Chicago and the surrounding suburbs. App. Ex. No. 4. However, these donations cannot have occurred in 2012 because all UNITS are accounted for as sold to paying customers or shipped out-of-state. In 2012, I am unable to conclude that ABC gave away any UNIT locally, and accordingly, I am unable to conclude that ABC dispensed charity to all who needed and applied for it in that year.

**Sales Tax Exemption Only:** ABC's Form 990 for 2013, "Schedule M," "Noncash Contributions," shows exactly X,XXX UNITS donated to ABC in 2013. Mr.

Lindsay was asked in redirect examination what the "likelihood [was] that there are exactly X,XXX UNITS in this one year that were received in terms of donations?" He replied: "Almost zero." Tr. pp. 346-347. Mr. FRANK testified that ABC had 13 shipments to "international charities" in 2013. Tr. p. 111. There was no testimony as to how many of the

X,XXX UNITS were shipped to international charities. Mr. FRANK also testified that in 2013, “Mr. TN,” who lives in a veteran’s home, referred everybody in his building to ABC. Tr. pp. 118-119. There was no testimony as to how many of the X,XXX UNITS went to Mr. TN or the people he referred to ABC in 2013. Mr. FORMAN testified that in 2013, ABC gave vouchers to people so that they could come to ABC and receive a UNIT. Tr. pp. 283-284. There was no testimony as to how many people received UNITS through the vouchers in 2013. This is the only testimony in the record as to donations in 2013. I am unable to conclude that ABC dispensed charity to all who needed and applied for it in 2013, without an exact accounting for the admittedly inaccurate figure of “8,000 UNITS” donated to ABC in 2013.

ABC did not offer into evidence any dollar amount for UNITS it donated in 2012. ABC’s Form 990 and its audited financial statements for 2012 do not give an amount for UNIT donations. App. Ex. Nos. 8 and 9. **Sales Tax Exemption Only:** ABC’s audited financial statement for 2013 lists an Expense entitled “In-Kind UNIT Donations” of \$XXX,XXX. However, this same dollar amount does not appear on ABC’s Form 990 for 2013. Dept. Ex. No. 8.

The Property Tax Code allows exemptions for charitable use of property when the property is “exclusively” used for charitable purposes and not used with a view to profit. 35 ILCS 200/15-65. In 2013, ABC’s audited financial statement lists “In-Kind UNIT Donations” of \$XXX,XXX. The same audited financial statement lists Revenue from “Sales Income” and “UNIT Service Income” of \$XXX,XXX. Dept. Ex. No. 8. ABC’s UNIT donations for 2013 were approximately 20% of the revenue it received from selling and repairing UNITS. “To be charitable, an institution must give liberally.” Provena (1) at 750. I cannot conclude from the 20% figure that ABC has given “liberally.” Furthermore, the disparity between the value of the UNITS donated by ABC and the revenue received from the sale and repair of UNITS is so extreme that it would not be

reasonable to conclude that the primary use of this property is to provide charity, as is required by 35 ILCS 200/15-65. The primary use of the subject property is the sale and repair of UNITS. The UNIT donation amount, representing 20% of the revenue ABC earns from the sale and repair of UNITS, falls far short of meeting the primary purpose standard.

The Korzen criteria that a charitable organization dispenses charity to all who need and apply for it is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. The record of this case, including the inaccurate and unreliable financial information, does not show that ABC dispenses charity to all who need and apply for it or that its use of the subject property is consistent with this characteristic.

**Korzen factor 5: 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.** ABC’s “Local Donation Policy” states that an eligible UNIT donation candidate “is inhibited from buying a UNIT due to low income or other situational barriers” and “has need for a UNIT; needs include general transportation or recreational/physical activity.” An organization or individual can contact ABC by phone, e-mail or in person to request a UNIT. The applicant must submit a referral letter written by a social worker, case manager, program manager or a representative of a relevant organization who is familiar with the applicant’s needs. The Policy states further that ABC “requests \$20 to offset the costs of the Program; the co-pay is frequently paid by the partner organization or waived.” The \$XX covers the helmet and the lock. Individuals requesting a UNIT may be put on a waiting list while UNITS are being repaired. Tr. pp. 58-61, 98-100, 111-113, 116, 157, 381-383; App. Ex. No. 4. The \$XX co-pay is per UNIT, not per organization. Tr. p. 116.

The required referral letter and the \$XX co-pay are obstacles in the way of those who need a UNIT. A person needing a UNIT cannot just show up at ABC and request one. Mr. JOSEPH referred to the Local Donation Policy as “our stated policy,” “seen by the public.” “I don’t think we could publicly say anyone who wants to show up at [ABC] and claim a free UNIT they can.” “I don’t think any organization could do that.” Mr.

JOSEPH cited an instance where the manager “in 2012 had a needy individual come to him for – to have a UNIT repaired where we ended up giving a UNIT to the individual.”

Tr. pp. 99-100. Apparently, this “needy individual” did not have a referral letter. There is no testimony on whether the individual had to pay the \$XX co-pay. So according to his testimony, one person overcame ABC’s obstacles in 2012. It must be noted, again, that this UNIT does not show up on Dept. Ex. No. 7, which shows all UNITs as either sold or shipped out of state in 2012.

Mr. FRANK was asked if ABC waived the co-pay in 2012. He remembered waiving the co-pay in 2012 for the organization “Refugee One,” whose margin and funding were not sufficient to cover the \$XX. Tr. pp. 113-114. This UNIT does not appear in Dept. Ex. No. 7. According to Mr. FRANK, “people can come in off the street and not have the \$XX and receive a UNIT.” But “it’s not sustainable to put UNITs on the sidewalk and have people take them.” Tr. pp. 116-117.

Mr. Lindsay was asked how ABC’s Local Donation Policy was made known to the public. He responded: “I would say I don’t know if it was made public.” Tr. p. 381. He did not think that the Policy was handed out to the public. He was then asked how it was made known that the fee could be waived if those seeking a UNIT did not have the \$XX or the referral letter. He did not know. “How it was communicated to the client, I don’t know.” “I don’t think there’s a big sign that you can get a free UNIT and it may or

may not cost you \$XX.” Tr. p. 382. **Sales Tax Exemption Only:** ABC’s Local Donation Policy does not appear on its website as of May 29, 2015. Dept. Ex. No. 5.

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.” In Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> 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.”

Similarly, the record in this case does not show that the “general public” would know that a free UNIT was available at ABC. The record does not show conclusively that ABC’s “Local Donation Policy” was widely disseminated or that those people needing UNITS were made aware that the \$XX co-pay could be waived. These are obstacles in the way of receiving charitable assistance from ABC. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). The Korzen criteria that a charitable organization places no obstacles in the way of those needing assistance is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. The record of this case does not show that ABC possesses this characteristic of a charitable organization or that its use of the subject property is consistent with this characteristic.

**Korzen factor (6): The exclusive (primary) use of the property is for charitable purposes.** This Korzen factor is only relevant for the 2012 property tax

exemption. The statute which allows exemption from property taxes for charitable use requires that the property not be leased or otherwise used with a view to profit. 35 ILCS 200/15-65. There was testimony that approximately 18.42% of ABC's building "is used for a thrift shop, our retail area." Tr. p. 374. Ms. KNIGHT, who owns a UNIT shop in the Bridgeport area, testified that she sees herself in competition with ABC's retail area.

"It's sort of the price point which is the same with Walmart." "Somebody who wants a hundred dollar UNIT is more likely to find that at Working UNITS than with us ..." "... It's cheaper at Working UNITS or it's cheaper at Walmart." "I can't compete with that, you know." Tr. pp. 229-230. The prices for UNITS for sale are set by ABC's "professional managers," "based on what we put into the UNIT, new tires, new brakes, new seat, new handle, tape, and what UNITS like that can more or less go for and we sell it at – we are selling a well-repaired, safe UNIT that is sold with a warranty." Tr. pp. 60-61. Counsel for the Department argued in his closing statement that "the people able to buy these UNITS [in the retail area] are not receiving a charitable benefit." "Working UNITS is merely undercutting competing retailer prices." Tr. p. 402.

The 18.42% of ABC's building used for retail purposes generated "Program Service Revenue" of \$642,775 in 2012 and "Revenue Less Expenses" of \$XXX,XXX. App. Ex. No. 8. When money is made by the use of a building, that money constitutes profit, no matter to what purpose that money is applied. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill 136, 141 (1924). In 2012, ABC made money, "profit," from the use of 18.42% of its building.

Mr. Lindsay testified that if ABC received a property tax exemption for 2012,<sup>6</sup> the funds would be held in trust "and then they would be disbursed in the form of UNITS given

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<sup>6</sup> Although not specifically testified to at the evidentiary hearing, I surmise from ABC's Application for Property Tax Exemption that property taxes for the year 2012 were \$26,000. App. Ex. No. 1.

to the public.” The funds would be used “to further the charitable mission” of ABC.” Tr. p. 312. According to the testimony, all funds from UNIT sales are “absolutely and unequivocally” “held in trust for purposes of furthering the corporate mission.” Tr. p. 304. But this testimony is not borne out in the financial data and it is unclear from the record how ABC’s excess funds are used. In 2012, ABC retained \$XXX,XXX in “Revenue Less Expenses.” This amount was evidently not used by ABC to “further its charitable mission.” Additionally, as I have said repeatedly in this Recommendation, I cannot determine from the record that even one UNIT was given by ABC to “the public” in 2012. Dept. Ex. No. 7.

Counsel for ABC argued in his closing statement, with “some hesitancy,” that the 18.42% of the property used for retail operations could be “pulled out” and the exemption given to the remainder of the property. Tr. p. 413. I have determined above that ABC, as an organization, does not possess several of the Korzen factors. Accordingly, pulling out the 18.42% for the retail area is not at issue here. Assuming, for purposes of argument, that ABC, as an organization, did possess the Korzen factors, I still would not be able to recommend pulling out the 18.42% for the retail area and exempting the remainder of the property.

ABC’s first floor has a loading dock, areas for UNIT storage, waiting area, UNIT service department, and a retail sales area. The retail sales area may hold up to 80 UNITS “for people to look at if they would choose to purchase a low-cost well-repaired UNIT.” The retail area is open 24 hours/week. ABC’s second floor has a UNIT storage area, UNIT repair lab, kitchen and bathroom. The basement is used for storage of UNITS. UNITS are stored until they are ready to be repaired. No part of the building is rented. No other organization uses the space. Tr. pp. 41-44, 236-242; App. Ex. Nos. 1 and 7.

There was testimony that the “vast majority” of the building is used for storage of

UNITs. Tr. p. 40. According to Mr. Lindsay’s testimony, the second floor of the building and the basement are used to store UNITs. However, this storage area is for UNITs that will be repaired and sold in the retail shop, UNITs that will be shipped out-of-state and UNITs that will be donated under ABC’s “Local Donation Policy.” Generally, when ABC gets a UNIT, they do not initially know what they are going to do with it. “There might be UNITs in storage that end up getting repaired for sale.” Tr. pp. 378-379. So if I had concluded that ABC as an organization possessed the Korzen factors, I would still have to recommend that the property tax exemption be denied for one hundred percent of the property. I am unable to “pull out” an area on the subject property that is exclusively used for charitable purposes, as required by 35 ILCS 200/15-65.<sup>7</sup>

The six Korzen factors require a determination of whether charity is the primary use of the property or rather whether it is a secondary or incidental use. 35 ILCS 200/15-65 of the Property Tax Code requires that the subject property be “exclusively” used for charitable purposes. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). ABC’s revenue and profit from the 18.42% of the building used for retail space in 2012 were not incidental amounts. The 2012 revenue and profit and the fact that UNITs to be sold in the retail area are not segregated but are stored throughout the subject property does not allow me to conclude that the exclusive use of the subject property, or any identifiable area in the subject property, was for charitable purposes in 2012.<sup>8</sup>

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<sup>7</sup> Such as a storage area where only UNITs that will be shipped out-of-state or donated under ABC’s Local Donation Policy are stored and repaired.

<sup>8</sup> In Highland Park Women’s Club v. Department of Revenue, 206 Ill. App. 3d 447 (2d Dist. 1990), the Department denied an exemption for the food stands and gift shop at Ravinia Park finding that this area generated a profit for Ravinia. On appeal, the Court found that the gift shop and concession stands were

Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). Several times in this Recommendation for Disposition, I have noted the inconsistencies in ABC's financial information and that the testimony of some witnesses was not supported by the documentary evidence. Because ABC has the burden of proof to show that it was entitled to a sales or property tax exemption for charitable purposes, the inconsistencies and the unsupported testimony must be construed against ABC in this matter. Accordingly, I conclude that ABC has failed to prove, and the record does not support, ABC's entitlement to a charitable exemption for sales or property tax.

For the above stated reasons, it is recommended that 1) the Department's determination which denied Working UNITs Cooperative a sales tax exemption should be affirmed and 2) the Department's August 8, 2013 determination that Cook County Property Index Number XX-XX-XXX-XXX-000 was not in exempt ownership and use in 2012 should be affirmed and this P.I.N. should not be exempt from 2012 property taxes.

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Kenneth J. Galvin February

8, 2016

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“a mere adjunct” to Ravinia’s operations. “They are provided as a convenience for concertgoers.” “Since the primary use of the Ravinia Park parcel is a charitable use, the entire parcel is exempt” including the food stands and gift shop. *Id.* at 465. Ravinia is distinguishable from ABC. ABC’s retail area is not a “convenience” and not a “mere adjunct” to ABC’s operations. ABC’s retail area is the essence of ABC’s operations, the main reason for visiting the subject property, and the source of ABC’s funding for its entire operation. Additionally, unlike Ravinia, I am unable to conclude that the primary use of ABC’s property, or any identifiable portion of its property, is charitable.