

PT 18-01
Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use
Religious Ownership/Use

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

**PROVENA SENIOR SERVICES,
APPLICANT**

v.

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

No: 07-PT-0039 (04-89-37)

**Real Estate Tax Exemption
For 2004 Tax Year
P.I.N. 89-18-19-05-105-013, 016,
020 through 022,
89-18-19-05-176-001 through 005
Stephenson County Parcels
Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Patrick Coffey, Mr. Timothy Maggio and Mr. Kevin Wisniewski, Locke, Lord, Bissel & Liddell, LLP, on behalf of Provena Senior Services; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Stephenson County Parcels, captioned above, (hereinafter the “subject property” or “St. Joseph Campus”), qualify for exemption from 2004 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, and 35 ILCS 200/15-40, which exempts all property used for religious purposes and not used with a view to profit.

This controversy arises as follows: On December 20, 2004, Provena Senior Services (hereinafter “PSS”) filed an Application for Non-homestead Property Tax

Exemption with the Stephenson County Board of Review (hereinafter the “Board”) seeking exemption from 2004 real estate taxes for the subject property. App. Ex. No. 5. The Board reviewed the Application and recommended that the exemption be granted. Tr. pp. 443-444; App. Ex. No. 4.

On February 23, 2007, the Department of Revenue of the State of Illinois (hereinafter the “Department”) rejected the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2004. On April 23, 2007, PSS filed an appeal of the Department’s exemption denial and requested an evidentiary hearing which was held on October 27, 28 and 31, 2008. The following witnesses testified for PSS: Monsignor Timothy L. Doherty, Priest and Ethicist for health care issues in the Rockford Diocese, David Howard, Vice-President of Operations, Theresa Parsek, Administrator of St. Joseph Center, Father William Grogan, System Director of Ethics for clinical and organizational issues at PSS, Michael Gordon, Chief Financial Officer for PSS, Connie March, President and CEO of PSS, Sharon Batten, Director of the Adult Day Care Center, Mary Ann Ostendorf, a member of the Board of Review of Stephenson County Assessor’s Office, Amy Lynn Smith, Supervisor of the St. Vincent Community Living Facility and Supportive Living Arrangement, Mary Walters, Director of Pastoral Care, Meghan Kieffer, Vice-President and General Counsel for Provena Health and Affiliates (“PHA”), John Blum, County Board Chairman of Stephenson County and a member of PSS’s Finance Committee in 2004, James Sacia, Illinois State Representative for the 89th District, and Ronald Kane, Clerk with the Stephenson County Board of Review. Following a careful review of the testimony and evidence and PSS’s

“Post-Hearing Brief” (“PSS Brief”)¹, the Department’s “Response Brief” (“Dept. Response”), and PSS’s “Post-Hearing Reply Brief” (“PSS Reply”), it is recommended that the Department’s denial be affirmed, except for the chapel located on the subject property.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use in 2004. Tr. pp. 13-14; Dept. Ex. No. 1.
2. St. Joseph Campus was historically an orphanage known as “St. Vincent’s Home for Children,” maintained by the Diocese of Rockford. On or about June 14, 1996, St. Vincent’s Home for Children conveyed the subject property to ServiceCor, Inc. On or about October 10, 1997, ServiceCor, Inc. conveyed the subject property, by quit-claim deed, to Cor Unum. On November 30, 1997, the religious community which sponsors Cor Unum, Servants of the Holy Heart of Mary, consolidated with two other religious communities, Franciscan Sisters of the Sacred Heart and Sisters of Mercy of the Americas, to form PHA. As a result of this consolidation, Cor Unum changed its name to PSS. PSS is the current owner of the subject property. PSS is a wholly owned subsidiary of PHA. PHA’s board of directors consists of two members from each of the sponsoring religious congregations, *inter alia*. Tr. pp. 21-22, 78, 97-100, 263-269, 288, 353, 498-499, 502-504; App. Ex. Nos. 5, 8 and 43.

¹ PSS submitted “Proposed Findings of Fact” and “Proposed Conclusions of Law” with their “Post-Hearing Brief.” Leave had not been granted to file these documents and the documents were not considered in this Recommendation.

3. PSS owns and operates ten nursing homes, four independent living facilities, two assisted living facilities, four adult day care centers, two community service facilities and one outpatient pharmacy in northern and central Illinois and Indiana. App. Ex. No. 39.
4. PSS is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. PSS is exempt from sales tax in the State of Illinois as of May 12, 2000. Tr. pp. 284-299, 353-357, 486-490; App. Ex. Nos. 6 and 35.
5. PSS's Bylaws state that the "declared mission of Provena Senior Services shall be that of its Sole Member, Provena Health," which is as follows: "Provena Health, a Catholic health system, builds communities of healing and hope by compassionately responding to human need in the spirit of Jesus Christ." Tr. pp. 272, 281, 347; App. Ex. No. 5.
6. PSS's Bylaws state that its purposes are: 1) to establish, develop, own, sponsor, manage, maintain, promote and/or conduct the affairs of Catholic-identified and related healthcare facilities and programs; 2) to enhance the health status of the communities being served through preventive health education and to undertake educational programs and activities related to care for the sick, injured, poor, aged, infirm, distressed and/or unfortunate, which may be appropriate and may be justified by the personnel, facilities, funds and other resources available; 3) to undertake efforts to continuously improve care for the sick, injured, aged, infirm, distressed and/or unfortunate which may be appropriate and may be justified by the personnel, facilities, funds and other resources available; 4) to coordinate the activities of PSS Subsidiaries as those entities pursue their religious, charitable, educational and scientific purposes in

the fields of health care, health education and training, health management, human services and other related fields; and, 5) to offer at all times high quality and cost effective healthcare and human services to the consuming public. Tr. pp. 272-274, 365-366; App. Ex. No. 5.

7. PSS has a written policy on “financial assistance,” which was effective March 23, 2004 and states as follows: “It is the policy of PSS that financial assistance be provided when feasible and within the resource limitations of the entity. Financial assistance is in keeping with the Catholic health care value of special commitment to the poor, but is limited by the need for responsible stewardship of facility and [PSS’s] resources.” The policy states further that, although PHA has adopted its own financial assistance policy, PSS’s separate policy “exists as a result of the differences in Medicaid payment provisions for long term care.” “Indigent residents eligible for our services are eligible for the Medicaid program. The State of Illinois determines the amount the individual residents are able to pay. The per diem reimbursement from Medicaid is less than our per diem costs to provide services. Therefore, under-compensated care provided through the Medicaid program is our primary form of charity care.” Tr. pp. 274-277, 366; App. Ex. No. 36.
8. PSS’s Financial Assistance Policy requires that residents applying for financial assistance will be asked to complete an application. “Residents should be informed at the time of application that no guarantee of approval exists.” Once approved for financial assistance, the facility has the right to revoke the status and approval at any time. All income of the resident will be used toward the cost of the care provided by the facility. “Financial assistance will only be used

to supplement such income when such income is inadequate to pay for continued care at the normal fee rates of the facility.” Criteria that will be used to determine if the resident qualifies for financial assistance will conclude, “but not be limited to,” date of admission to the facility, degree of financial need, availability of the facility’s resources for the provision of financial assistance, degree of ability to pay by the resident and their family, severity of impact upon the resident if relocation is required to another long-term care facility, special relationship to the facility or to PSS, if any, held by the resident, and other factors as determined by the Financial Assistance Review Committee. App. Ex. No. 36.

9. PSS produces materials which advertise that there is a “Financial Assistance Program Available.” The advertisement states that “[S]ubject to availability in our Medicaid-certified beds, residents will be assured of their ability to remain within our facility regardless of their ability to pay privately for their care. Throughout Provena Senior Services, continued care for residents (those unable to pay) without public or private funding will be considered on a case-by-case basis. Please contact our Administrator with any questions.” Tr. p. 186; App. Ex. No. 38.

10. The subject property, located in Freeport, Illinois, contains “Provena St. Joseph Center” which is a 24 hour skilled nursing facility, with a capacity of 120 beds, occupied by 60 elderly residents. Residents come for short term rehabilitation services or for longer stays. Tr. pp. 66, 300, 357, 360; App. Ex. No. 5.

11. Hallways in the skilled nursing facility have been reconfigured into “neighborhoods” and “streets.” Residents may bring in their own furniture.

Residents choose their room color and border edging. Residents are given a flat screen TV. PSS is currently seeking assistance from the community and residents' families to outfit each room with a refrigerator. Tr. pp. 133-136; App. Ex. No. 1.

12. The subject property contains a residential living facility, known as "Provena St. Vincent Community Living Facility and Supportive Living Arrangement" ("St. Vincent CLF/SLA"). Residents in St Vincent CLF/SLA have an IQ below 55 and deficits in at least three of six major life skills. Residents in the SLA section have a variety of diagnoses from mental retardation to borderline intellectual development. They may also have walking and gait disabilities. Residents require intermediate care, rather than 24 hour care. SLA individuals reside in Trinity Hall, O'Neill Hall, Bidwell House and Rectory House on the subject property. Approximately 5% of the SLA individuals reside off campus so that they can be integrated into society to the extent of their capabilities. PSS assists SLA residents by making doctor's appointments for them, communicating with their doctors, taking them grocery shopping, teaching them how to budget and use a checkbook, encouraging them to participate in social and community activities, making sure that they go to work and encouraging them to be responsible for themselves. Tr. pp. 450-457; App. Ex. Nos. 1 and 5.
13. Residents in the CLF section require 24 hour care. They reside in Hoban Hall on the subject property. The first floor contains a living room and the second and third floors contain 20 apartments, for women and men, respectively. There is a nurse present to monitor medications and the facility is staffed 24 hours per

day/7 days per week. Tr. pp. 160-162, 370-373, 450-459; App. Ex. Nos. 1 and 5.

14. The subject property also contains parking lots, benches and a swing set that is open to the outside community for free and is used by residents' visitors. Tr. pp. 22-23, 61, 109-112, 114-115, 155, 159-160; App. Ex. No. 1.

15. There is an adult day care facility on the subject property known as "Provena St. Joseph Adult Day Care Center" located in O'Neill Hall. This facility provides day care services for the elderly and adults who may be physically and mentally impaired, including high-functioning developmentally disabled people and people with brain injuries including strokes. Participants would be at-risk home alone during the day, but are not yet ready for assisted living or nursing homes. Daily transportation, individual and group activities, crafts, bingo, group exercise, socialization, outings, movies, fishing, and nutritional meals, including a morning meal, lunch and a snack, are offered. There is a nurse on duty who monitors the participants' medications and who may do regular health monitoring, such as testing for diabetics. The Adult Day Care Center opens at 7:30 a.m. and the last bus to take participants home leaves at 4:00 p.m. Some caregivers place adults in the Adult Day Care Center when the caregiver needs respite from giving daily care. Tr. pp. 177-179, 367-369, 407-417; App. Ex. Nos. 1 and 5.

16. Approximately 60 people volunteer at the Adult Day Care Center. Volunteers entertain the participants, and help with bingo, meals and feeding. Tr. pp. 428-429; App. Ex. No. 30.

17. Brochures advertising the “Adult Day Center” and “Respite Care” state that “[W]hether your loved one is above or below 60 years old, we have found that financial assistance is available for most of the clients that we serve. In addition, private pay rates are available.” Tr. pp. 429-432; App. Ex. No. 24.
18. The Adult Day Care Center has 33 participants paid for by the Department of Rehabilitation, 7 private-pay patients and two paid for by Veterans Administration. Tr. pp. 436-437.
19. The subject property contains a chapel, which has a tabernacle where Holy Communion is reserved. The maintenance of the chapel is directed by church law and the Bishop. There is a Catholic mass in the chapel on Sunday and Wednesday, and on holy days of obligation, attended by both the public and residents on the subject property. Communion ministers, who visit Catholic residents on the subject property, retrieve Holy Communion from the tabernacle. Funerals for Catholic residents and people in adult day care may be held in the chapel. The chapel is also used by a new church forming in the community that does not yet have the resources to build its own church. Students from Aquin High School, which is located across the street from St. Joseph Campus, use the chapel for in-service work for the religious part of their education. Tr. pp. 23-25, 111-113, 158, 174-175, 301, 473-476, 504-505, 513-514, 527-528; App. Ex. No. 1.
20. Rosary is offered in one of the larger dining rooms in St. Joseph Center. The rosary is led by a volunteer pastoral care resident. Tr. pp. 474-475.
21. Services for Protestants are offered on Thursday afternoons and Sunday afternoons alternating between two areas in St. Joseph Center. Tr. pp. 476-477.

22. Volunteers from the community assist at St. Joseph Center. Volunteers socialize with the residents, read books to residents and take them to and from church. Volunteers at the CLF help the residents with crafts and work on the computer or pass out juice. Tr. pp. 180-182.
23. St. Joseph Center is a Catholic ministry because it takes place in the Bishop's jurisdiction by the permission of the Bishop and because it follows the "Ethical and Religious Directives for Catholic Health Care Services," published by the United States Conference of Catholic Bishops. Tr. pp. 28-33, 73-74, 236-238, 376-377; App. Ex. No. 17.
24. In 2004, PSS and St. Joseph Campus used a "Discernment Tool in Decision Making" which integrates PSS's mission and values into business decisions, including strategic decisions, budgeting, hiring, terminating or promoting employees and resolving difficult issues. The tool requires the decision-maker to consider how the decision impacts the organization's integrity, mission and values including promoting and defending human dignity, attending to the whole person, caring for poor and vulnerable persons, promoting the common good, acting on behalf of justice, stewardship of resources, and acting in communion with the Church. Tr. pp. 49-60, 245-246; App. Ex. No. 19.
25. In 2004, St. Joseph Campus received \$88,865 in "Unrestricted Contributions." This represents 1.4% of "Total Revenue" of \$6,111,586. Contributions were used to paint the residents' rooms, to purchase an ice cream machine and to purchase "Broda chairs" which are more comfortable for residents. Step exercise machines for seniors and an exercise bike were purchased with

- contributions. Contributions were used to restore lighting in the church. Tr. pp. 187-191, 309-310, 316-318, 383-384, 516-517; App. Ex. No. 41.
26. The “St. Joseph/St. Vincent Auxiliary” raises funds for the subject property. In 2004, the Auxiliary raised \$10,775 through such activities as a salad luncheon, “love light tree,” “cookie-walk,” and “shepherd’s gifts.” Tr. pp. 192-201, 378-379, 509-510; App. Ex. No. 28.
27. In 2004, St. Joseph Campus had “Total Revenue” of \$6,111,586 and “Total Expenses” of \$6,074,120, resulting in a “Net Operating Income” of \$135,771. “Total Expenses” include \$503,056 in “PSS Management Fees,” which represent the “allocation of corporate expenses to each of the operating ministries,” and \$146,856 in “Provena Health Admin & IS Fees.” Tr. pp. 313-317, 339-340, 386-396; App. Ex. Nos. 41 and 42.
28. In 2004, St. Joseph Campus’ “Charitable Contributions @ Cost” were \$863,671. Mr. Gordon testified that “greater than 90%” of this amount is Medicaid shortfall. In the skilled nursing facility in 2004, where more than 50% of the residents were on Medicaid, the testimony is that there was a shortfall of \$45/day, with Provena charging \$125/day and Medicaid reimbursing \$80/day. “Charitable Contributions @ Cost” also include Medicaid shortfalls from St. Joseph Adult Day Care Center and St. Vincent CLF/SLA, where, in both programs, 90% of the participants were eligible for Medicaid. The charitable contributions also include making Campus facilities available for outside organizations, and salaries for the time that the staff donates to food pantries in the community and “other unreimbursed or under-reimbursed services.” Tr. pp. 318-321, 322-323, 331-332, 385-387; App. Ex. No. 42.

CONCLUSIONS OF LAW: CHARITABLE EXEMPTION

An examination of the record establishes that PSS has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2004 real estate taxes for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 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 (1st Dist. 1983).

It is well established in Illinois that a statute 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 (1st 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 (4th Dist. 1994). “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010). In the instant case, PSS had the “heavy” burden of proving, by clear and convincing evidence, that the subject property was entitled to an exemption for charitable purposes.

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) ***,
- (c) Old people’s homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual’s ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) ***.

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. 35 ILCS 200/15-65.

At the evidentiary hearing, PSS apparently took the position that the applicable statutory subsection was 35 ILCS 200/15-65(a), “institutions of public charity,” and proceeded to apply the guidelines articulated in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). However, under a broad reading of 35 ILCS 200/15-65(c), St. Joseph Center meets some of the threshold requirements of an “old people’s home,” St. Vincent Community Living Facility and Supportive Living Arrangement meets some of the threshold requirements of a “facility for a person with developmental disabilities” and St. Joseph Adult Day Care Center meets some of the threshold requirements of an “organization providing services or facilities related to the goals of educational, social and physical development.” Accordingly, subsection (c) of 35 ILCS 200/15-65 must also be considered.

PSS is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 239, 284-285; App. Ex. No. 6. 35 ILCS 200/15-65(c) requires that the organization’s bylaws provide for a waiver or reduction of entrance fees or services, based on an individual’s ability to pay. Mr. Gordon testified that PSS’s Bylaws provide for waiver and reduction of fees or costs based on an individual’s financial condition. According to the testimony, this waiver is evident from the statements in the Bylaws that PSS operates exclusively for religious, charitable and educational purposes, that one of PSS’s purposes is to care for the sick, injured, poor, aged, infirm, distressed and/or unfortunate, and that PSS will undertake efforts to continuously improve care for these individuals “which may be appropriate and may be justified by the personnel, facilities, funds and other resources available.” App. Ex. No. 5. According to Mr. Gordon’s

testimony, these provisions mean that PSS “will provide charitable assistance to those in need.” Tr. pp. 272-274. I am unable to conclude, however, that a reasonable person needing charitable assistance would know from these provisions in the Bylaws that the cost of their care would be waived or reduced based on their inability to pay. The provisions are simply not specific enough.

PSS points out in its Post-Hearing Brief that “Bylaws” is defined under the Illinois “General Not For Profit Corporation Act of 1986” as “the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the names or names by which such rules are designated.” 805 ILCS 105/101.80. PSS Brief, p. 31.

PSS has a written policy on “financial assistance,” which was effective March 23, 2004 and states as follows: “It is the policy of [PSS] that financial assistance be provided when feasible and within the resource limitations of the entity. Financial assistance is in keeping with the Catholic health care value of special commitment to the poor, but is limited by the need for responsible stewardship of facility and [PSS’s] resources.” Tr. pp. 274-277, 366. The Financial Assistance Policy requires that residents applying for financial assistance complete an application. “Residents should be informed at the time of application that no guarantee of approval exists.” Once approved for financial assistance, the facility has the right to revoke the status and approval at any time. All income of the resident will be used toward the cost of the care provided by the facility. “Financial assistance will only be used to supplement such income when such income is inadequate to pay for continued care at the normal fee rates of the facility.” App. Ex. No. 36.

The Financial Assistance Policy states that the criteria that will be used to determine if the resident qualifies for financial assistance will conclude, “but not be

limited to,” date of admission to the facility, degree of financial need, availability of the facility’s resources for the provision of financial assistance, degree of ability to pay by the resident and their family, severity of impact upon the resident if relocation is required to another long-term care facility, special relationship to the facility or to PSS, if any, held by the resident, and other factors as determined by the Financial Assistance Review Committee.” App. Ex. No. 36.

Assuming, *arguendo*, that the above provision in PSS’s Bylaws conforms to the requirements of 35 ILCS 200/15-65(c), this does not signify “*ipso facto*” that the subject property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004), the Supreme Court held that even if an applicant met the requirements of 35 ILCS 200/15-65(c), the applicant still “must comply unequivocally with the constitutional requirement of exclusive charitable use.” Therefore, the following conclusions are applicable under an analysis of both 35 ILCS 200/15-65(a) or (c).

Eligibility for a charitable exemption requires not only that the property be actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, but also that it be owned by an institution of public charity. Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, (2010), citing Chicago Patrolmen’s Ass’n. v. Department of Revenue, 171 Ill. 2d 263, 270 (1994). The Department denied PSS’s exemption request for the subject property finding that the property was “not in exempt ownership” and “not in exempt use.” Dept. Ex. No. 1. Accordingly, PSS must establish that both the owner of the property and the use of the property meet the criteria set forth in Korzen.

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of charitable ownership and 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 charity is dispensed to all who need and apply for it; (4) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; and (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. Korzen at 156-157. PSS must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

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 PSS is not a charitable organization and that the subject property is not exclusively used for charitable purposes.

PSS owns and operates ten nursing homes, four independent living facilities, two assisted living facilities, four adult day care centers, two community service facilities and one outpatient pharmacy in northern and central Illinois and Indiana. App. Ex. No. 39. The subject property contains the following programs and services: "Provena St. Joseph Center" is a 24-hour skilled nursing facility for 60 elderly residents. "Provena St. Joseph Adult Day Care Center" provides supportive day care services for the elderly as well as adults who are physically and/or mentally impaired. "Provena St. Vincent Community

Living Facility and Supportive Living Arrangement” is a residential living facility providing community housing and a family atmosphere for developmentally challenged adults. App. Ex. No. 5. The subject property also contains parking lots, benches and a swing set that is open to the outside community for free and is used by residents’ visitors. Tr. pp. 22-23, 61, 109-112, 114-115, 155, 159-160; App. Ex. No. 1.

The following is a consideration of the Korzen factors and whether the owner of the subject property, PSS, is a charitable organization and whether the subject property was used for charitable purposes in 2004.

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, PSS has failed to prove that the majority of its funds were derived from public and private charity. At the evidentiary hearing, PSS offered into evidence consolidated financial statements for PHA. The consolidated financial statements for PHA contain a separate column for PSS. This column shows PSS with “Net Patient and Other Service Revenue” of \$65.2 million for 2004 and “Other Revenue” of \$2.9 million. No explanation was offered at the hearing as to the composition of “Other Revenue.” If all of the “Other Revenue” was composed of funds derived from public and private charity, and there is absolutely nothing in the record to indicate that these funds are so derived, the “Other Revenue” would represent 4.3% of “Total Revenue.” App. Ex. No. 39. Clearly, the majority of PSS’s funding is not derived from public and private charity.

Ms. March, President and CEO of PSS, testified with regard to PSS’s funding. PSS caused to be admitted into evidence documents described as a “philanthropy

charitable contribution document developed by our fund development staff for Provena Senior Services.” Tr. p. 381. This document is for 2005 and was issued in the summer of 2006. The year at issue in the instant case is 2004 and, therefore, the document is not relevant to the present issues. Moreover, page 6 of this document contains a “list of donors that have provided charitable contributions to our ministries.” Ms. March was asked if these donations would have been made in 2005. She responded “[Y]es.” Then the following exchange took place:

Q. Would a similar report have been in existence for 2004?

A. Yes, in maybe a slightly different format.

Q. There would be records, however?

A. Yes, there are records, certainly.

Q. There would be records within Provena Senior Services that would reflect the contributions made by individuals?

A. Yes.

Q. And, again, those contributions you’ve testified, amount to a material financial contribution to the institution?

A. Yes.

Whatever records were “certainly” available for 2004 were not offered into evidence by PSS. Tr. pp. 381-382; App. Ex. No. 43 A.

The document developed by the fund development staff, referred to above, states that for 2005, “combined, unrestricted and restricted contributions were \$1.2 million and “total bequest funds” were \$0.6 million. This \$1.8 million in 2005 contributions measured against PSS’s total revenue of \$68.1 million in 2004 would represent 2.6%. Ms. March testified that the contributions “amount to a material financial contribution to the institution.” Tr. p. 382. However, the consideration in this Korzen factor is not whether the contributions are “material,” but whether the majority of the organization’s funding is derived from public and private charity. Clearly, the majority of PSS’s funding is not derived from public and private charity and PSS does not possess this characteristic of a charitable organization.

Ms. March testified that in 2004, St. Joseph Campus received \$88,865 in “Unrestricted Contributions.” Contributions were used to paint the residents’ rooms and to purchase an ice cream machine. Contributions were used to purchase “Broda chairs” which are more comfortable for residents. Step-exercise machines for seniors and an exercise bike were purchased with contributions. Contributions were used to restore lighting in the church. Tr. pp. 187-191, 309-310, 316-318, 383-384, 516-517; App. Ex. No. 42. The “St. Joseph/St. Vincent Auxiliary” also raised funds for the subject property. In 2004, the Auxiliary raised \$10,775 through such activities as a salad luncheon, “love light tree,” “cookie-walk,” and “shepherd’s gifts.” Tr. pp. 192-201, 378-379, 509-510; App. Ex. No. 28. The “Unrestricted Contributions” of \$88,865 represents 1.4% of St. Joseph Campus’ “Total Revenue” of \$6,111,586. App. Ex. No. 41(A).² Clearly, the majority of funding on St. Joseph Campus is not from public and private charity and the extremely low level of contributions received is an indication that the subject property is not being used exclusively for charitable purposes.

PSS’s and St. Joseph Campus’ revenue are generated, overwhelmingly, by providing medical care for a fee. As the financial data indicates, PSS and St. Joseph Campus receive the great majority of their funding from either private pay patients or the government for providing assisted care to seniors, day care for adults and community living facilities for the disabled. PSS received approximately 97% of its revenue from billings for services and St. Joseph Campus received approximately 98% of its revenue from billings for services. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App.

² Exhibit 42 is a summary of significant income statement accounts for “all facilities” on the St Joseph Campus. It shows “Total Revenue” for 2004 of \$6,121,026. Exhibit 41(A) contains a more detailed “Income Statement Summary” for “Provena St. Joseph Campus.” It shows “Total Operating Revenue” of \$6,111,586. No explanation was offered for the discrepancy.

3d 603 (3rd 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.” *Id.* at 608.

Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. This factored against Alivio and the court found that Alivio was not a charitable institution. As the above cases indicate, the exchange of services for payment, at the level enjoyed by PSS and St. Joseph Campus, is not characteristic of a charitable organization or 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 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010).

Having an operating income derived almost entirely from contractual charges goes against a charitable identity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975). In the instant case, the high level of revenue generated by PSS from the services provided to seniors, adults and disabled on the St. Joseph Campus indicates that the primary use of the subject property is not to provide charity, but to provide medical care to those who can afford to pay for it, either privately or through government assistance. PSS has failed to prove that the majority of its funding is derived from public and private charity and PSS’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.

PSS is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. PSS is exempt from sales tax in the State of Illinois as of May 12, 2000. Tr. pp. 284-299, 353-357, 486-490; App. Ex. Nos. 6 and 35. PSS is a wholly-owned subsidiary of PHA. PHA's member board consists of two members from each of the three sponsoring religious congregations. App. Ex. Nos. 5, 8 and 43. PSS does not have shareholders and does not pay dividends. App. Ex. No. 5.

35 ILCS 200/15-65 proscribes the granting of a charitable exemption when property is used with a "view to profit." In that regard, it must be noted here that both PSS and St. Joseph Campus earned a profit in 2004. PSS earned a profit of \$271,000 from operations in 2004. In addition to this profit, PSS also received \$40.6 million in "Transfers from Affiliates" in 2004. App. Ex. No. 39(A). St. Joseph Campus had "Net Earnings" of \$137,866 in 2004 when the Campus was 94% occupied. App. Ex. No. 41(A). PSS argues in its Post-Hearing Brief that the "Campus depends on [its donations of \$88,865] and, without them, St. Joseph would be operating at a net loss, and staffing programs would need to be reduced." According to the Post-Hearing Brief, the donations are "material" to the operations of St. Joseph Campus. PSS Brief, pp. 40-41.

These statements are not supported by the financial data. As discussed above, the donations of \$88,865 represent 1.4% of St. Joseph Campus' "Total Revenue" of \$6,111,586 in 2004. App. Ex. No. 41(A). It is unclear in what sense this 1.4% was "material" to the operation of the subject property. Moreover, if St. Joseph Campus had not received the \$88,865 in donations, the Campus would have had "net earnings" of

\$46,906 (\$135,771 minus \$88,865) in 2004. Clearly, St. Joseph Campus would not be operating at a net loss without the donations.

In 2004, St. Joseph Campus paid “PSS Management Fees” in the amount of \$503,056. The counterpart of this amount would appear to be the “Transfers from Affiliates” of \$40.6 million which appears on PSS’s Income Statement for 2004. App. Ex. No. 39(A). There was no testimony at the evidentiary hearing regarding the “management fee” that St. Joseph Campus paid to PSS in 2004. The management fee appears to be similar to the fee paid by a condominium association to a commercial management company for managing the condominium property.

The issue of the management fees paid by St. Joseph Campus to PSS in 2004 for management of the property, and PSS’s corresponding “Transfers from Affiliates,” is directly related to the Korzen factor that considers whether the subject property provides gain and profit in a private sense to other persons or organizations. The management fee represents approximately 8% of St. Joseph Campus’ “Total Operating Revenue.” App. Ex. No. 41(A). There is no evidence in the record as to what services are performed by PSS for this fee. There is no evidence in the record as to whether 8% is a reasonable fee for whatever services are performed by PSS for St. Joseph Campus on the subject property.

In addition, St. Joseph Campus’ Income Statement shows “Provena Health Admin. & IS Fees” of \$146,856, representing 2.4% of St. Joseph Campus’ “Total Operating Revenue.” App. Ex. No. 41(A). There is no evidence in the record and to what services are performed by PHA for this fee. There is no evidence in the record as to whether 2.4% is a reasonable fee for whatever services are performed by PHA for St. Joseph Campus on the subject property.

There was testimony at the hearing that the Human Resources Department of PSS sets salaries after doing a “community review” of the going rate for salaries. Tr. pp. 152-154, 305-306, 375-376. The “community review” was not submitted into evidence. Ms. Parsek testified that employees are paid “reasonable amounts” and are not paid amounts that are “excessive in any way.” She testified that the salaries are in line with similar institutions and she “believed” that PSS paid “a little bit lower than for-profit” institutions. According to her testimony, no revenues generated by “St. Joseph Center” go to the benefit of private individuals. Tr. pp. 152-153. Mr. Gordon testified that “the salaries that we provide to our staff are fair and reasonable.” Tr. pp. 152-153. Ms. Kieffer was asked, with regard to PSS and St. Joseph Center, if the salaries paid can ever be excessive. She replied: “No. A not-for-profit cannot provide excess benefits.” Tr. p. 498.

PSS failed to provide documentation of any authority that these witnesses profess to base their testimony on regarding the issue of salaries paid to employees. No documentary evidence was offered to support any of the testimony on the reasonableness of the salaries or the monitoring of the salaries paid either by PSS or at St. Joseph Campus. No employee who testified was asked his or her salary. There was no testimony with regard to whether bonuses were paid to PSS employees or at St. Joseph Campus. PSS’s Form 990, “Return of Organization Exempt from Income Tax,” which would show compensation of PSS’s highest paid employees, was not offered into evidence.

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services

actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). The problem in the instant case, however, is that no documentary evidence was presented at the evidentiary hearing by PSS to support the testimony that the salaries paid by PSS and the salaries paid at St. Joseph Campus were “reasonable.”

It is well established in Illinois that a statute 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 (1st Dist. 1987). The issue of the reasonableness of both the salaries paid and the transfers from St. Joseph Campus and PSS’s other affiliates to PSS must be construed against PSS in this case. The transfers to PSS from its affiliates were \$40.6 million. Without legally sufficient evidence in the record putting these substantial transfers into any perspective as to reasonableness, I must conclude that St. Joseph Campus, through its payment of \$503,056 to PSS, and the transfers from PSS’s other affiliates, provide gain and profit, in a private sense, to PSS.

Additionally, the deficiencies in the evidence with regard to the reasonableness of the salaries paid by PSS to its employees and to employees at St. Joseph Campus does not allow me to conclude that PSS does not provide gain or profit to persons connected with it, namely its employees. The overwhelming deficiencies in the evidence force me to conclude that PSS’s use of the subject property is not consistent with the characteristic of a charitable organization that the organization not provide gain or profit in a private sense to persons connected with it.

Korzen factor (3): Charity is dispensed to all who need and apply for it.

Before determining whether PSS dispensed charity to all who needed and applied for it in 2004, it is necessary to look at what charity was actually dispensed by PSS and on the subject property.

There is no testimony or documentary evidence in the record of this case with regard to what charity and how much charity was dispensed by PSS in 2004. As stated previously, at the evidentiary hearing, PSS offered into evidence consolidated financial statements for PHA, which show a separate column for PSS. This separate column does not show an amount for “charitable contributions.” The notes to PHA’s consolidated financial statements state under “Charity Care” that “[P]rovena Health has a long tradition of serving the poor, needy and all who require health care services.” “Provena maintains records to identify and monitor the level of charity care it provided.” App. Ex. No. 39(A). Mr. Gordon testified that PSS and St. Joseph Campus “generate records that track things like charitable expenditures that are incurred by the facilities.” The organizations “account for and document the level of charitable contributions provided to the community.” Tr. p. 307. Whatever records PHA and PSS maintain showing PSS’s charitable contributions were not admitted into evidence. There is testimony in the record about the charitable expenditures on St. Joseph Campus in 2004, but as will be discussed below, there is also no documentation in the record supporting this testimony.

The Korzen criteria that a charitable organization dispense 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 Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). The omission from the record in this case of any evidence regarding this “essential criteria” for PSS must be construed against exemption for the subject property

and in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

In Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010), Provena Hospitals was the owner of the property at issue. The Court noted that the record in that case contained no information “as to Provena Hospitals’ charitable expenditures in 2002.” The Court observed that the Director of the Department of Revenue had reasoned that, without such information, it is simply not possible to conclude that the true owner of the property is a charitable institution as required by Illinois law. The Court fully agreed. *Id.* at 393. In the instant case, there is no evidence in the record as to the charitable expenditures in 2004 of PSS, the owner of the subject property. Without this evidence, it is simply impossible for me to conclude that PSS is a charitable organization, as required for exemption under 35 ILCS 200/15-65.³

In 2004, St. Joseph Campus’ summary of significant accounts show “Charitable Contributions @ Cost” of \$863,671. App. Ex. No. 42. Mr. Gordon testified that “greater

³ The evidentiary hearing in this matter was held on October 27, 28 and 31, 2008. On December 8, 2008, I granted PSS’s “Motion to Stay” the briefing schedule and the Recommendation in this case pending the issuance of the Illinois Supreme Court’s decision in Provena Covenant Medical Center. The Supreme Court’s decision was issued on March 18, 2010. A briefing schedule for the instant case was set on June 9, 2010. On June 14, 2010, PSS filed a “Motion to Re-Open the Record and Stay Post-Hearing Briefing” in the instant matter. PSS argued in this Motion that prior to the Supreme Court’s decision in Provena Covenant Medical Center, “the multi-factor Korzen test had been understood to apply to the constitutional standard of ‘charitable use,’ [and] not to the statutory ownership requirement set forth either in Section 15-65(a) or the other five alternatives for qualifying-ownership set forth in Sections 15-65(b) through (f).” PSS asked to reopen the record because the legal standards “flowing from the Provena Covenant plurality opinion are different than the standards as understood at the time of the [instant] administrative hearing.” I denied PSS’s Motion on June 17, 2010. In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734 (4th Dist. 2008), issued August 26, 2008, two months before the instant evidentiary hearing, the Appellate Court could not have been clearer in the section entitled “Ownership By an Institution of Public Charity,” that “in addition to the constitutional requirement that the property be used exclusively for charitable purposes, the General Assembly has set down a further requirement for the exemption: the property must be owned by an institution[] of public charity.” “Under Section 15-65(a), it will not suffice that the property is exclusively used for charitable or beneficent purposes...” *Id.* at 741. “[T]he owner of the property must be a charitable organization.” *Id.* at 742. PSS was on notice at the time of the instant evidentiary hearing that it had the burden of proving that PSS was a charitable organization and that the nature and amount of PSS’s charitable expenditures in 2004 were a necessary and indispensable part of this burden.

than 90%” of this amount is Medicaid shortfall.⁴ Tr. p. 331. In the skilled nursing facility in 2004, where more than 50% of the residents were on Medicaid, there was a shortfall of \$45/day, with Provena charging \$125/day and Medicaid reimbursing \$80/day. Mr. Howard testified that as he “sees it,” “the primary charitable mission is in serving the indigent elderly in our nursing home despite the under-compensation of the Medicaid program, what we call the ‘Medicaid shortfall.’ ” Tr. p. 76. “Charitable contributions” also include Medicaid shortfalls from the adult day care service and St. Vincent CLF/SLA, where, in both programs, 90% of the participants are eligible for Medicaid. Tr. pp. 318-323, 331-332. Mr. Howard characterized the Medicaid Program in Illinois as “abominably funded.” Tr. p. 62.

Ms. March testified that PSS consciously admits people that are enrolled in the Medicaid Program. “The reason that we do that is because it’s our mission. That’s what you do. You reach out to human need in the spirit of Jesus Christ. Those are the very people in need. Of course we’re going to admit those people with that funding source.” Tr. pp. 389-390. Ms. March testified that over 50% of the residents in the nursing home are on Medicaid, “virtually all” attendants in the day care center are Medicaid funded and the Campus as a whole is over 80% Medicaid-funded. Tr. p. 388.

It must be noted that there is no evidence in the record that beds could be filled by private pay patients if St. Joseph Campus did not accept Medicaid patients. St. Joseph Campus earned 25% of its Total Operating Revenue from Medicaid patients. So whereas

⁴ It is unclear from the record how this shortfall is calculated. App. Ex. No. 42 labels the shortfall “Charitable Contributions @ Cost.” However, the “Notes to Consolidated Financial Statements” for PHA for December 31, 2004 and 2005, state under “Charity Care” that the unpaid costs of Medicaid and other public programs represent the cost, “using a cost to charge ratio,” of providing services to beneficiaries of public programs. There is no testimony in the record as to how the “cost to charge ratio” is calculated, and whether the shortfall included a mark-up and how much the mark-up is.

it may be PSS's "mission" to accept Medicaid patients, from a business perspective, the decision is both profitable and prudent.

Mr. Howard testified that St. Joseph Campus makes a profit from Medicare patients. "Medicare for long-term -- for nursing homes actually pays very well, unlike the hospitals." Mr. Howard testified that "we actually make a profit on our Medicare which are people coming after the hospital, for short-stay care, typically for about a month, for rehabilitation and skilled nursing, before they go home." "And we have grown that business as deliberately as we can, if we can, because that profit is then used to subsidize the Medicaid residents." Tr. p. 81.

Illinois courts have consistently rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603 (3rd Dist. 2003), Riverside argued, as does PSS, that the institution's charity care also included "discounted care to patients through Medicare, Medicaid and private insurance." Riverside claimed to provide this care at 50% of actual cost. The court stated that it was "unpersuaded" by Riverside's arguments that the unreimbursed amounts constituted charitable care. The court was "confident that these discounts are not charitable and do not warrant a finding in favor of Riverside." *Id.* at 610. A similar argument was advanced in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where Alivio argued, *inter alia*, that 78% of its patient fees came from Medicaid reimbursement and 2% came from Medicare reimbursement. The court found that Alivio was not a charitable organization and its use of the property was not charitable.

In Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010), Provena Hospitals similarly argued that its shortfall from treatment of Medicare

and Medicaid patients should also be taken into account as charitable expenditures arguing that the payments it received for treating such patients did not cover the full cost of care. The Court noted that participation in Medicare and Medicaid is not mandatory and stated the following: “While it is consistent with Provena Hospitals’ mission, it also serves the organization’s financial interests.” “In exchange for agreeing to accept less than its ‘established’ rate, the corporation receives a reliable stream of revenue and is able to generate income from hospital resources that might otherwise be underutilized.” “Participation in the programs also enables the institution to qualify for favorable treatment under federal tax law, which is governed by different standards.” *Id.* at 401-402.

The Court observed that it would be “anomalous” to characterize services provided to Medicare and Medicaid patients as charity. Charity is, by definition, a type of gift and must be gratuitous. “Hospitals do not serve Medicare and Medicaid patients gratuitously. They are paid to do so.” *Id.* at 402. “For a gift (and, therefore, charity) to occur, something of value must be given for free.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 751 (4th Dist. 2008). In serving Medicare and Medicaid patients, something of value is not being given for free.

Mr. Howard reinforced the Supreme Court’s statements with his testimony that St. Joseph Campus earns a profit from Medicare patients, which is then used to subsidize Medicaid patients. St. Joseph Campus grows that “business” as deliberately as “we can, if we can.” Tr. p. 81. It is simply impossible for me to conclude, based on the testimony and on Illinois’ established case law, that the unreimbursed costs of Medicaid, which are subsidized by the profits that St. Joseph Campus earns from Medicare, constituted

charitable care or that St. Joseph Campus' Medicaid differential constituted a charitable expenditure.

PSS argues in its Post-Hearing Brief that “none of [the] excess costs incurred by Provena St. Joseph constitute ‘Medicaid shortfall’ as that term has come to be known.” In the Nursing Center, “the State requires a basic standard of care -- hot dogs or baloney for dinner, for example – and Medicaid pays nursing homes for that standard of care.” “But Provena St. Joseph provides not only the basics but also much more.” “It voluntarily hires extra staff, for example, so residents can receive individualized care -- not the group, institutionalized care typically associated with nursing homes.” These extra services “are an attempt to make the Nursing Center more like a person’s home.” PSS Brief, pp. 36-37.

I do not interpret the Supreme Court’s decision in Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010), as giving me discretion to determine whether “Medicaid shortfall” constitutes charity. PSS is asking me to determine, in effect, that the roast beef that they serve their residents, rather than the hot dogs or baloney that Medicaid reimburses them for, constitutes charity. If I could determine that the roast beef constituted charity, I would have to subtract the Medicare profit that Mr. Gordon testified subsidizes the Medicaid shortfall from the cost of the roast beef. In fact, whether to serve roast beef or baloney is a business decision that PSS makes, and I am confident that this decision is geared toward marketing St. Joseph Campus and its services. If I did have the discretion to make the absurd determination that the roast beef served at St Joseph Campus constituted charity, the record provided by PSS is woefully inadequate. No breakdown of the \$863,671, which Mr. Gordon labeled as “Medicaid shortfall,” was provided in the record. Tr. p. 331.

Furthermore, even if the Supreme Court had not definitively decided that Medicare and Medicaid differential did not constitute charity, I would still be unable to conclude that St. Joseph Campus' Medicaid differential was charitable. Mr. Gordon testified that PSS charges \$125/day with Medicaid reimbursing at \$80/day. There was no testimony with regard to PSS's profit on its daily charge of \$125/day. If PSS's costs are less than the reimbursement from Medicaid, they would be making a profit on the Medicaid patient. So comparing PSS's daily charge against Medicaid's reimbursement, without knowing PSS's cost of providing the services, distorts the shortfall, and prohibits me from determining that the shortfall is, in fact, charitable.

It cannot be questioned that PSS made a business decision to accept Medicaid patients. The Income Statement Summary shows that 35% of St. Joseph Campus' "Total Operating Revenue" is from Medicare and Medicaid. App. Ex. No. 41. It is clear from these figures that St. Joseph Campus earns the majority of its revenue, 65%, from private pay patients. Assuming, *arguendo*, that providing medical care to Medicare and Medicaid patients was a charitable activity in Illinois, PSS is still not using St. Joseph Campus for exclusively charitable purposes. The majority of the revenue on the Campus is from private pay patients, forcing me to conclude that the Campus is used primarily for the business purpose of providing medical care for a fee, rather than for exclusively charitable purposes.

St. Joseph Campus' charitable contributions also include making facilities on the subject property available for outside organizations, including Alzheimer's support groups, and the time that the Campus' staff donates to food pantries in the community and "other unreimbursed or under-reimbursed services." Tr. pp. 155, 320-321. Ms. Parsek testified that "a lot of times our staff uses company time to go in the community

and either serve meals at Salvation Army or something like that, and that personally costs me because I pay for their salaries while they are out there.” Tr. p. 119. There was testimony that the Campus grounds are open to the general public to use as a park, free of charge. Tr. pp. 114, 155-57, 514-515. Playground equipment has been installed so that neighborhood children can have a safe location to play. Tr. pp. 114-115, 159.

Mr. Gordon testified that “[F]rom time to time, we have residents who are treated for free.” “From time to time it may either be someone who is a resident in the nursing home or someone who is receiving adult day care services that does not have the capacity to pay or is not eligible for a government form of reimbursement.” Tr. p. 335. He testified that the recipient of this “charity” would be a private pay patient. “So there would be private pay revenue of, say, \$5,000, and there would be a contra revenue account for a private pay charity care of \$5,000 which would offset it and it would summarize in the revenue section of the summary financial statement that you see.” Tr. pp. 335-336. Mr. Gordon acknowledged, however, that the contra revenue account that would show private pay charity care was not a “separate line item” on the financial information admitted into evidence as App. Ex. No. 41. Mr. Gordon was asked the following question on cross-examination: “So there is no way you can tell from looking at this that you’re deducting some—making some kind of a deduction from private pay revenue?” He responded: “Not from this document, no.” Tr. pp. 336-337.

Unfortunately, no financial statement admitted into evidence for PSS or St. Joseph Campus contains a contra revenue account, showing any charity care extended to any private pay patient who was “not eligible for a government form of reimbursement” in 2004. I must conclude, from the lack of documentary evidence in the record, that no

private pay patient, and no patient who was ineligible for government assistance, received charitable assistance from either PSS or on St. Joseph Campus in 2004.

There is, however, anecdotal testimony, but no documentary evidence, in the record concerning two people receiving charitable assistance at St. Joseph Campus. Ms. Parsek testified that Sister Mary Gabriel “was charity care up to about a year ago.” Sister Mary Gabriel worked at the orphanage on the subject property.⁵ In 2004, Sister was Director of Pastoral Care on the Campus and she “worked on that Campus for many, many years. She since has retired.” Tr. pp. 73-74. Ms. Parsek testified that Sister was in an apartment in 2004, “but I was pretty much covering the cost of the apartment.” Tr. pp. 139-140. It is unclear from the record whether Sister’s apartment was on St. Joseph Campus. It is unclear from the record what the “cost” of Sister’s apartment was. It is unclear from the record how the “cost” of Sister’s apartment constituted charity care when Sister was apparently performing services on the subject property.

Mr. Howard also testified that St. Joseph Campus had “an elderly priest,” “Father Clarence,” who provided service to residents on the Campus. “When he ended up in the nursing home, he was completely indigent. We took care of him for – in excess of a year and a half without ever sending him a bill because we felt that was the right thing to do for the service that he had done and just as a charitable organization.” Tr. pp. 61-62. No documentary evidence was admitted showing the cost of Father Clarence’s care in 2004, the year at issue in this proceeding. Mr. Howard was unsure if Father Clarence died in 2004 or 2005. Tr. p. 62. Ms. Parsek testified that she was “thinking 2003 is when [Father Clarence] was moved there. Maybe it was 2004.” Tr. p. 140. It is unclear from the

⁵ It is unclear from the record exactly when the orphanage closed. On June 14, 1996, St. Vincent’s Home for Children conveyed the subject parcels to ServiceCor, Inc. App. Ex. No. 5.

record whether PSS paid Father Clarence for the “services” he provided to residents on the Campus when he was apparently physically able to do so.

Not sending Father Clarence a bill may have been the “right thing” for PSS to do and it may also have been the “right thing” to cover the cost of Sister Mary Gabriel’s apartment, wherever it was and whatever it cost. But it is difficult for me to view these undocumented expenditures, that may or may not have been dispensed in 2004, to an elderly priest, who had provided service to the residents on the Campus, and to an elderly nun, who had worked on the Campus for “many, many years,” as “charity.” In order to obtain an exemption for charitable use of property, an organization is required to prove that its primary purpose is charitable. As discussed previously, there is no evidence in the record that any private pay patient or any patient ineligible for government assistance received charity care either from PSS or on the subject property in 2004. But PSS is arguing that in 2004, the use of the subject property was exclusively charitable because PSS, part of PHA’s “Catholic health system,” may have dispensed some undocumented “charity” to a Catholic priest and covered the cost of an apartment for a Catholic sister, who had both previously worked and provided services on the subject property.

There is no testimony or documentary evidence in the record as to the monetary value of PSS allowing other organizations to use the premises, the time that the staff donated to food pantries and the Salvation Army, or the installation of playground equipment on the Campus grounds. Mr. Gordon testified that in 2004, greater than 90% of St. Joseph Campus’ charitable contributions of \$863,671 were Medicaid shortfall. Tr. p. 331. Assuming then that charitable contributions, excluding the Medicaid shortfall, amount to 8% of St. Joseph’s Campus’ “contributions” of \$863,671, these contributions

would have a monetary value of approximately \$69,000.⁶ Ms. Parsek testified that St. Joseph Campus cares for people after their funding has been exhausted and that this form of charity amounts to “significant dollars.” Tr. pp. 148-149. Because the record of this case contains no documentation of the charitable expenditures, I must assume that the \$69,000 represents the cost of Sister Mary Gabriel’s apartment, the bill not sent to Father Clarence, salaries for employees working at food pantries and the Salvation Army, making the Campus facilities available to outside organizations, the installation of playground equipment on the subject property for the neighborhood children and “other unreimbursed or under-reimbursed services.”

The \$69,000 represents 1.1% of St. Joseph’s Campus’ “Total Revenue” of \$6,111,586. App. Ex. No. 41(A). The \$69,000 is approximately \$20,000 less than the \$88,865 in “Unrestricted Contributions” that St. Joseph Campus received in 2004. The \$69,000 is approximately \$430,000 less that St. Joseph Campus paid PSS for management fees in 2004. “To be charitable, an institution must give liberally.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). Based on the record in this case, I cannot conclude either that PSS has given “significant dollars” or given “liberally” at St. Joseph Campus in 2004.⁷ In order to obtain an exemption for charitable use of property, an organization is required to prove that its primary purpose is charitable. The estimate of the Campus’

⁶ Based on the testimony, it would be fair to conclude that charitable contributions on St. Joseph Campus, other than the Medicaid shortfall, could be as low as 1% of \$863,671, or \$8,636.

⁷ Some of the charitable activities that are at issue here, such as the installation of playground activity, unquestionably benefit the community. However, “community benefit is not the test.” “Under Illinois law, the issue is whether the property is used exclusively for a charitable purpose.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010). Furthermore, I assume that the time that the Campus staff donates to food pantries and the Salvation Army does not even occur on the subject property making the inclusion of this “charitable” activity even more questionable. Mr. Gordon testified that records are kept of the amount of time that the staff spends at food pantries and PSS allocates the staff’s hourly rate of compensation and benefits towards the charitable contribution. Tr. p. 332. No records documenting this “contribution” were admitted into evidence.

charitable expenditures in 2004, both in terms of dollars and percentages and in terms of the testimony regarding the undocumented assistance provided to one priest and one nun, fall far short of meeting the primary purpose standard.

PSS's "Financial Assistance Policy," effective March 23, 2004, states that "[I]ndigent residents eligible for our services are eligible for the Medicaid program. The State of Illinois determines the amount the individual residents are able to pay. The per diem reimbursement from Medicaid is less than our per diem cost to provide services. Therefore, under-compensated care [provided] through the Medicaid program is our primary form of charity care." Tr. pp. 274-277, 366; App. Ex. No. 36. PSS's Financial Assistance Policy puts PSS in the unsustainable position of arguing that the organization dispenses charity to all who need and apply for it when their "primary form of charity care," including over 90% of their "charitable" expenditures on the Campus, is not recognized by established case law in Illinois as charity.

Additionally, "... [T]he Korzen factor that charity be dispensed 'to all who need it' is not limited to the past but also requires an assessment of future policy." Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995). PSS's Financial Assistance Policy states that "[F]acilities may include in their operating budget a specific expense amount to be used to cover the cost of financial assistance during the calendar year." App. Ex. No. 36. St. Joseph Campus' financial statements include a "budget" column but the column is empty. App. Ex. No. 41(A). There is no testimony in the record that would allow me to assess PSS's future policy on financial assistance or whether any amount for charitable care is budgeted.

Furthermore, PSS did not offer any evidence in the record as to the standard or benchmark that PSS used in budgeting for financial assistance and whether this standard

or benchmark included the provision of charitable assistance to non-Medicaid patients. Without a standard or benchmark, I cannot determine that PSS will provide charitable assistance on St. Joseph Campus in the future. Therefore, whether PSS will provide a sustainable level of financial assistance to non-Medicaid patients in the future on St. Joseph Campus, while it would be enjoying the financial benefits of the property tax exemption that it is requesting from this tribunal, is pure speculation.

No testimony or documentary evidence was admitted showing PSS's charitable contributions in 2004 and I am unable to conclude that PSS possesses the characteristic of a charitable organizations that it dispenses charity to all who need and apply for it. Additionally, I am unable to conclude that the subject property is exclusively used for charitable purposes based on my estimate that only 1.1% of St. Joseph Campus' revenue was used for "charity" care, with this 1.1% being unproven, undocumented, generally unspecific as to the year at issue, and questionable as to whether its individual components would truly be recognized as "charity" under Illinois case law.

Korzen factor (4): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

As noted in the discussion of Korzen factor (3), above, greater than 90% of the "charitable benefits" dispensed on St. Joseph Campus in 2004 were for Medicaid shortfall. Tr. p. 331. The established case law in Illinois does not recognize this shortfall as charity. The only testimony in the record with regard to specific persons, not on Medicaid, receiving charitable benefits on St. Joseph Campus, was the testimony about Sister Mary Gabriel and Father Clarence, discussed above. Tr. pp. 61-62. It would clearly be unreasonable for me to conclude that an "indefinite number of persons" derived benefits either from PSS or on St. Joseph Campus in 2004, when the only

testimony in the record is that two members of a religious community, who had previously provided services on the subject property, received benefits.

PSS does have a “Financial Assistance Policy” effective March 23, 2004. Financial assistance will be provided when “feasible and within the resource limitations of the entity.” Financial assistance is “limited by the need for responsible stewardship of facility and PSS resources.” The Policy states that “[E]ach PSS facility will seek to provide financial assistance when appropriate, and within the resource constraints of the facility to eligible residents/clients (hereinafter referred to as ‘residents’).” One of the criteria for determining whether financial assistance will be granted is “date of admission to the facility.” App. Ex. No. 36.

The Policy requires that residents applying for financial assistance will be asked to complete an application. “Residents should be informed at the time of application that no guarantee of approval exists.” Once approved for financial assistance, the facility has the right to revoke the status and approval at any time. All income of the resident will be used toward the cost of the care provided by the facility. “Financial assistance will only be used to supplement such income when such income is inadequate to pay for continued care at the normal fee rates of the facility.” Criteria that will be used to determine if the resident qualifies for financial assistance will conclude, “but not be limited to,” date of admission to the facility, degree of financial need, availability of the facility’s resources for the provision of financial assistance, degree of ability to pay by the resident and their family, severity of impact upon the resident if relocation is required to another long-term care facility, special relationship to the facility or to PSS, if any, held by the resident, and other factors as determined by the Financial Assistance Review Committee. App. Ex. No. 36.

An “indefinite number of persons” cannot receive charitable benefits under PSS’s Policy because the benefits are limited by feasibility, appropriateness, PSS’s resources, resource constraints of the facility, and the need for responsible stewardship. If a resident receives charitable assistance under the Policy, the assistance may be revoked at any time. No reasons are stated in the Policy as to why PSS would revoke financial assistance. Given these facts, it is not unreasonable to conclude that PSS could revoke the assistance on a whim.

Additionally, the Financial Assistance Policy applies only to residents. The application for financial assistance requires the applicant to list their date of admission to the facility. There is no provision in the Policy for financial assistance to prospective residents. If an “indefinite number of persons” were to receive charitable benefits under this policy, these persons would be current residents, not prospective residents. Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits people who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). The record in this case does not show that any resident, who was unable to pay for the services provided and was ineligible for government assistance, was admitted to St. Joseph Campus in 2004, even though there were beds available.

There was testimony at the hearing that St. Joseph Campus has never turned away anyone in need for any reason and there is no limit on free or discounted care. Tr. pp. 149-150. There was testimony that there is never any screening or any other type of action to attempt to limit those who are provided with financial assistance or free care.

Tr. pp. 146-150, 366. According to the testimony, St. Joseph Campus provides free care to all who need and apply for it. Tr. pp. 150, 303-304, 366.

However, the minimal amount of non-Medicaid charitable assistance provided by PSS on the Campus, amounting to approximately \$69,000 by my estimate, cannot be rationalized by the argument that an indefinite number of persons in the geographical area did not need financial assistance. Ms. Parsek testified that “available space” is what limits the Campus in providing financial assistance. “It’s a matter of how many beds are available.” Tr. pp. 145-147. St. Joseph Campus’ Income Statement for 2004 shows overall occupancy on the Campus of 94%. Clearly there were beds available in 2004.

Mr. Gordon testified that “the primary purpose of existence of Provena Senior Services is to provide the care for the poor and less fortunate within the community that we serve.” Tr. p. 303. I must conclude that if the number of poor, uninsured and underinsured residents in Stephenson County is so small that only two people, an elderly priest and a nun, needed charitable assistance in 2004, the opportunity for PSS to further its “primary purpose” in Stephenson County is virtually nonexistent. If PSS were truly using St. Joseph Campus exclusively for charitable purposes, one would expect to see an indefinite number of persons, at least a number of persons greater than two, covered by PSS’s Financial Assistance Policy. An examination of the evidence demonstrates that the number of persons receiving free or discounted care and the actual dollar value of the care were *de minimis* and the subject property was devoted to the medical care of patients in exchange for compensation through private insurance, Medicare or Medicaid or direct payment from the recipient of the service. PSS’s primary purpose in operating St. Joseph Campus is more “temporal” than as professed by Mr. Gordon. Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368 (2010).

The Korzen factor at issue here also requires a consideration of whether PSS's benefits reduce a burden on government. This factor has been a long-standing component of Illinois' charitable exemption analysis with the focus being on whether the charitable benefits reduce a burden on either state or federal 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). There is no credible evidence in the record of this case showing that PSS reduces any burden on state or federal government.⁸

Ms. Parsek testified that "some of the people that we maintain, especially our day care," would be in government institutions if it were not for the charitable services and contributions made by PSS at St. Joseph Campus. Tr. p. 150. Ms. March testified that by providing the "very supportive environment" in the Adult Day Care Center, "we can keep those people functioning very well in their home-type setting, and this is a far lower cost from a government perspective than having someone going into a nursing home." Tr. p. 368. Similarly, Mr. Blum testified that St. Joseph Campus is the "only place in the community that provides adult day care." Tr. p. 511. "And without the Adult Day Care Center in the community, many seniors would prematurely go into a nursing home, which is more expensive to the government." PSS Brief, p. 33.

⁸ See Footnote 2, *supra*. PSS also moved to reopen the record in the instant matter to introduce supplemental evidence regarding the Supreme Court's statement that "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 government functions." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734 (4th Dist. 2008), *aff'd*, 236 Ill. 2d 368, 395 (2010). In this Recommendation, I have not considered this "sine qua non," and whether PSS has relieved the burden of specific "affected taxing bodies," but instead have looked solely at whether the operations on the subject property reduce a burden of the state or federal government.

PSS did not refer me to, and my own research does not indicate, any Illinois statute that would require any governmental entity in this state to operate and maintain an adult day care center. If there is no such requirement in Illinois, there is no burden on government for PSS to relieve. Additionally, there is no evidence in the record to support the testimony and PSS's argument that attendants in the Adult Day Care Center would go into a nursing home "prematurely" if the day care on the subject property did not exist. There is no evidence in the record that shows or proves that attendants go into nursing homes when they cannot attend day care. Absent this evidence, I must presume that if the Adult Day Care Center on the subject property did not exist, families of the attendants would make other arrangements, which would not necessarily involve putting the attendant into a nursing home. The argument that the Adult Day Care Center saves attendants from entering a nursing home is pure speculation by PSS with no support in the record to substantiate the argument.

PSS also argues that the nursing center on the subject property relieves a burden on government. Mr. Blum testified that "we do have four nursing homes in the region, one being the county nursing home." "Two of those don't provide a great deal of Medicaid or public aid beds. Most of them are provided by [PSS] or the county." According to Mr. Blum, "without [PSS], [the county] wouldn't be able to cover the so-called load of taking care of the public aid residents that we have." Tr. p. 511. Ms. Parsek was asked if patients in the long-term care facility could be "handled" by the county home if PSS was not providing them charitable assistance. She responded as follows: "To a degree, to whatever beds they had. Otherwise, they wouldn't be able to handle them either. So they would have no place to go." Tr. pp. 151-152. "However, if Provena St Joseph stopped providing nursing services, the County nursing facility could

not handle all the poor and Medicaid-eligible seniors in the community.” PSS Brief, p. 33.

There are several problems with this testimony and PSS’s arguments on the matter. 55 ILCS 5/5-1005 states that each county in Illinois “shall have the power” to erect and maintain a county sheltered care home or county nursing home. However, the statute does not require a county to erect and maintain such a home and PSS has not referred me to any statute that would so require. Accordingly, there is no “government burden” that PSS relieves by operating the long term care facility on the subject property.

Furthermore, if the nursing facility on the subject property refused to accept Medicaid patients, it is again pure speculation to assume that all patients in the nursing home would end up in county facilities. As the testimony indicates, there are two other nursing homes in the county that take Medicaid or public aid beds. It is possible that patients from St. Joseph Campus could relocate to these two homes. Also, there is no evidence in the record showing what county the nursing home residents at St. Joseph Campus are from. People in the nursing home may be from counties other than Stephenson County. If they were to go into a government-run nursing home, it is again pure conjecture that they would all end up in Stephenson County’s nursing home. These patients may choose facilities run by other counties if PSS refused to accept Medicaid patients.

The medical services offered by PSS on the subject property were for value received, with this value either paid by insurance companies, the patients themselves, or by the government. Services extended for value received, including those services paid for by the government, cannot relieve the government of a burden, and in the instant case, PSS has also failed to prove that the government actually had any burden with regard to

residents on the subject property. There is simply nothing of fact in the record of this case which would lead me to conclude that the federal and state government would have an increased burden if PSS did not own and operate St. Joseph Campus. I am unable to conclude from the record that the benefits derived from PSS on the subject property are for an indefinite number of persons or that PSS reduces a burden on federal or state government. PSS's use of the subject property is not consistent with this characteristic of a charitable organization.

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.

Brochures advertising the “Adult Day Center” and “Respite Care” state that “[W]hether your loved one is above or below 60 years old, we have found that financial assistance is available for most of the clients that we serve. In addition, private pay rates are available.” Tr. pp. 429-432; App. Ex. No. 24. PSS also produces materials advertising that there is a “Financial Assistance Program Available.” The advertisement states that “[S]ubject to availability in our Medicaid-certified beds, residents will be assured of their ability to remain within our facility regardless of their ability to pay privately for their care.” “Throughout Provena Senior Services, continued care for residents (those unable to pay) without public or private funding will be considered on a case-by-case basis. Please contact our Administrator with any questions.” Tr. p. 186; App. Ex. No. 38.

Ms. Parsek testified that the Financial Assistance Program is advertised in “large posters that are in all of our households.” Tr. pp. 141-142. There are “regular posters, big posters” in the rest of the facilities. Tr. p. 144. The availability of financial

assistance is made known in the posters in both English and Spanish. Tr. pp. 172-173. Mr. Gordon testified that PSS has posters on display within the ministry that promote the financial assistance policy. Tr. p. 33.

I conclude that what PSS is advertising with their “Financial Assistance Program Available” materials and posters is that PSS and St. Joseph Campus accept Medicaid patients. As discussed previously, the Illinois Supreme Court has definitively ruled that treating Medicaid patients does not constitute charity. Accordingly, based on the Financial Assistance Program materials admitted into evidence, PSS cannot possibly possess the characteristic of a charitable organization that it not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses on St. Joseph Campus. PSS is not dispensing charitable benefits on St. Joseph Campus. It is treating Medicaid patients, and it advertises accordingly. This clearly is an obstacle in the way of those needing charitable benefits, but unable to qualify for Medicaid.

Assuming, *arguendo*, that treating Medicaid patients was a charitable endeavor, there are still obstacles present in PSS’s Financial Assistance Program. PSS’s Financial Assistance Policy states that when a Medicaid bed is not available, thus limiting a resident from being maintained as a Medicaid-funded resident, that resident may be afforded the opportunity to request continued care through financial assistance funding. “When the facility cannot retain additional Medicaid residents, the resident affected will be assisted in relocating to another long-term care facility that will accept them under this funding Program.” App. Ex. No. 36.

If accepting Medicaid patients were charity, this “charity” would be limited by the “availability” of Medicaid-certified beds on St. Joseph Campus. This is an obstacle in the

way of anyone requesting a Medicaid-certified bed when these beds are no longer available. The Financial Assistance Program advertisement makes clear that continued care for residents whose funding has run out will be considered on a “case-by-case basis.” There is obviously no guarantee here that PSS will cover a patient’s care when their funding has run out. This is also an obstacle in the way of those needing charitable assistance when their funding sources are no longer available.

Nowhere in the advertised Financial Assistance Program does it state that if a resident enters the facility as a private pay patient, PSS will cover them if their insurance or personal funds run out and they are ineligible for Medicaid. The record does not allow me to conclude that prospective or current private pay patients at St. Joseph Campus would know that charitable assistance was available if their funding ran out and they were ineligible for Medicaid. This is a significant obstacle in the way of any prospective or current resident who wished to reside or continue at the Campus when their funding had run out. As discussed previously in this Recommendation, there is no evidence in the record showing that PSS extended charity to any private pay patient in 2004, other than the anecdotal testimony about a priest and a nun. The record in this case shows, then, that not only does PSS not advertise that they extend charitable benefits to private pay patients whose funding has run out, but PSS did not, in fact, extend charitable benefits to this class of people in 2004, when there was available space on the subject property. This is an obstacle in the way of those in this group needing or anticipating the need for charitable benefits.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (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.” *Id.* at 281. Similarly, in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. In 2004, the extent of PSS’s “charitable nature” was that it accepted Medicaid patients on St. Joseph Campus. People who are not on Medicaid are not made aware by PSS that free care may be available to them, with the record showing that it is not, in fact, available to them on St. Joseph Campus. As a result of this, PSS does not satisfy the legal requirement that a charitable organization must dispense charity and not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004).

PSS’s Financial Assistance Policy gives no indication as to how facilities, including St. Joseph Campus, should budget for financial assistance. The Policy states that financial assistance is “limited by the need for responsible stewardship of facility and PSS resources” and that once approved for financial assistance, the facility has the right to revoke the status and approval at any time, for any reason deemed appropriate by the facility Administrator. App. Ex. No. 36. PSS’s advertised Financial Assistance Program materials states that those unable to pay be considered on a case-by-case basis. App. Ex. No. 38. The documents concerned with PSS’s financial assistance on St. Joseph Campus make it clear that funds are limited and that there is no guarantee that financial assistance will be available to a resident when requested. If a resident did receive financial assistance, and there is no documentary evidence in the record that any resident did

receive financial assistance at St. Joseph Campus in 2004, there is no guarantee that this financial assistance will be available “at any time thereafter.” Because of the overwhelmingly speculative nature of PSS’s financial assistance, it is difficult to consider it as a factor which truly governs the operations of St. Joseph Campus.

The speculative nature of PSS’s Financial Assistance Program is obviously an obstacle in the way of those needing assistance. In any given year, the number of residents at St. Joseph Campus needing assistance from PSS may exceed the budgeted and available amounts, and this could occur as PSS enjoyed the substantial financial benefits of the property tax exemption that they are requesting from this tribunal. The record in this case forces me to conclude that PSS places obstacles in the way of those who would avail themselves of charitable benefits on St. Joseph Campus. The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is also “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 Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). PSS’s use of St. Joseph Campus is not consistent with this characteristic of a charitable organization.

The exclusive and primary use of the property is for charitable purposes.

I have balanced the above considerations against factors showing some charitable activities on the subject property in 2004. Ms. Batten testified that approximately 60 people volunteer at the Adult Day Care Center. Volunteers entertain the participants, and help with bingo, meals and feeding. There is a “gentleman who comes every Friday and does like a men’s group.” Tr. pp. 428-429; App. Ex. No. 30. Ms. Parsek testified that volunteers from the community assist at St. Joseph Center. Volunteers socialize with the

residents, read books to residents, take them to and from church, assist with crafts and work on the computer or pass out juice. Tr. pp. 180-182. She also testified that the day care center on the subject property “is used by the community for some support groups, Alzheimer’s, some others.” Tr. p. 155.

Ascertaining whether property is exempt under 35 ILCS 200/15-65 requires a determination as to whether charity is the primary use of the property or 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 (1st Dist. 1987).

In 2004, PSS failed to satisfy five of the five Korzen factors, used to determine whether an entity is used “exclusively” for charitable purposes. St. Joseph Campus earned \$6,111,586 in revenue from providing its services in 2004 and provided, by my estimate, \$69,000 in undocumented charitable assistance of an unspecified nature. This \$69,000 may have covered the medical costs and apartment of a priest and a nun who provided services on the subject property. By way of comparison, in 2004, St. Joseph Campus paid PSS a management fee of \$503,056 and paid PHA an “Admin & IS Fee” of \$146,856 and had net earnings of \$135,771.

This, along with a consideration of all the facts relating to the operation of the subject property in 2004, establishes that PSS’s “charity” on this property represents an incidental act of beneficence that is legally insufficient to establish that PSS “exclusively” uses its property for charitable purposes. Rogers Park Post No. 108 v.

Brenza, 8 Ill. 2d 286 (1956). It is clear from the record in this case that PSS provides medical care at St. Joseph Campus to those who have the funds to pay for it, either privately or through government funding. Illinois courts have determined that these factors do not constitute a charitable purpose sufficient to qualify for the requested exemption. The record in this case does not allow me to conclude that the exclusive and primary use of the subject property is for charitable purposes and accordingly, I recommend that the Department's determination denying the exemption for charitable purposes be affirmed.

CONCLUSIONS OF LAW: RELIGIOUS EXEMPTION

The provisions of the Property Tax Code that govern religious exemptions are found in 35 ILCS 200/15-40. Section 200/15-40(a) exempts property used exclusively for religious purposes, school and religious purposes or orphanages as long as the property is not used with a view to profit. Section 200/15-40(b) exempts property that is owned by churches, religious institutions or religious denominations and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside. The statute states specifically that “[A] parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.”

35 ILCS 200/15-40.

St. Joseph Campus was historically an orphanage known as “St. Vincent’s Home for Children,” maintained by the Diocese of Rockford. On or about June 14, 1996, St. Vincent’s Home conveyed the subject property to ServiceCor, Inc. On or about October 10, 1997, ServiceCor, Inc. conveyed the subject property by quit-claim deed to Cor Unum. On November 30, 1997, the religious community which sponsors Cor Unum, Servants of the Holy Heart of Mary, consolidated with two other religious communities, Franciscan Sisters of the Sacred Heart and Sisters of Mercy of the Americas, to form Provena Health. As a result of this consolidation, Cor Unum changed its name to Provena Senior Services, which is the current owner of the subject property. PSS is a wholly-owned subsidiary of PHA. PHA’s board of directors consists of two members from each of the sponsoring religious congregations, *inter alia*. Tr. pp. 21-22, 78, 97-100, 263-269, 288, 353, 498-499, 502-504; App. Ex. Nos. 5, 8, 43.

St. Joseph Campus is, in part, a “housing facility” that is owned by a religious institution, PSS. There is testimony in the record regarding two persons who performed “religious related activities” on the subject property in 2004. Mr. Howard testified that Sister May Gabriel, who originally worked in St. Vincent’s Home for Children on the subject property, was the Director of Pastoral Care on the St. Joseph Campus in 2004. According to his testimony, her responsibilities included assessing and supporting the spiritual needs of the patients who chose to receive such support as well as to arrange for celebrations of Christian holidays. She spent time at the bedside of dying individuals and provided comfort and solace to the dying and their families. Tr. pp. 74-75. Ms. Parsek testified that Sister Gabriel “worked from the orphanage up until now.” In 2004, Sister was in an apartment with “Provena pretty much covering the cost of her apartment.” Tr.

pp. 139-140. It is unclear from the record whether the “apartment” was located on the subject property.

Mr. Howard testified that Father Clarence lived on the subject property and provided services to residents there. Tr. pp. 60-61. Ms. Parsek testified that Father Clarence “was in the facility in – I’m thinking 2003 is when he was moved there. Maybe it was 2004. I’m not exactly sure because he lived – he lived on our campus in the rectory.” “And then he needed to move into the nursing home.” Tr. pp. 140-141. Monsignor Doherty testified that he was “unaware” of any “third order” religious that resided on the subject property. “Third order” religious members make a life commitment to a religious order as part of their piety and their personal practice. Tr. pp. 38-39.

The above testimony is insufficient for me to conclude that the subject property was exclusively used for “religious purposes” under subsection (b) of 35 ILCS 200/15-40 in 2004. I am unable to conclude from the record that either Sister Mary Gabriel or Father Clarence performed religious related activities while residing on the subject property as a condition of their employment, which is a requirement under subsection (b) of 35 ILCS 200/15-40.⁹ Therefore, if the subject property qualifies for exemption under Section 15-40 of the Property Tax Code, it must qualify under subsection (a) as property used “exclusively” for religious purposes.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions

⁹ PSS’s PTAX-300, “(Religious) Application for Non-homestead Property Tax Exemption,” included a “Parsonage Questionnaire” which states that “the minister” was required to live on the subject property “as a condition of his employment.” App. Ex. No. 5. It is unclear from the record in this case who the “minister” is.

are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Illinois legislature intended to confer. Exempting the subject property for religious purposes under subsection (a) would require an extraordinarily liberal reading and interpretation of the religious exemption statute which, as noted above, must be strictly construed in favor of taxation and against exemption. The record in this case shows conclusively that PSS is unable to meet the requirements of Section 15-40(a), except for the chapel located on the subject property

Section 15-40(a) of the Property Tax Code exempts “[a]ll property used exclusively for religious purposes...” and “not leased or otherwise used with a view to profit.” 35 ILCS 200/15-40. The first issue to be determined in the instant case is what use constitutes the “exclusive” use of the subject property. The word “exclusively” when used in Section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933). “Primary purpose” is defined as that which is first in intention; that which is fundamental. Black’s Law Dictionary, p. 1972 (5th ed. 1979). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

PSS’s Bylaws state that its purposes are: 1) to establish, develop, own, sponsor, manage, maintain, promote and/or conduct the affairs of Catholic-identified and related healthcare facilities and programs; 2) to enhance the health status of the communities

being served through preventive health education and to undertake educational programs and activities related to care for the sick, injured, poor, aged, infirm, distressed and/or unfortunate, which may be appropriate and may be justified by the personnel, facilities, funds and other resources available; 3) to undertake efforts to continuously improve care for the sick, injured, aged, infirm, distressed and/or unfortunate which may be appropriate and may be justified by the personnel, facilities, funds and other resources available; 4) to coordinate the activities of PSS's Subsidiaries as those entities pursue their religious, charitable, educational and scientific purposes in the fields of health care, health education and training, health management, human services and other related fields; and, 5) to offer at all times high quality and cost effective healthcare and human services to the consuming public. Tr. pp. 272-274, 365-366; App. Ex. No. 5.

It is reasonable to conclude that if the primary purpose for which the subject property is used is religious, this primary use would be advertised and stated in PSS's Bylaws. PSS's Bylaws indicate several purposes but no "primary" purpose is stated. "While there is plainly a religious component to this mission, advancing religion is not identified as the corporation's dominant purpose." Provena v. Department of Revenue, 236 Ill. 2d 368 (2010). St. Joseph Campus' financial statements show that 120 beds/units on the subject property were 94% occupied in 2004, with PSS earning \$6.1 million in revenue and \$135,771 in net earnings from the medical care provided. I conclude that PSS's primary purpose on the subject property is to provide medical care for payment. Medical care, "while potentially miraculous, is not intrinsically, necessarily, or even normally religious in nature." *Id.* at 410.

PSS is a component of PHA, "a Catholic health system." App. Ex. No. 43. There is no testimony in the record that there is a requirement that residents receiving medical

care on the subject property be Catholic. There is no evidence in the record as to how many of the residents receiving medical care on the subject property are Catholic. There is no testimony or evidence in the record that residents even have to be religiously inclined to receive medical care on the subject property. Exhibit B to PSS's PTAX-300, "Application for Non-homestead Property Tax Exemption" states that St. Joseph Campus offers its "services to all persons regardless of race, religion, gender, national origin or any other classification." App. Ex. No. 5.

One concludes from this statement that PSS will offer medical care on the subject property to those who profess no religion and even to those who disdain religion. This puts PSS in the unique position of asking for a religious exemption for the subject property, where medical care is provided, when the people receiving this medical care may be indifferent, or even hostile, toward religion.

There can be only one primary use of property. The religious exemption statute requires that an exemption be given only if the use claimed for exemption is the exclusive use of the property. The legislatively mandated requirement that property be "exclusively" used for the exemption claimed cannot be disregarded and the fundamental and primary use of the property cannot be ignored. "The right to a tax exemption is to be accorded to schools, charitable and religious organizations only when the property claimed to be exempt is exclusively used for either one of the three purposes." "Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon any secondary or incidental use." People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951).

St. Joseph Campus may have more than one use but the question of whether it is entitled to exemption for religious purposes must be determined from its primary use.

The evidence and testimony clearly indicate that the subject property's primary use is to provide medical care for payment. I cannot recommend an exemption for religious use of the subject property when I am unable to conclude that the medical care dispensed to and paid for on the subject property by "all persons regardless of religion," is intrinsically, necessarily or even normally religious.

The Illinois Supreme Court defined the term "religious use" as follows:

As applied to the uses of religious property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter McCullough). Several years later, the Illinois Supreme Court explained that its pronouncement in McCullough "was not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use." People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922). However, if public worship, Sunday schools and religious instruction are "illustrative of the nature of [religious] use," it must follow that "religious use" has a determinable nature and that to be a religious use, the activity must somehow resemble the activities in McCullough. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010).

Although some of PSS's use of the subject property may constitute religious use as defined in McCullough, I am unable to conclude that the property, other than the chapel, should be exempted for religious purposes because of the requirement in 35 ILCS 200/15-40 that the property be used "exclusively" for religious purposes.

Monsignor Doherty testified that “on an annual basis,” a local pastor does a blessing of all the grounds and buildings on the subject property. “Four to five ministers” “come each week to conduct services for people.” Meetings on the subject property “begin with little reflections and things.” Tr. pp. 25-26. There was testimony that religious services may take place in a patient’s room, similar to services that could take place in a room in a publicly-owned hospital. Tr. p. 38. Ms. Parsek testified that there is a Bible study held in the long-term care facility. “There is a rosary every week in the long-term care facility hosted in one of the households.” There is no testimony or evidence in the record as to how many residents participated in any of these activities. A priest “would take Communion and offer it to anyone in the long-term care or at the day care or the developmentally disabled, whoever would want Communion.” Tr. pp. 158-159. Ms. March testified that the Campus has “full-time pastoral care staff,” who provide bedside counseling, bedside education, “a myriad of religious activities that occur.” Tr. pp. 357-358.

Ms. Waters is Director of Pastoral Care on the Campus. She testified that a “spiritual assessment” is done of residents within 72 hours of admission. She lets them know about available religious services and asks if there is anything she can do for them spiritually. Ms. Waters may also provide support to friends, families and roommates of patients, if requested. Tr. pp. 467-471. Ms. Waters testified that the rosary is offered in one of the larger dining rooms. The rosary is led by a volunteer pastoral care resident. Tr. pp. 474-475. Services for Protestants are offered on Thursday afternoons and Sunday afternoons alternating in different courts of the long term care facility. Tr. pp. 476-477.

According to Ms. Waters, some residents do not want spiritual or pastoral support because “they don’t have a church or they don’t have a religion or they’re madder than

anything at God and they don't want to come out and say that to someone." Tr. p. 469. This testimony by Ms. Waters echoes my argument, above, as to why the subject property cannot reasonably be exempted for religious purposes. There are residents on the subject property, using the subject property for medical care, but refusing to participate in any religious use of the subject property, reinforcing the fact that medical care is not intrinsically, necessarily or even normally religious.

There was no testimony at the hearing, and I am unable to conclude, that any specific identifiable area on St. Joseph Campus, other than the chapel, was used exclusively for religious purposes in 2004. The property tax exemption is based on space used and the statute requires that the space be exclusively used for the exemption claimed. It is reasonable to conclude, as there is no evidence to the contrary, that the "larger dining room" where the rosary is said is used primarily as a dining room. It is similarly reasonable to conclude, as there is no evidence to the contrary, that the "household" which alternates for rosary prayer is primarily used as a "household." The rosary would be an incidental use of these spaces. The primary use of the space, and not the incidental use, is controlling in determining whether property is exempt from taxation.

I cannot recommend an exemption for the subject property for the one day each year that the grounds and buildings are blessed. I cannot recommend an exemption for the space that the priest occupies on the subject property when he carries Communion to those residents in the different facilities, who wish to receive it. Based on the evidence of record, it seems reasonable to conclude that an undetermined number of residents participate in no religious activities on the subject property. I cannot recommend a

religious exemption for the space occupied by the person seeking medical care who refuses to participate in any religious use of the property.

The subject property contains Provena Sacred Heart Chapel, “a sizable building,” which “houses the accoutrements of Catholic worship” and has a tabernacle where Holy Communion is reserved. The maintenance of the Chapel is directed by church law and the Bishop. There is a Catholic mass in the Chapel on Sunday and Wednesday, and on holy days of obligation, attended by both the public and residents on the subject property. Communion ministers, who visit Catholic residents on the subject property, retrieve Holy Communion from the tabernacle. Funerals for Catholic residents and people in adult day care may be held in the Chapel. The Chapel is also used by a new church forming in the community that does not yet have the resources to build its own church. Students from Aquin High School, which is located across the street from the campus, use the Chapel for in-service work for the religious part of their education. Tr. pp. 23-25, 111-113, 158, 174-175, 301, 473-476, 504-505, 513-514, 527-528; App. Ex. No. 1. There is no testimony in the record that the Chapel is used for any activities other than religious activities.

PSS has borne its burden of proving, by clear and convincing evidence, that the Chapel, located on the subject property, is used exclusively for religious purposes. Based on the evidence and testimony presented at the evidentiary hearing, I conclude that Provena Sacred Heart Chapel, located on the subject property, should be exempt from real estate taxes for the 2004 tax year.¹⁰

There was considerable testimony at the evidentiary hearing that the operation at St. Joseph Campus is, in itself, a religious activity, according to the Catholic Church.

¹⁰ Applicant’s Exhibit No. 5 indicates that the Chapel is 6,913 square feet, located on P.I.N. 89-18-19-05-105-022.

According to Monsignor Doherty, PSS and St. Joseph Campus are obligated to adhere to “The Ethical and Religious Directives for Catholic Health Care Services,” issued by the National Conference of Catholic Bishops, which provide a framework both as to vision and guidance for Catholic health care ministries in the United States. Tr. p. 31; App. Ex. No. 17. The Directives state in Part 1, entitled “The Social Responsibility of Catholic Health Care Services,” that “the biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care.” “This mandate prompts us to work to ensure that our country’s health care delivery system provides adequate health care for the poor.” “In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured and the underinsured.” App. Ex. No. 17.

Father Grogan testified that PSS is a religious ministry in the Catholic Church. “So everything it does is to advance the religious ministry of the Church which is to evangelize in the context of health care or senior services.” Tr. p. 238. According to his testimony, “the reason for the existence of the facilities is to advance the religious mission of the Catholic Church.” Tr. p. 242. In 2004, PSS and St. Joseph Campus used a “Discernment Tool in Decision Making” which integrates PSS’s mission and values into business decisions, including strategic decisions, budgeting, hiring, terminating or promoting employees and resolving difficult issues. The tool requires the decision-maker to consider how the decision impacts the organization’s integrity, mission and values including promoting and defending human dignity, attending to the whole person, caring for poor and vulnerable persons, promoting the common good, acting on behalf of justice, stewardship of resources, and acting in communion with the Church. Tr. pp. 49-60, 245-246; App. Ex. No. 19.

Monsignor Doherty testified that “the Provena organization” “has standing within the Church, official recognition.” Tr. p. 20. Provena is a member of the Illinois Catholic Health Association and “they are conscious of their Catholic mission.” Tr. p. 35. Ms. Parsek testified that because Provena is “religiously based,” “we get to feel very free to have [God as] a part of our lives while we’re [at St. Joseph Campus].” Tr. p. 105. Ms. Waters testified that St. Joseph Campus is more than a religious mission. “I think it’s about who Jesus Christ was himself.” “I think it’s gospel-driven.” “And I think people who work there -- I’m counting myself -- ... they become the mission.” Tr. pp. 472-473.

I find the testimony of Monsignor Doherty, Father Grogan, Ms. Parsek and Ms. Waters with regard to the Catholic Church’s characterization of its activities at St. Joseph Campus, to be credible and made in good faith. I am confident that these witnesses believe that PSS is mission driven, that they believe that the operation at St. Joseph Campus is a religious activity or purpose according to the teachings of the Catholic Church, and that they believe that the performance of religious activities is mandated by the Catholic Church and scripture in order to obtain salvation. I do not question their belief structure and I do not question whether their conduct conforms to the standards or purposes of the Catholic Church.

However, the testimony discussed above is strikingly similar to the testimony elicited in Fairview Haven v. Dept. of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987), where members of the Apostolic Christian Church of America (hereinafter “Apostolic Church”) sought a religious and charitable exemption for 16 independent living units and an intermediate care facility that housed 49 residents. The court noted that one of the basic tenets of the Apostolic Church “is that salvation is accomplished through faith and Christian witness.” “Therefore, everyone has a duty to preach the gospel and do Christian

service works.” *Id.* at 768. In Fairview Haven, there was testimony that the Apostolic Church created avenues through which members could show their faith by accomplishing Christian service works. Fairview Haven was apparently one such “avenue,” “and the motivating factor behind Fairview’s operation was to provide an opportunity to help the elderly and fulfill the tenets of the Apostolic Church.” *Id.* at 768. In Fairview Haven, all policies, rules and regulations of Fairview had to subscribe to the beliefs of the Apostolic Church and be reflected in the operation of the nursing home. A member of Fairview’s Board of Directors testified that Fairview was “an integral part of the Church, governed by the Church, and maintained by it.” “It proclaimed the good news, so [it] served a religious purpose.” *Id.* at 768.

In Fairview Haven, the court found that the Department’s determination that Fairview was not exempt for religious purposes was supported by the evidence. The court noted that it was not contested that the operation of Fairview provided an opportunity for members of the Apostolic Church to carry out Christian service work and care for the elderly. The court then succinctly stated the following: “However, operation of the nursing home was not necessary for these religious purposes, which could have been accomplished through other means.” *Id.* at 774.

Similarly, whereas the existence and operation of St. Joseph Campus may provide an opportunity for religious activities, the Campus, itself, is not necessary for the fulfillment of PSS’s religious mission, and it is not necessary for the performance of religious activities, mandated by the Church. The faithful could conceivably attain salvation, and PSS’s religious mission could be accomplished, by ministering to the elderly at any other such facility or hospital. Monsignor Doherty is a priest in the Diocese of Rockford and apparently does not live on St. Joseph Campus. Tr. p. 19.

Father Grogan is a resident at St. Ignatius Loyola Parish in Chicago. Tr. p. 225. Ms. Parsek and Ms. Waters both work on the subject property but apparently do not live there. Tr. pp. 93-94, 466. Similar to Fairview Haven, the testimony shows that the existence and operation of St. Joseph Campus is not necessary for salvation. I must conclude that religious acts can be accomplished, and salvation obtained, in places and through means other than St. Joseph Campus.

In Fairview Haven, the court noted that the practice of charity, kindness to other persons and in particular to the aged, and the practice of all virtues are encouraged by religious organizations. “[H]owever, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.” *Id.* at 774. Similarly, in Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008), the court noted that “[I]n a sense, everything a deeply religious person does has a religious purpose.” “But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion.”

In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010), where the court denied a religious exemption to a hospital, the court stated that if “religious purpose” meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation would be the exception. *Id.* at 766. In Provena Covenant, the court noted that “religious purpose” within the meaning of 735 ILCS 200/15-40(a) has to be narrower than “Christian service,” or else “religious purpose” would mean everything (and therefore nothing). *Id.* at 767. Provena Health, owner of PSS, identifies itself as a “Catholic Health System.” App. Ex. No. 43. The Illinois Property Tax Code does not provide an exemption for religious identity. The

Illinois Property Tax Code does not provide an exemption for religious motivation. The Legislature required “religious use” for exemption of property under 735 ILCS 200/15-40. Religious identity, religious motivation and religious spirit are not synonymous with, and are legally insufficient to establish, religious use.

The court in Provena Covenant then stated that if “public worship, Sunday schools, and religious instruction” are illustrative of the nature of religious use, it must follow that “religious use” has a determinable nature and that to be a religious use, the activity must somehow resemble public worship, Sunday schools and religious instruction. “We do not see how medical care resembles public worship, Sunday school, or religious instruction.” *Id.* at 767. Similarly, in the instant case, PSS has failed to prove that providing medical care to those who have the funds to pay for it or are eligible for government assistance “resembles” public worship, Sunday school or religious instruction. Without religious use, PSS is not entitled to an exemption under 35 ILCS 200/15-40(a).

PSS was required to prove that the religious use of St. Joseph Campus was its primary use. If the operation of the property is businesslike and more characteristic of a place of commerce than a facility used primarily for religious purposes, then property is not exempt from taxation under Section 200/15-40(a). Faith Builders Church v. Dept. of Revenue, 378 Ill. App. 3d 1037, 1046 (4th Dist. 2008).

In 2004, St. Joseph Campus earned 98% of its revenue, \$6.1 million, from providing medical care to private pay patients or those eligible for government assistance. St. Joseph Campus paid \$503,056 to PSS as “Management Fees” and \$146,856 to PHA as “Admin. & IS Fees.” These fees are characteristic of a charge assessed on the residents of commercially operated multiple dwelling property. After deducting these fees and

other costs, St. Joseph Campus still had “Net Earnings” of \$135,771 in 2004. App. Ex. No. 41. St. Joseph Campus’ “Net Earnings” suggest that PSS has been successful in delivering medical care on the subject property.

On the other hand, PSS has not offered into evidence any “religious” benchmark that it used to evaluate its success on the subject property. As discussed above, the operation of the property may have satisfied certain individuals’ religious aspirations and fulfilled PSS’s mission, but this is not the basis for an exemption under the Property Tax Code. Based on the record in this case, I conclude that PSS’s operations on St. Joseph Campus more resemble a business with some religious overtones than property used exclusively for religious purposes.

The record in this case includes extensive oral and documentary evidence. This Recommendation is based on the record in this case and relevant Illinois authority. 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 (4th Dist. 1994). In the instant case, the Applicant has failed to prove, and the record does not support PSS’s entitlement to a charitable exemption or a religious exemption for St. Joseph Campus, except for the chapel on the subject property.

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2004 real estate taxes on the grounds that the subject property was not in exempt use for charitable or religious purposes should

be affirmed, except for the chapel, which was used for religious purposes, and Stephenson County Parcels, captioned above, should not be exempt from 2004 real estate taxes, except for the chapel located on P.I.N. 89-18-19-05-105-022, which should be exempt for the entire 2004 assessment year.

ENTER:

February 24, 2011

Kenneth J. Galvin