

PT 12-11

Tax Type: Property Tax

Tax Issue: Educational Ownership/Use

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

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

v.

**HEARTLAND COMMUNITY COLLEGE
DISTRICT NO. 540**

Applicant

Docket # 10-PT-0031

Tax Year 2010

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; J. Patrick Joyce of Brown, Hay & Stephens, LLP for Heartland Community College District No. 540

Synopsis:

Heartland Community College District No. 540 (“applicant” or “College”) filed an application for a property tax exemption for the year 2010 for a parcel of property located in McLean County. The applicant contends that the property qualifies for an exemption pursuant to sections 15-135, 15-35, and 15-125 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The applicant “leases” the property to Normal Professional Baseball, LLC (“Team”). The McLean County Board of Review recommended that the property receive a full year exemption. The Department of Revenue (“Department”)

disagreed with that determination and denied the exemption on the basis that the property is neither exempt in ownership nor exempt in use. The applicant timely protested the Department's decision, and an evidentiary hearing was held. The parties also filed briefs in support of their positions. The applicant raised several issues in its brief:¹ (1) whether the agreement between the College and the Team is a "license" that is not taxable rather than a lease; (2) if the agreement is a lease, whether the agreement is a financing device that warrants an exemption under section 15-35(e); (3) whether the lease was entered into with a view to profit; (4) whether the applicant is entitled to a full exemption based on its use of the property; and (5) if not a full exemption, whether the applicant is entitled to a partial exemption based on its use of the property. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant owns approximately 25 acres of real property ("Real Property") located on the eastern portion of the Heartland Community College campus in Normal, Illinois. (App. Ex. B, C, p. 1)
2. On May 21, 2009, the applicant entered into a "Ground Lease and Stadium Project Agreement" ("Agreement") with Normal Professional Baseball, LLC ("Team") and the Town of Normal, Illinois ("Town") wherein the Team agreed to construct, own and operate a sports stadium ("Stadium") to be used by the Team for its home baseball games and by the College for its home baseball, softball, and soccer games. (App. Ex. C, p. 1)

¹ The first issue raised by the applicant was whether it maintains the indicia of ownership to warrant an exemption. In response, the Department stated that it "does not dispute the fee simple ownership of the subject property by the Applicant." (Dept. brief p. 3)

3. Under the Agreement, the College leases to the Team the Real Property for a term commencing on May 21, 2009 and ending on June 30, 2030. The Team has the option to extend the term for two additional periods of 10 years each. The rent for the initial term is \$10, and the rent for each extended term is \$10. (App. Ex. C, Sections 2.02, 2.03, 2.04, pp. 6-7)
4. Under the Agreement, the Team was responsible for the construction of the Stadium, and it was constructed at the Team's expense. The Team received a contribution to the Construction Loan Account from the Town in the amount of \$1,500,000, and a contribution to the Construction Loan Account from the College in the amount of \$3,500,000. The Team contributed \$4,300,000 towards the construction. (App. Ex. C, Section 3.05, pp. 8-9; Tr. pp. 40-42)
5. The Agreement provides that the final construction documents were subject to the College's reasonable and timely review and approval. "Notwithstanding any provisions of this Agreement to the contrary, the Team shall have ultimate decision-making authority and control regarding overall design and construction of the Stadium, Parking Areas and Grounds; *provided, however*, that the Team will consult with and seek and consider input from the College, as appropriate, regarding general design and construction plans; *provided further*, that the Stadium and Grounds will be constructed in a manner consistent with ... the Junior College Standards for baseball, softball and soccer play." (Emphasis in original; App. Ex. C, Section 3.01, p. 7)

6. Subject to the rights of the parties set forth in the Agreement, the College has an absolute right to own and operate the Real Property in its sole discretion. (App. Ex. C, Section 3.05, p. 13)
7. Under the Agreement, the Team agrees that it does not have any ownership in the fee interest of the Real Property, “*provided, however,* that College and Team acknowledge and agree that Team will have a leasehold interest in the Real Property by virtue of this Agreement.” The College “acknowledges and agrees that the leasehold estate, Stadium, and the other Improvements constructed by the Team” (including the parking areas) “will be owned exclusively by the Team” and the Team has the right to grant a lender a leasehold mortgage in connection with the Agreement. For purposes of the Agreement, “the Stadium and all other Improvements constructed by the Team and situated on the Real Property shall not be deemed part of or included in the Real Property.” (Emphasis in original; App. Ex. C, Section 3.05, p. 13)
8. Under the Agreement, the “College acknowledges that the Team will be the owner and primary user and operator of the Stadium.” Except as otherwise set forth in the Agreement regarding the scheduling and the College Areas, “the Team shall have the exclusive right to occupy and use the Stadium.” (App. Ex. C, Section 4.01, p. 14)
9. The College baseball and softball season is March 1 to May 19 annually. The Team baseball season is May 20 to September 4 annually. The College soccer season is August 1 to December 1 annually. Priority scheduling is given to the

College during the College soccer, baseball and softball seasons and to the Team during the Team baseball season. (App. Ex. C, Section 1.11, pp. 4-5)

10. The Team has the exclusive right to use the Stadium on the days scheduled for Team Events during the Team baseball season. The College has the exclusive right to use the Stadium on the days scheduled for College Events during the College soccer, baseball, and softball seasons, “*provided, however, that as between the Team and the College, the Team will have priority Stadium use rights if and to the extent that any Team Home Game Date falls within any period in which the Team Baseball Season and College Soccer Season overlap.*” (Emphasis in original; App. Ex. C, Section 4.01, p. 14)
11. “The Team and College agree that all scheduling for events in the Stadium will be coordinated in a fashion to maximize the beneficial use of the Stadium by the Team, the College and the greater Normal region, subject to the need to preserve, in the Team’s reasonable and professional judgment, the playing field in a condition suitable for play of professional baseball.” (App. Ex. C, Section 11.01, p. 22)
12. The Team has 20 spaces in the Parking Areas available on a year-round basis, and the College has 5 spaces available “rent-free” on a year-round basis. During all Team Events and College Events, 90 parking spaces reasonably proximate to the Stadium are available to luxury suite patrons. Spaces proximate to the Stadium are also reserved for season parking pass holders for all Team Events and College Events. (App. Ex. C, Section 14.04, p. 28)

13. “The Team shall have all rights, responsibilities and revenues to be derived in connection with the Team’s use of the Stadium...” (App. Ex. C, Section 4.01, p. 14)
14. The “College Areas” mean the College administrative office area, College locker rooms, practice fields (baseball, softball and soccer), College storage area and coaches offices. The “Team Areas” mean the Team administrative office area, Team locker rooms, Team Novelty and Souvenir Sales Store areas, all luxury suites, and Team storage areas.² The “Common Areas” mean all areas except the Team and College areas. (App. Ex. C, Sections 1.01, 1.04, 1.12, pp. 3-5)
15. The Agreement states as follows: “In consideration for the College’s obligations [to contribute \$3,500,000 into the Construction Loan Account], the College will have the exclusive use of the College Areas on a year-round basis during the Term, except to the extent necessary or required for Team to provide the Team Stadium Services applicable to the College Areas.” (App. Ex. C, Section 4.05, p. 15)
16. The “Team Stadium Services” include preparing the field for games and other events, except the Team is not responsible for preparing the field for any College team practice. The services include janitorial services (cleaning and maintenance of all areas) and facility and security services, which include “the operation and staffing of the Stadium scoreboard, the public address system, the box office, all ticket booths, ushering services and parking lot attendant services, first-aid room,

² The record does not indicate the percentage or square footage of the Stadium that consists of the College Areas or the Team Areas. The record includes a document that is part of the “Preliminary Stadium Plans” that shows various numbers relating to the areas of the Stadium. (App. Ex. C, pp. 43-55) Nothing in the record, however, indicates that these figures relate to the final construction for the Stadium, and the document does not refer to any areas as College Areas.

on-site and supplemental parking lot security services, the opening and closing of the Stadium, building and Grounds security and the operation of all Utilities.”

(App. Ex. C, Section 1.14, pp. 5-6)

17. “As part of the Team Stadium Services, the Team shall provide persons necessary for all parking lot traffic control, fee collection and parking lot cleaning.” Any parking fees charged for Team Events or College Events “shall be reasonable.” The Team is responsible for removing snow from the parking areas. “The Team shall have the responsibility to provide parking lot attendants and clean-up services for Parking Areas.” (App. Ex. C, Sections 14.01, 14.02, 14.03, p. 28)
18. The Agreement states that the Team will provide all Team Stadium Services for all events and “will retain, employ, compensate, train and manage sufficient numbers of polite and well-groomed personnel to provide such services in a high quality and professional manner during the Term.” (App. Ex. C, Section 5.01, p. 15)
19. The “College Stadium Services” mean those event services that are reasonably requested by the College and can be feasibly provided by the Team for College Events, including by reasonable request and at the College’s cost the equivalent of Team Stadium Services for College Events. (App. Ex. C, Section 1.03, p. 3)
20. The Agreement states that upon reasonable request by the College to do so, “the Team shall provide College Stadium Services for all College Events. All costs and expenses of the College Stadium Services and all costs and expenses of any Team Stadium Services that are attributable to College Events or College Areas will be borne by the College but will be limited to the Team’s actual cost of

- providing” such services (*i.e.*, the charge will not include a “mark up” or profit in connection with the Team’s provision of the services). “Nothing in this Section authorizes the College to retain, terminate, supervise or take other direct actions relating to the Team or employees of the Team.” (App. Ex. C, Section 5.03, p. 16)
21. The Agreement states that the “Team shall be responsible for the coordination, management and scheduling of regular and special services for and maintenance of the Stadium to assure the efficient operation of all Team Events and College Events held in the Stadium during the entire Term.” (App. Ex. C, Section 5.04, p. 16)
22. The Team shall operate the Stadium box office, and the “Team shall be entitled to impose an additional ticket fee for the use of the Stadium box office for College Events.” (App. Ex. C, Section 5.05, p. 16)
23. The “Team shall hire uniformed security for all Team Events and College Events (when reasonably requested to do so by College) ... Any private security personnel utilized by the Team shall be employees or independent contractors of the Team and in no manner considered or construed to be employees or agents of the College or Town.” (App. Ex. C, Section 5.07, pp. 16-17)
24. The College must give to the Team a facility services request form “so that the Team may adequately prepare for the provision of the applicable College Stadium Services for such College Event.” (App. Ex. C, Section 5.08, p. 17)

25. The Team has the exclusive right to operate the Food and Beverage Services and all areas from which souvenirs are sold for all events at the Stadium. (App. Ex. C, Section 6.01, p. 17)
26. The Team has a contract with another company that operates all the concession stands at the Stadium for all events, and the Team receives 25% of the concession revenues. (Tr. pp. 92, 97)
27. The Team is solely responsible for all equipment used to operate the Food and Beverage Services, and all installed equipment remains the property of the Team upon termination of the Agreement. (App. Ex. C, Section 6.02, p. 17)
28. The Team retains 15% of College and Town novelty and souvenir gross sales, and the College is not assessed any costs for the service of making the novelties available for sale. (App. Ex. C, Section 6.05, p. 18)
29. The Team is not required to sell any College or Town novelties that are substantially similar to Team novelties. The Team has the right to approve the novelty items offered for sale in advance of their offer for sale. (App. Ex. C, Section 6.06, p. 18)
30. The Team shall market the use of the luxury suites and the advertising space on the outfield wall, the scoreboard message center, and the internal Stadium. “The Team shall retain all advertising revenues derived at or in connection with the Stadium and from Team Events and College Events.” (App. Ex. C, Section 7.01, p. 19)

31. The Team has the exclusive right to broadcast, televise, cablecast or transmit via the internet all Team Events held in the Stadium during the Term. (App. Ex. C, Section 7.02, p. 19)
32. The Team has the exclusive right to display advertising signage and distribute promotional materials at the Stadium. (App. Ex. C, Section 4.01, p. 14)
33. The College may permit contestants to fly flags, pennants or banners, “provided that such flags, pennants or banners do not interfere with advertising, sponsorships or promotions of the Team.” (App. Ex. C, Section 5.02, p. 16)
34. The College is entitled to display signage referencing the Heartland Hawks in reasonably prominent locations as determined by the Team. The College bears the costs in connection with such signage. (App. Ex. C, Section 7.03, p. 19)
35. All revenues derived from Stadium events, except those expressly reserved to the College and the Town, are reserved to the Team. (App. Ex. C, Section 8.01, p. 20)
36. The College is entitled to retain 100% of revenues generated from the sale of tickets to College Events. (App. Ex. C, Section 8.02, p. 20)
37. The Town shall rebate to the Team for a period of 20 years the sales taxes received by the Town that were generated from the Stadium and the Grounds. This obligation continues only as long as the Team operates a professional minor league baseball team at the Stadium. (App. Ex. C, Section 8.04, p. 20)
38. The Team is responsible for maintaining the mechanical components of the Stadium and for repairs of a capital nature. “The Team, after consultation with, but without the requirement for consent from or approval of, the College, shall be

- entitled to use any and all funds in the Capital Improvement Reserve ... for repairs ... of a capital nature.” (App. Ex. C, Section 9.01, p. 21)
39. The College is responsible for the maintenance of all the practice fields and the landscaping. The Team is responsible for all long-term maintenance of the Grounds and Parking Areas, which includes but is not limited to repaving, striping, and sealing of the paved areas. (App. Ex. C, Section 9.02, p. 21)
40. The Team maintains a Capital Improvement Reserve that is used by the Team at its discretion for capital repair and replacement obligations. With respect to this reserve, the Agreement provides as follows:
- The Capital Improvement Reserve will be funded by a parking fee in an amount not less than \$2.00 per vehicle to be charged by the Team at least for all Team Events that are League-scheduled Team baseball games or that are non-baseball specialty events (such as concerts); *provided, however*, that the Team anticipates that the parking fee will be at least \$3.00 per vehicle for Team Events that are League-scheduled Team baseball games and more than \$3.00 per vehicle for at least some non-baseball specialty events. Fifty percent (50%) of such gross parking fees collected by the Team will be delivered monthly by the Team to the Town. The remaining fifty percent (50%) of such parking fees collected by the Team will be deposited into the Capital Improvement Reserve, and the College will match such deposits on a dollar-for-dollar basis up to \$50,000 per year. (Emphasis in original; App. Ex. C, Section 9.03, p. 21)
41. The utilities that are separately metered for the Team or College areas are paid by the Team or College respectively. The remaining utilities are split evenly between the Team and the College and will be reviewed on an annual basis and allocated between the Team and the College based on relative use. (App. Ex. C, Section 10.02, p. 22)

42. The Team is responsible for all light bulb replacement and for installing and maintaining an electronic scoreboard. (App. Ex. C, Section 10.03, p. 22)
43. The Team has the exclusive right to enter into an agreement with a provider for siting of wireless telecommunications equipment on the light towers and will retain all revenue derived from such agreement. (App. Ex. C, Section 10.06, p. 22)
44. Any requests to hold events at the Stadium (other than the usual scheduled events) must be referred to the Team, and “neither the College nor the Town shall have any right or authority to grant or commit the use of the Stadium to any third party.” (App. Ex. C, Section 11.01, pp. 22-23)
45. All scheduling is coordinated by the Team with assistance and consultation from the College. (App. Ex. C, Section 11.03, p. 23)
46. The Team is required to keep a comprehensive general liability insurance policy in effect for all claims arising out of its activities under the Agreement, and the policy must show the Team, the College, the Town, and the Lender as insured parties. (App. Ex. C, Sections 12.04, 12.05, pp. 24-25)
47. The College is required to keep a comprehensive general liability insurance policy in effect for all claims arising out of its activities under the Agreement. (App. Ex. C, Section 12.06, p. 25)
48. If the Team is in default, the College may terminate the Agreement. If the College exercises the remedy of termination, the Team shall vacate the Stadium and deliver exclusive possession thereof to the College. (App. Ex. C, Section 13.02, p. 27)

49. If the College is in default, the Team may terminate the Agreement. (App. Ex. C, Section 13.04, p. 28)
50. The Team has the right to assign or otherwise transfer the Agreement upon the prior written approval of the College, which approval may not be unreasonably withheld, conditioned or delayed. (App. Ex. C, Section 16.01, p. 29)
51. “In the event the Stadium is destroyed by fire or other casualty, and after consultation with the College, the Team in its sole discretion may elect whether to repair or restore the Stadium or to terminate” the Agreement. (App. Ex. C, Section 17.02, p. 30)
52. The Team is “responsible and liable for any and all real estate taxes levied or assessed against the Real Property and attributable to the Improvements (*e.g.*, the Stadium, Parking Areas and Grounds).” (App. Ex. C, Section 20.06, p. 32)
53. Upon expiration or termination of the Lease, the Team shall surrender the Stadium to the College, free of all claims by the Team or any other person or entity. (App. Ex. C, Section 20.21, p. 35)
54. The Team has the right, subject to the written prior reasonable approval of the College, to place signs upon the exterior façade of the Stadium. (App. Ex. C, Section 20.24, p. 36)
55. During the first five months of 2010, the Stadium was under construction. The first game at the Stadium was a Team game on June 1, 2010. (App. Ex. D, p. 19; Tr. pp. 42, 77-78, 107)

56. The College does not currently charge for its athletic events. If it decided to charge, the Team has the mechanics to sell the tickets for the College. (Tr. pp. 46-47)
57. The Stadium has 10 “luxury suites” plus a “classroom.” All of these rooms have multiple uses; the luxury boxes can be used as classrooms and the classroom can be used on game days for larger parties or events. They are rented either on a per season basis or per game, and the Team receives the revenue. The suites and classroom are heated and air conditioned. (App. Ex. D, p. 6; Tr. pp. 89-92)
58. The bathroom near the classroom is heated and can be used year-round. (Tr. p. 130)
59. The Team’s office is located on the property and is used on a year-round basis. (Tr. pp. 127-128)
60. For 2010, the applicant totaled the number of hours that the field was used for the Team’s games and practices, the College’s games and practices, community events, youth activities, and other events. During 2010, the Team’s hourly use of the field was 33% of the time, and the College’s hourly use of the field was 52% of the time. The remaining hours of use were divided between the youth activities (7%), community events (2%), and other events (6%).³ (App. Ex. D, p. 34; Dept. brief, pp. 6-7; Tr. pp. 109-113)
61. The youth activities are events by groups such as a local youth league that wants to use the field for a game. The community events include things such as a walk

³ These numbers differ slightly from a pie chart that was based on the days, not hours, that the field was used. (App. Ex. D, p. 33) The testimony indicated that the hours more accurately reflected the use. (Tr. pp. 109, 123-124) The Department stated that “[n]either the types of uses of the subject parcel by [the Team and College] nor the amount of time (percentage of use) dedicated to these activities are in dispute.” (Dept. brief, pp. 6-7)

or run for charity. The other events include things like a kickball tournament or a wedding. (Tr. pp. 109-113)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977).

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

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290.

Pursuant to this constitutional authority, the General Assembly enacted section 15-135 of the Property Tax Code, which allows exemptions for school districts and community college districts and provides as follows:

All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt. 35 ILCS 200/15-135.

The General Assembly also enacted section 15-35 of the Property Tax Code, which allows exemptions for schools and provides, in relevant part, as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

...

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely;

...

(e) property owned by a school district. The exemption under this

subsection is not affected by any transaction in which, for the purpose of obtaining financing, the school district, directly or indirectly, leases or otherwise transfers the property to another for which or whom property is not exempt and immediately after the lease or transfer enters into a leaseback or other agreement that directly or indirectly gives the school district a right to use, control, and possess the property. In the case of a conveyance of the property, the school district must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the school district.

(1) If the property has been conveyed as described in this subsection, the property is no longer exempt under this Section as of the date when:

(A) the right of the school district to use, control, and possess the property is terminated;

(B) the school district no longer has an option to purchase or otherwise acquire the property; and

(C) there is no provision for a reverter of the property to the school district within the limitations period for reverters.

(2) Pursuant to Sections 15-15 and 15-20 of this Code, the school district shall notify the chief county assessment officer of any transaction under this subsection. The chief county assessment officer shall determine initial and continuing compliance with the requirements of this subsection for tax exemption. Failure to notify the chief county assessment officer of a transaction under this subsection or to otherwise comply with the requirements of Sections 15-15 and 15-20 of this Code shall, in the discretion of the chief county assessment officer, constitute cause to terminate the exemption, notwithstanding any other provision of this Code.

(3) No provision of this subsection shall be construed to affect the obligation of the school district to which an exemption certificate has been issued under this Section from its obligation under Section 15-10 of this Code to file an annual certificate of status or to notify the chief county assessment officer of transfers of interest or other changes in the status of the property as required by this Code

(4) The changes made by this amendatory Act of the 91st General Assembly are declarative of existing law and shall

not be construed as a new enactment; ... 35 ILCS 200/15-35(c), (e).

In addition, section 15-125 of the Property Tax Code allows exemptions for parking areas and provides as follows:

- (a) Parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.
- (b) Parking areas owned by any religious institution that meets the qualifications for exemption, when leased or rented to a mass transportation entity for the limited free parking of the commuters of the mass transportation entity, are exempt. 35 ILCS 200/15-125.

The applicant argues that the property is entitled to an exemption under sections 15-135, 15-35(e), and 15-125 because the property is owned by a community college district and is not leased or otherwise used with a view to profit.

License or Lease

The applicant argues that under the Agreement, the Team has a license interest in the property rather than a lease, and the license is not taxable. The applicant refers to Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281 (2010), where the court found that an agreement between a taxpayer and the city park district was a nontaxable license rather than a lease. The court stated that the essential elements of a lease include the following: (1) the extent and bounds of the property; (2) the term of the lease; (3) the amount of rent; and (4) the time and manner of payment. *Id.* at 310. “If any of these elements are missing, a lease has not been created; but the fact that an agreement may contain all of these essential requirements for a lease does not necessarily make it a lease.” *Id.*

The applicant admits that the Agreement in the present case contains all four elements of a lease. The Millennium Park court stated, however, that “the crucial distinguishing characteristic of a lease is the surrender of possession and control of the property to the tenant for the agreed upon term.” *Id.* The court found that the taxpayer in that case did not have exclusive possession and control but rather the right to use the premises, which it shared with other users. The court also found that the city park district had extensive control over all aspects of the taxpayer’s business.

The applicant contends that it similarly has a significant degree of control over the property. The Agreement requires the Team to cooperate with the College to arrange schedules. The College contends that under Section 11.01, the Team does not have total possession and control of the property because the Team is not permitted to put its interests ahead of the College’s or the community’s; the Team is required to schedule events to “maximize the beneficial use of the Stadium by the Team, the College and the greater Normal region.” (App. Ex. C, p. 22) The College believes that the Team has the exclusive right to use the Stadium only on the days scheduled for Team Events during the Team baseball season, which is only three and a half months of the year. The applicant, therefore, claims that the Team has limited control over the property.

In the applicant’s view, other provisions indicate that the applicant has control over the property. The construction of the Stadium was subject to the College’s extensive oversight and participation. The applicant contends that but for the College’s requirements, the Stadium would have been built differently (*e.g.*, with real turf).⁴ The applicant argues that maintenance and utilities are shared between the Team and the

⁴ The testimony indicated that if the Stadium did not have to be constructed in a manner consistent with the Junior College Standards, then it would have been built with a traditional grass surface. (Tr. p. 87)

College. The Team's maintenance responsibilities include the Stadium and seating areas, and the College's responsibilities are the grounds and the parking lot. The Team can only assign its interest in the property with the College's consent. The College reserves 5 year-round, rent-free parking spaces for its use, and the College has exclusive access to the College Areas (except for janitorial and field preparation purposes). The College has placed "Heartland Hawks" signage throughout the Stadium. The applicant believes that the Team does not have exclusive rights to use the Stadium, and the College has not surrendered its control over the property. According to the College, under Millennium Park, *supra*, the Agreement has too many restrictions on the Team's use of the property to be deemed a lease. See also Charlton v. Champaign Park District, 110 Ill. App. 3d 554 (4th Dist. 1982); In re Application of Rosewell, 69 Ill. App. 3d 1003 (1st Dist. 1979).

The Department argues that the facts in this case are significantly distinguishable from those in the Millennium Park case. The applicant acknowledges that the Agreement in the present case contains all four of the essential elements of a lease. In addition, the applicant does not have control over the Team's business aspects, and the Team has control over the property for the time period set forth in the Agreement. The Department contends that in the Millennium Park case, the park district exercised significant control over just about every aspect of the vendor's business, and the vendor did not have exclusive use of the areas designated in the agreement. None of these situations exist in the present case, and the Team's level of control and possession is entirely different. The restrictions that do exist in the Agreement do not transform it from a lease to a license.

Whether a contractual agreement is a license or a lease is determined from the legal effect of its provisions and the intention of the parties. Jackson Park Yacht Club v.

Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1st Dist. 1981). “If the contract gives exclusive possession of the premises against all the world, including the owner, it is a lease, but if it merely confers a privilege to occupy the premises under the owner, it is a license.” Millennium Park, at 309 (citing 53 C.J.S. *Licenses* § 133 at 608 (2005)). A “license” is “essentially permission to do an act or a series of acts upon the land of another without possessing any estate or interest in such land.” *Id.* (citing Mueller v. Keller, 18 Ill. 2d 334, 340 (1960)). The “principal difference between a lease and a license is that a lease confers the right to exclusively possess and control property, whereas a license merely confers a right to use property for a specific purpose, subject to the licensor’s control.” Millennium Park, at 309.

Applying these principles to the present case, the Agreement between the College and the Team created a lease rather than a license. The Team leases the Real Property from the College, and the Team possesses the leasehold estate, the Stadium, and the Improvements; the Team’s possession of the premises is exclusive against the world, including the owner. Except as otherwise set forth in the Agreement regarding the scheduling and the College Areas, “the Team shall have the exclusive right to occupy and use the Stadium.” (App. Ex. C, p. 14) The “College acknowledges that the Team will be the owner and primary user and operator of the Stadium.” *Id.* All requests to hold events at the Stadium (other than the usual events) must be referred to the Team, and neither the College nor the Town has the right to allow the use of the Stadium to a third party. The applicant’s exclusive use of the College Areas is allowed only because of the College’s \$3,500,000 contribution to the Construction Loan Account. The Team, therefore, controls the use of the property.

Although the applicant claims that the Team has the exclusive right to use the Stadium for only three and a half months of the year (*i.e.*, from May 20 to September 4), the applicant fails to consider the fact that a College Event does not take place on every single day during the College baseball, softball, and soccer seasons (see App. Ex. D, pp. 13-18), and the Team has the exclusive use of the Stadium on days when a College Event is not scheduled. The College baseball and softball season is from March 1 to May 19, and the College soccer season is from August 1 to December 1.⁵ Because a College Event is not scheduled on every single day during these seasons, the Team has the exclusive right to use the Stadium during most of this time period.

In addition, the Team has the exclusive use of the Stadium during the months of December, January, and February. Although the field will not likely be used during those months, the heated portions of the Stadium may be used. The Team, therefore, has the exclusive right to use the Stadium for a significant portion of the year. With the exception of the College Areas, the Team is the only entity that has the exclusive right to occupy and use the Stadium for most of the year.

Furthermore, even when the College uses the Stadium, the Team controls major areas and sources of revenue at the Stadium. Under the Agreement, the Team retains all advertising revenues derived at the College Events, and the Team receives revenue from concessions, parking, luxury suites, and souvenir sales. Based on the plain language of the Agreement, even when the College uses the Stadium, it does not use the entire Stadium. Neither the College's use nor the Town's use is exclusive during their events.

⁵ The Team baseball season and the College soccer season overlap from August 1 to September 4. Pursuant to the Agreement, the Team has priority use of the Stadium during this time period. (App. Ex. C, Section 4.01, p. 14)

Although the applicant contends that the construction of the Stadium was subject to the College's extensive oversight and participation, the Team had ultimate decision-making authority and control regarding the overall design and construction of the Stadium, Parking Areas and Grounds. The Team would only "consult with and seek and consider input from the College." (App. Ex. C, p. 7) The only restriction was that the Stadium and Grounds had to be constructed in a manner consistent with the Junior College Standards for baseball, softball and soccer play.

Furthermore, the Team is responsible for maintaining the property (except for the practice fields and the landscaping) and for all repairs of a capital nature. The Team is entitled to use money from the Capital Improvement Reserve for capital repairs, without consent from or approval of the College. The Team also provides the Team Stadium Services for all the events at the Stadium, and the Team employs the personnel to provide the services. The College has no control over the Team's services. "Nothing ... authorizes the College to retain, terminate, supervise or take other direct actions relating to the Team or employees of the Team." (App. Ex. C, p. 16) The Team Stadium Services include preparing the field for games. They also include the janitorial, facility, and security services, which include operation and staffing of the scoreboard, the public address system, the box office, all ticket booths, ushering services, parking lot attendant services, first-aid room, parking lot security services, and building and Grounds security.

In addition, the Team controls the following: operating the Food and Beverage Services and its equipment (the evidence does not indicate that the Team's contract with another company to operate the concession stands was approved by the College); selling souvenirs and novelties; advertising space (on the outfield wall, the scoreboard message

center, and the internal Stadium); distributing promotional materials; luxury box rentals; and siting of wireless telecommunications equipment on the light towers. Although the College uses 5 “rent-free” parking spaces year-round, the spaces are not necessarily free because the College matches the portion of the parking fees that are deposited into the Capital Improvement Reserve up to \$50,000 per year.

Under the Agreement, the Team possesses the Stadium and the Team manages and controls most aspects of the Stadium’s use. The College has very limited control over the Team’s operations on the property. The Team’s interest in the property, therefore, is a lease rather than a license.

Financing

The applicant argues that if the Agreement is a lease, then the evidence established that the Agreement is part of a larger financing transaction that warrants an exemption. The applicant claims that the Agreement allowed the Stadium to be constructed, and without the Team’s substantial financial contribution, the project was not otherwise financially feasible for the College. Because the rent is only \$10 for a 20-year term, the College does not profit as a result of the financing arrangement. The College contends that a similar arrangement was in Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983), where the court found that when a sale and leaseback is used as a financing device that is an alternative to conventional financing, it may qualify for a property tax exemption. The decision in Cole Hospital was codified in the Property Tax Code under subsection 15-35(e). The College believes that with this provision, the legislature sought to provide school districts with options for “creative financing” like that utilized in the Cole Hospital case without

sacrificing their exemptions. According to the applicant, the Agreement in the present case is a solution to a financing dilemma and should not prevent the tax exemption.

The Department argues that subsection 15-35(e) is not the applicable section of the Code for community college districts. Subsection 15-35(e) applies to schools and, more particularly, situations in which school districts, not community college districts, structure a sale and leaseback for purposes of financing for property that would otherwise be exempt to the school district. Because the applicant is a community college district, the Department believes the relevant section of the Code is not 15-35(e) but rather 15-135. Under section 15-135, the exemption is prohibited if the property is leased or otherwise used with a view to profit. The Department contends that the mere lease by the College prevents the exemption of the property at issue. The Department also argues that unlike the facts in Cole Hospital, *supra*, the instant case does not involve a sale-leaseback transaction. In addition, this is not a charitable exemption, like the one in the Cole Hospital case. The Department claims that even if subsection 15-35(e) is applicable in this case, the type of transaction contemplated by this subsection does not fit the structure established by the Agreement between the College, the Team, and the Town.

In response, the College argues that sections 15-35 and 15-135 are not mutually exclusive with respect to the entities that they cover, and the Department's technical interpretation undermines Illinois case law and the policies at work in the Code. When determining whether an entity is a school for purposes of section 15-35, courts have considered two factors: (1) whether the organization offers a course of study which fits into the general scheme of education founded by the State, and (2) whether the course of study substantially lessens what would otherwise be a governmental function. Coyne

Electrical School, at 392-393. The applicant contends that it clearly constitutes a “school,” and an analysis of its use under subsection 15-35(e) is appropriate. The applicant also notes that references to higher education exist throughout section 15-35. In addition, section 15-135 pertains to “*school districts* and community college districts.” (Emphasis added; 35 ILCS 200/15-135). The applicant, therefore, believes that subsection 15-35(e) applies equally to community college districts.

Assuming, *arguendo*, that subsection 15-35(e) applies equally to community college districts as it does to school districts, subsection 15-35(e) does not warrant an exemption in the present case. Subsection 15-35(e) provides, in relevant part, as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

...

(e) property owned by a school district. The exemption under this subsection is not affected by any transaction in which, for the purpose of obtaining financing, the school district, directly or indirectly, leases or otherwise transfers the property to another for which or whom property is not exempt and immediately after the lease or transfer enters into a leaseback or other agreement that directly or indirectly *gives the school district a right to use, control, and possess the property*. Emphasis added; 35 ILCS 200/15-35(e).

As previously discussed, the applicant uses the property for part of each year, but it does not control or possess the property. The Team not only possesses the leasehold estate, the Stadium and the Improvements, the Team’s control of the property is substantial. Without control and possession of the property, the College does not meet the requirements for the exemption under subsection 15-35(e).

Furthermore, the property does not qualify for an exemption under the analysis of Cole Hospital, *supra*. In that case, the not-for-profit hospital made extensive efforts to obtain conventional financing in order to build a new facility, but it could not obtain it. The hospital's only financing option was to enter into a sale-leaseback arrangement with a private organization for a 20-year term with options to renew for two additional 10-year terms. The hospital paid rent, property taxes, insurance, and maintenance costs. The hospital had the absolute right to purchase the property at ten times the annual rent on the 11th and 16th anniversary dates. The hospital also had the right of first refusal if the lessor received a bona fide purchase offer. All the terms of the lease remained in effect in the event of a sale to a third party. In finding the property qualified for an exemption, the court stated that "[t]here are few, if any, *per se* rules in the field of property taxation. Obviously not every lease *qua* lease will qualify for exemption. [citation omitted] When, under proper circumstances, a sale-and-lease-back is used as a financing device, alternatively to conventional financing, it may qualify." *Id.* at 101.

As the Department has indicated, the Agreement in the present case is not a sale-leaseback arrangement. The College owns the underlying Real Property, and the College leases that property to the Team. Under the Agreement, the Team owns the Stadium, Improvements, and leasehold interest. The College did not sell the property to the Team and lease it back from them like the applicant in Cole Hospital, *supra*. The facts in the present case are not similar to those in Cole Hospital, and an exemption is not warranted under the analysis of that case.

View to Profit

Next, the applicant argues that even if an exemption is not warranted on the basis that the Agreement is a financing device, then the property should still be exempt because it is not leased with a view to profit. The applicant contends that the Agreement was a collaboration between the College, the Team, and the Town to enhance the facilities and instructional level at the College and to give the community a professional sports venue.

Notwithstanding the applicant's contention, the evidence clearly establishes that the Team profits from the use of the property. As the Team's president testified, "Minor league baseball ... it's a good small business." (Tr. p. 82) Although nothing in the record indicates specifically how much money the Team earned during 2010, several sections of the Agreement show that the Team leases the property with a view to profit.

In addition to the income from ticket sales, the Team receives all the advertising revenue. The Team markets the advertising space on the outfield wall, the scoreboard message center, and the internal Stadium. The Team has the exclusive right to display advertising signage and distribute promotional materials at the Stadium. The Team also markets the use of the luxury suites. The Team has the exclusive right to enter into an agreement with a provider for siting of wireless telecommunications equipment on the light towers and retains all revenue derived from that agreement.

The Team also receives money from parking fees and the College's contribution to the Capital Improvement Reserve. 50% of the parking fees that the Team collects are deposited into the Capital Improvement Reserve, and the College matches these fees up to \$50,000 per year. The money in this account is used by the Team at its sole discretion.

The Team receives income from its exclusive right to operate the Food and Beverage Services and all areas from which souvenirs are sold for all events at the

Stadium. Although the applicant did not provide the contract that the Team has with its concessionaire, the testimony indicated that the Team has a contract with another company that operates all the concession stands at the Stadium, and the Team receives 25% of the concession revenues. In addition to the income that the Team receives from its souvenir sales, the Team retains 15% of College and Town novelty and souvenir gross sales. The Town rebates to the Team all the sales taxes received by the Town that are generated from the Stadium and the Grounds. The Team also can impose an additional ticket fee for the use of the Stadium box office for College Events.

Furthermore, the Team receives money from the use of the Stadium for the other events. Although the record does not include the contracts that the Team has with other entities concerning the use of the property, the testimony indicated that for some of the youth events that involve fund raising, the Team shares the ticket revenue with them. (Tr. pp. 113-114) Clearly the Team is in the business to make money. The evidence presented in this case shows that the Team leases the property with a view to profit, which prevents an exemption under sections 15-135, 15-35(e), and 15-125.

Full Exemption Based on Use

The applicant argues that even if it is found that the lease was with a view to profit, then an exemption should still be granted for the entire property at issue because the Team's non-exempt use of the property is incidental to the primary exempt use. The property may be wholly exempt if its primary use is exempt, and any non-exempt use is "merely incidental." Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66 (1971). Property of an exempt entity loses its tax-exempt status when it is leased to a private entity for commercial purposes rather than used for public purposes. Marshall County

Airport Board v. Department of Revenue, 163 Ill. App. 3d 874, 876 (3rd Dist. 1987). The exception to this rule, however, arises when the taxpayer can show that, following such leasing, the property continued to be used for exempt purposes, and the primary use of the property was tax exempt while the taxable use was merely incidental. Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue, 313 Ill. App. 3d 469, 476 (1st Dist. 2000); see also DePaul University, Inc. v. Rosewell, 176 Ill. App. 3d 755, 757 (1st Dist. 1988).

The College contends that the Agreement reserves so many rights and uses for the College that, notwithstanding the lease, the “primary use” of the Stadium is the College’s exempt use for its sports teams. See Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist. 1988) (baseball field exempt from taxes because non-exempt use was incidental). The applicant refers to Grundy County Agricultural District Fair, Inc. v. Department of Revenue, 346 Ill. App. 3d 1075 (3rd Dist. 2004), where the court stated that determining the “primary use” of property must include an analysis of the following factors: (1) whether non-exempt uses directly and substantially support the exempt uses; (2) the amount of time the property is used for exempt purposes; (3) the percentage of the property used for exempt purposes; and (4) the percentage of total visitors who use the property for exempt purposes. *Id.* at 1079. The applicant believes it meets these factors. The applicant claims that if its use is primary, then the nature of the Team’s incidental use is irrelevant, and an exemption should be granted for the whole property.

The record does not support the applicant’s contentions. First, the record does not contain enough evidence to apply the Grundy County factors. The record does not

include the percentage of the Stadium that is used by the Team or the percentage that is used by the College, and the record does not include any evidence concerning the total visitors who used the property for either exempt or non-exempt purposes. The record does include evidence concerning the hours that the field was used during 2010. The Team's hourly use of the field was 33% of the time, and the College's was 52% of the time. The remaining hours of use were divided between the youth activities (7%), community events (2%), and other events (6%). These numbers, however, do not necessarily indicate that the exempt use of the property was 52% because the Team continued to operate, control and earn revenue (from things such as advertising, concessions, and parking) during the College Events. The school's use of the property, therefore, was not exclusive. The Team's presence on the property for money-making purposes was always there during College Events, and the Team controlled various areas of the property and revenue during those events.

Nevertheless, based on the evidence in the record concerning the use of the field, the non-exempt use was substantially more than "merely incidental." If the non-exempt use is more than merely incidental, then the exemption must be denied. Skinner, at 66. Based on the percentages of time that the field was used, the non-exempt use of the field was for 48% of the time. Clearly, the field was used more than incidentally for taxable purposes.

The applicant argues, in the alternative, that the entire property should still be exempt if the Team's use of the property is not for the production of income but rather for the support of the College's purposes. See Childrens Development Center, Inc. v. Olson, 52 Ill. 2d 332 (1972) (if primary use of property is to serve a tax-exempt purpose,

the tax-exempt status of the property continues though the use may involve an incidental production of income). According to the applicant, the primary use of the property by the Team is not for the production of income but rather to support the tax-exempt purpose of the College. In addition to using student interns from the College, the applicant states that the Team operates on a \$75,000 salary cap for the entire team, per season, and the Team Events are more of a social or community nature as opposed to the “big business draw of major league baseball.” (App. brief, p. 17) The Team charges only \$10 admission to its games, and although the Team has a contract with a concessionaire, the concession stand is an adjunct to the field’s operation. See Decatur Sports, *supra* (concession stand is adjunct to the field’s operation); see also Highland Park Women’s Club v. Department of Revenue, 206 Ill. App. 3d 447 (2nd Dist. 1990). The applicant contends that the Stadium has been used for charity events, community events, and youth sports. The applicant, therefore, believes that the property has been used primarily for public purposes, and any taxable use is merely incidental.

First, the applicant is not seeking an exemption based on use for *public* purposes; the applicant is seeking an exemption pursuant to section 15-35, which allows an exemption for property used for *school* purposes. The use of the Stadium for community and youth activities does not support the applicant’s claim for an exemption based on its use of the property for school purposes.

In addition, the Team does not use the property to serve the College’s tax-exempt purpose; the Team uses the property for the production of income. As the Team’s president stated, operating a minor league baseball team is a business. It may not be the “big business draw of major league baseball,” but it is still a business, a “good” one. (Tr.

p. 82) Although the Team uses interns from the College and other nearby schools, this is not different than any other local business that uses interns.

In Childrens Development Center, *supra*, a religious organization leased a portion of its property to a charitable organization, which used the property to provide programs for educationally handicapped children. Although the court found that the property was entitled to an exemption based on the primary use of the property, the case is distinguishable from the present case. The court stated that if the property were owned by the lessee and its activities were conducted thereon, the property would be exempt. *Id.* at 335. The same is not true in the present case. If the Team owned the real property and conducted its activities thereon, the property would not be exempt. In addition, the court stated that if the primary use of the property is “to serve a tax-exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income.” *Id.* at 336. In the present case, the Team’s use of the property is not to serve any tax-exempt purpose such as the College’s educational purpose or a charitable activity like the one in Childrens Development Center. The Team’s use of the property is to operate a minor league baseball business; this use does not serve a tax-exempt purpose. Furthermore, neither the Team’s use nor the income produced from that use has been shown to be incidental. The property in this case clearly is not entitled to a full exemption based on the Team’s use of the property.

Partial Exemption Based on Use

Finally, the applicant argues that even if it is found that the Team’s non-exempt use is not incidental, then a partial exemption should be granted for the portion of time that the College uses the property for its exempt purposes. If the non-exempt use of

property is more than incidental, then the property may qualify for a partial exemption where an identifiable portion of the property is used for exempt purposes. Skinner, at 63. The applicant states that assuming, *arguendo*, that the Team's use of the property is non-exempt and not incidental, then the College should be granted a partial exemption for the portion of its exempt use.

The applicant states that a partial exemption for an "identifiable" portion does not necessarily mean a specific physical area must be delineated to qualify; rather, the party seeking the exemption must be able to quantify in some manner the exempt use. In Streeterville Corporation v. Department of Revenue, 186 Ill. 2d 534 (1999), a corporation sought a partial exemption for a parking garage that offered discounts to a nearby hospital's employees. The garage was also open to the public. Although the garage did not designate any area for exclusive parking by hospital personnel, the parties agreed that 74% of the customers received some form of hospital discount. *Id.* at 535. The court allowed the exemption for 74% of the property, finding that Streeterville established that an "identifiable portion" of the facility was used for an exempt purpose. *Id.* at 538.

The applicant argues that according to the records presented at the hearing, an 80% exemption is warranted. The applicant claims that during 2011, which is not the year at issue but was the first year that the Stadium was used for the entire year, the College's use of the field was 70% of the time, the Team's use was 20%, the community use was 6%, and the youth used it 4%. The applicant claims that the property was used for exempt purposes during 2011 for 80% of the time, and, therefore, a partial exemption of 80% is warranted.

First, the only year at issue in this case is 2010, and the percentages of use for the year 2011 cannot be considered when determining whether the property is entitled to an exemption for 2010. See Jackson Park Yacht Club, at 546 (even where ownership and use remain the same, a party may be required to relitigate the issue of its exemption annually). In addition, as previously discussed, when the property was used by the youth and by the community, it was not being used for school purposes, and this use cannot be considered when determining the exempt use for school purposes.

Furthermore, the applicant's request for a partial exemption must be denied because the evidence indicates that the property was used with a view to profit. The applicant is seeking an exemption based on its use of the property for school purposes, which is found in subsection 15-35(c) and provides as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

...

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely; 35 ILCS 200/15-35(c)

In Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2nd Dist. 2003), the court considered whether property that was used for school purposes was entitled to an exemption under subsection 15-35(c) even though the property was also used with a view to profit. The court found that the "view to profit" language in the first paragraph of section 15-35 applies to subsection 15-35(c). The court stated as follows:

[S]ection 15-35 is clear that property of schools cannot be ‘sold’ with a view to profit, ‘leased’ with a view to profit, or ‘otherwise used with a view to profit.’ *Id.* at 857.

The court continued with the following:

[T]he term ‘otherwise’ refers to all uses of the property ‘with a view to profit’ other than, or different from, selling or leasing it. This would include property devoted to school purposes, if used with a ‘view to profit.’ *Id.* at 857-858.

The court stated that the fact that the property in that case was used for educational purposes was not dispositive. Instead, it was the finding that the property was used with a view to profit that prevented the tax exemption. *Id.* at 862.

As previously stated, statutes granting exemptions must be strictly construed in favor of taxation. Eden Retirement Center, Inc., *supra*. All facts are to be construed and all debatable questions resolved in favor of taxation. *Id.* The burden of proof is on the party seeking the exemption, and the burden is very heavy. Provena Covenant Medical Center, *supra*. The applicant must prove by clear and convincing evidence its entitlement to the exemption. *Id.*

In the present case, the applicant has not met its burden of proving clearly and convincingly that the property, even while it was being used for school purposes, was not also used with a view to profit. As previously mentioned, the applicant has failed to present evidence concerning the percentage of the Stadium that is devoted to the College Areas. Even if that percentage were known, however, the applicant’s exclusive use of that area is allowed only because of the College’s \$3,500,000 contribution to the Construction Loan Account. The Team, therefore, received money for the College’s use of that area; the College Areas are not entitled to an exemption because those areas are being used with a view to profit.

In addition, the evidence does not clearly and convincingly show that when the College used the remaining portion of the property for College Events, the Team did not profit from that use. According to the Agreement, the “Team shall retain all advertising revenues derived at or in connection with the Stadium and from Team Events and College Events.” (App. Ex. C, Section 7.01, p. 19) The Team has the exclusive right to display advertising signage and distribute promotional materials. During College Events, the Team receives the advertising revenue. The Team also receives revenue from the luxury suites. The Team receives 25% of the concession revenues during College Events, and the Team retains 15% of the College novelty and souvenir gross sales. The Team receives a rebate from the Town of all the sales taxes received by the Town that are generated during the College Events. Under the Agreement, the Team is also allowed to impose an additional ticket fee for the use of the Stadium box office for College Events.

Furthermore, the Team not only receives revenue from the parking fees for College Events, the Team also receives additional income from the College up to \$50,000 a year. Half of the parking fees collected by the Team are deposited into the Capital Improvement Reserve, which is used by the Team at its sole discretion. The College then adds to the Team’s income by matching the fees that are deposited into the Capital Improvement Reserve up to \$50,000 per year. The College is effectively paying the Team to use the Team’s property.

In DePaul University, Inc., *supra*, DePaul University leased its tennis courts, clubhouse, and locker room building to Fullerton Tennis Club. Fullerton paid an annual fee to DePaul for the use of the property. The fee was \$20,000 at the beginning of the agreement and eventually rose to \$32,000. DePaul’s use of the tennis courts for physical

education classes was limited to a fixed number of hours and to specific times of the day. DePaul sought a property tax exemption on the basis that the property was used for school purposes. The court denied DePaul's request for an exemption by first finding that DePaul's use of the property for school purposes was not the primary use; Fullerton's use was primary. The court then found an additional basis for denying the exemption: the property was used with a view to profit. The court stated that "the substantial sums paid by Fullerton for use of the courts lead us to agreement with the trial court's finding that the property was used with a view to profit." *Id.* at 757.

Similarly, the substantial amount of money that the College pays into the Capital Improvement Reserve for the Team's use requires a finding that the property is used with a view to profit. This income, as well as the income that the Team receives from the other uses of the property during College Events, prohibits a finding that the property is entitled to a partial exemption. The applicant's request for a partial exemption must, therefore, be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2010.

Enter:

Linda Olivero
Administrative Law Judge