

PT 15-05

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

**CAMPTON UNITED SOCCER CLUB, INC.,
APPLICANT**

v.

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

**No: 13-PT-0012 (12-45-155)
Real Estate Tax Exemption
For 2012 Tax Year
P.I.N. 09-29-100-010
Kane County Parcel**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David Williams, Griffin Williams, LLP, on behalf of Campton United Soccer Club; Ms. Paula Hunter and Mr. Daniel Edelstein, Special Assistant Attorneys General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Kane County Parcel, identified by P.I.N. No. 09-29-100-010 (hereinafter the “subject property”), qualifies for exemption from 2012 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity and actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit.

This controversy arises as follows: On September 12, 2012, Campton United Soccer Club, Inc. (hereinafter “Campton”) filed an Application for Non-homestead Property Tax Exemption with the Kane County Board of Review (hereinafter the “Board”) seeking exemption from 2012 real estate taxes for the subject property. The Board reviewed the Application and recommended that a full year exemption be granted. On April 4, 2013, 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 and use in 2012 and that the Applicant was not the owner of the property.¹ On May 9, 2013, Campton filed an appeal of the Department's exemption denial. On July 16, 2014, an evidentiary hearing was held with testimony from Mr. Roger Albrecht, President of Campton. Following a careful review of the evidence, it is recommended that the Department's denial be affirmed.

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 during 2012. Tr. pp. 9-10; Dept. Ex. No. 1.
2. Campton, formerly called "St. Charles Soccer Club," was incorporated on February 26, 1986. It's "purpose" is "first" to provide for the mutual assistance, enjoyment, entertainment, and improvement of its members socially and physically, and to promote sportsmanship, education and fellowship by encouraging participation in soccer; and "second," "said corporation is organized exclusively for pleasure, recreation, and other non-profitable purposes..." Articles of Amendment were filed on May 26, 1999, to change the name of St. Charles Soccer Club to Campton. Tr. pp. 13-15, 17; App. Ex. A and C.
3. Campton is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 15-16; App. Ex. B.
4. Campton does not have shareholders and has not issued capital stock. Tr. p. 18.

¹ The owner of the property is Campton United SC Holdings, a limited liability company, whose only member is Campton. According to the Department, "[Campton] may be considered to be the owner of the property and that is not an issue that the Department will be contesting." Tr. pp. 5, 7-8, 47-49; App. Ex. K and L.

5. Campton is a traveling soccer club based out of St. Charles, with membership of approximately 600 players, 42 teams from a 20 mile radius. Teams are organized by age, gender and skill set. Tr. pp. 17-18, 26-27.
6. Campton has 20 employees, both full-time and part-time and 9 uncompensated Board members. The Board raises funds, solicits charitable donations and sponsorships, and hires a “Technical Director” to manage Campton and hire other employees. Soccer coaches are certified by the governing soccer organizations. Only certified coaches are hired by Campton, as required by the leagues that it participates in. Tr. pp. 18-19, 44.
7. Campton’s Bylaws allow for one class of members. “Active Members” are defined as “any player and the parent(s) of players actively engaged in Campton.” “In order to be an active member, all players and parents must sign and abide by their respective agreements each year.” The Board of Directors, by a 2/3 vote of all members of the Board, may terminate the membership of any member who, *inter alia*, “shall be in default in the payment of dues, if any.” “The Board of Directors may determine from time to time the amount of initiation fee, if any, and the annual dues payable to the corporation by members...” If any member shall be in default in the payment of dues for a period of six months, his or her membership may be terminated by the Board of Directors. Tr. pp. 20-23; App. Ex. D.
8. Campton’s Bylaws state that Campton “shall strive to make its services and products available to the appropriate general public without undue obstacles to access.” “It is the general policy of the corporation that any fees or charges associated with the charitable services of the corporation shall be waived or reduced in accordance with each recipient’s ability to pay.” “The administrative staff with approval of the board of

directors shall have the discretion to make such waivers or reductions, when appropriate, to ensure the maximum distribution of the corporation's charitable services." "More specifically, the program fee schedules, if any, shall be set in accordance with 35 ILCS 200/15-65(c)." Tr. pp. 23-24; App. Ex. D.

9. Potential players are given a "Tryout Flyer" which describes Campton's services, fees and requirements. Annual fees range from a deposit due at registration, of \$350 to \$525, plus 5 monthly payments of \$200 to \$325, all depending on the age and gender of the member. Some tournament fees are included in the annual fees. "Any additional tournaments will be an extra fee." "Surcharges for some tournaments could be higher than \$300." Travel fees (to tournaments) could also be an extra expense. "Failure to stay current by required due date for all payment plans and extra fees will result in a \$35 late fee added on to the monthly payments or extra fee." "Playing and training privileges will be immediately suspended until after balance is current." Each family is also required to participate in a mandatory fundraiser where the family purchases 10 "Discount Cards" for local businesses for \$200. "They can then re-sell the cards for \$20/each to recoup the \$200 investment." "Families that don't wish to sell the Campton Discount Cards can choose the '\$200 club donation' option." Uniforms must also be purchased from the "uniform contractor." Tr. pp. 29-30, 33, 52; App. Ex. E.
10. The "Tryout Flyer" contains the following language: "Any financial hardship application must be received at registration with \$100 non-refundable application fee and all required documentation." "Applications received after registration may not be considered." The "Application for Financial Assistance" states that a \$100 financial assistance application fee and \$200 mandatory fundraiser fee and full uniform must be

paid at registration.” The mandatory fundraiser fee is never waived because Campton feels “that people should put some effort into helping defer the cost.” Applicants for financial aid must submit the previous year’s federal tax returns and recent pay stubs. A Campton Board member will review the Application and determine what level of financial assistance the family requires: an extended payment plan or an appropriate level of assistance or full assistance. The Application does not state that the \$100 non-refundable application fee may be waived. Tr. pp. 30-33, 52-53; App. Ex. F.

11. Campton’s Form 990, “Return of Organization Exempt from Income Tax” for 2011 to 2012, shows Contributions of \$7,229 (less than 1% of Total Revenue), Program Service Revenue of \$1,040,713 (98%), and Net Income from Fundraising Events of \$12,254 (1%) for Total Revenue of \$1,060,196. Program Service Revenue is 73% Player Registration Fees, 11% Midwest Cup Tournament, 5% Player Uniform Fees, 5% Player Tournament Fees, 4% Training Programs and 1% Other. Campton had a loss for the year of \$10,467. Campton’s Form 990, for 2012 to 2013, shows Contributions of \$9,308 (less than 1% of Total Revenue), Program Service Revenue of \$1,169,571 (97%), Net Income from Fundraising Events of \$25,716 (2%) for Total Revenue of \$1,204,595. Campton had net income for the year of \$83,196. The breakdown of Program Service Revenue for 2012-2013 is similar in percentage to the breakdown for 2011-2012. Tr. pp. 39-46, 51-52; App. Ex. G, H, I and J.

12. The subject property, 25,000 square feet, 5 acres, is located in St. Charles, Illinois. The property contains office space and parking spaces for 80 cars. “Soccer-related training” occurs in the building. Tr. pp. 46-50.

CONCLUSIONS OF LAW:

An examination of the record establishes that Campton has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2012 real estate taxes. 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 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, Campton 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 People's Home v. Korzen, 39 Ill. 2d 149 (1968)

(hereinafter "Korzen"). However, under a broad reading of 35 ILCS 200/15-65(c), Campton met some of the threshold requirements of an "organization providing [for] ... educational, social and physical development," and this subsection must also be considered.

Campton is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 15-16; App. Ex. B. Additionally, Campton's Bylaws state that Campton "shall strive to make its services and products available to the appropriate general public without undue obstacles to access." "It is the general policy of the corporation that any fees or charges associated with the charitable services of the corporation shall be waived or reduced in accordance with each recipient's ability to pay." "The administrative staff with approval of the board of directors shall have the discretion to make such waivers or reductions, when appropriate, to ensure the maximum distribution of the corporation's charitable services." "More specifically, the program fee schedules, if any, shall be set in accordance with 35 ILCS 200/15-65(c)." Tr. pp. 23-24; App. Ex. D.

Assuming, *arguendo*, that Campton's policy for waiver or reduction of fees satisfies the requirements of 35 ILCS 200/15-65(c), this does not signify "*ipso facto*" that the property is used for a charitable purpose. In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004) the Supreme Court held that even if an applicant met the requirements of 35 ILCS 200/15-65(c), the applicant still "must comply unequivocally with the constitutional requirement of exclusive charitable use."

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. These guidelines are (1) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (2) 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; (3) the organization has no capital, capital stock or shareholders; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes.² Korzen at 156-157.

Courts consider and balance the criteria and guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Com'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965). Based on the evidence and testimony presented at the evidentiary hearing, I conclude that Campton is not an "institution of public charity," and that the subject property is not exclusively used for charitable purposes.

Korzen factor (1): The benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government.

Campton, formerly called "St. Charles Soccer Club," was incorporated on February 26, 1986. It's "purpose clause," as contained in its Articles of Incorporation, is "first" to provide for the mutual assistance, enjoyment, entertainment, and improvement of its members socially and physically, and to promote sportsmanship, education and fellowship by encouraging participation in soccer; and "second," "said corporation is organized exclusively for pleasure, recreation, and other non-profitable purposes..." Tr. pp. 13-15; App. Ex. A. Articles of Amendment were filed on May 26, 1999, to change the name of St. Charles Soccer Club to Campton. Tr. p. 17; App. Ex. C. Campton is a traveling soccer club, based out of St. Charles, with membership of

² The Department conceded in its "Opening Statement" that Campton has no capital, capital stock or shareholders and "does not appear to provide gain to any person connected to it." Tr. p. 7. I agree with the Department on these factors and, accordingly, have not discussed them in this Recommendation.

approximately 600 players from a 20 mile radius, 42 teams. Teams are organized by age, gender and skill set. Tr. pp. 17-18, 26-27.

Campton's Bylaws provide for one class of members. "Active Members" are defined as "any player and the parent(s) of players actively engaged in Campton." "In order to be an active member, all players and parents must sign and abide by their respective agreements each year." The Board of Directors, by a 2/3 vote of all members of the Board, may terminate the membership of any member who, *inter alia*, "shall be in default in the payment of dues, if any." "The Board of Directors may determine from time to time the amount of initiation fee, if any, and the annual dues payable to the corporation by members..." If any member shall be in default in the payment of dues for a period of six months, his or her membership may be terminated by the Board of Directors.³ Tr. pp. 20-23; App. Ex. D. Campton is obviously a membership organization that exists because of the mutual interests of its members in the sport of soccer.

My research indicates no reported case in Illinois where ownership and operation of a soccer facility was recognized as an inherently charitable purpose. Whereas promoting sportsmanship, education and fellowship by encouraging participation in soccer may be a worthwhile endeavor, participating in this activity through Campton requires money. Potential soccer players are given a "Tryout Flyer" which describes Campton's, services, fees and requirements. Annual fees range from a deposit due at registration of \$350 to \$525, plus 5 monthly payments of \$200 to \$325, all depending on the age and gender of the member. Some tournament fees are included in the annual fees. "Any additional tournaments will be an extra fee." "Surcharges for some tournaments could be higher than \$300." Travel fees (to

³ There is no evidence in the record as to the amount of Campton's initiation fee or dues and whether these items are in addition to the Program Service Fees, discussed below.

tournaments) could also be an extra expense. “Failure to stay current by required due date for all payment plans and extra fees will result in a \$35 late fee added on to the monthly payments or extra fee. Playing and training privileges will be immediately suspended until after balance is current.” Each family is also required to participate in a mandatory fundraiser where they purchase 10 “Discount Cards” for businesses in the area for \$200. “They can then re-sell the cards for \$20/each to recoup the \$200 investment.” “Families that don’t wish to sell the Campton Discount Card can choose the ‘\$200 club donation’ option.” Uniforms must also be purchased from the “uniform contractor.” Tr. pp. 29-30, 33, 52; App. Ex. E.

It is clear from the record of this case that Campton does not benefit an unlimited number of persons, one of the distinctive characteristics of a charitable organization, according to Korzen. Campton benefits a limited number of persons, namely its members whose families have paid the participation fees for their child. Campton may be promoting sportsmanship, education and fellowship but this “promotion” is for its members who pay substantial yearly fees to participate in Campton’s programs. Mr. Albrecht testified that fees for boys aged 15 to 17 years, for example, “could go up as high as \$1,900.” Tr. p. 52.

By its own admission, Campton is a membership based organization. When the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Chicago Bar Association v. Department of Revenue, 177 Ill. App. 3d 896 (2d Dist. 1988). Fraternal and social organizations do not qualify for exempt status because they operate primarily for the benefit of a limited class of persons who maintain membership therein. Campton, which sponsors numerous soccer programs that are of interest to its paying membership, operates primarily for the benefit of its members.

In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956), the Court found that one of the primary purposes of the organization was “to benefit and afford comradeship to its members.” “Affording comradeship to its members” is strikingly similar to some of Campton’s purposes as stated in its Bylaws, namely providing for “mutual assistance” and promoting “sportsmanship.” According to the Court in Rogers Park, the organization’s purposes were “patriotic, laudable and public spirited.” “Nonetheless, they do not constitute charitable purposes, however desirable or however beneficial.” The Court found that the dominant use of the subject property was as a “private club rather than as a headquarters for the dispensation of charitable relief.” *Id.* at 290-291.

Similarly, in Albion Ruritan Club v. Dep’t. of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991), the court found that a community service organization’s property did not warrant a tax exemption. In denying a property tax exemption to Albion, the court noted that “it must be shown that the benefits accrue to mankind directly; it is not sufficient that incidental benefits accrue to the public as a result of the property’s use.” *Id.* at 918. The primary benefit of Campton is not to mankind directly, but to Campton’s members, who pay a hefty fee to enjoy these “benefits.” If there are any benefits to mankind or the public at large from Campton’s soccer related activities on the subject property, the benefits are incidental and secondary to its main purpose, of providing a service to its paying members.

Campton’s purpose of providing for the enjoyment, entertainment and improvement of “its” young people socially and physically is “laudable and public-spirited.” But it is not logical to conclude that an organization whose “goal,” as stated on the “Tryout Flyer,” “is to become the most comprehensive and full service soccer club in the western suburbs” is a “headquarters for the dispensation of charitable relief.” App. Ex. E. Campton is a “headquarters” for activities that

are of interest to and paid for by its members. The record in this case shows that the primary purpose of Campton is not to provide charity but to provide programs of interest to its paying members. Accordingly, I conclude that the benefits derived from the use of Campton's subject property are not for an indefinite number of persons.

I am also unable to conclude that Campton reduces a burden on government. "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens." School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). It is a *sine qua non* of charitable status that those seeking a charitable exemption are able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions. Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 395 (2010).

Counsel for Campton argued in his closing argument that if Campton's soccer related training was not available, children would have to participate in park district programs, "which means the park districts would incur the cost on coaching, administrative staff, that they don't have to incur now because Campton provides that service." Tr. p. 62. This is pure speculation on Counsel's part and there is no evidence in the record to support this speculation.

Moreover, Counsel for Campton has failed to delineate, and my own research does not indicate, any statute, ordinance or legal mandate requiring park districts to offer soccer programs or to provide, as does Campton, a 25,000 square foot, 5 acre recreational facility for "soccer related activities." Tr. pp. 49-50. There was testimony that St. Charles Park District, Geneva Park District and Batavia Park District, all in the area of Campton, offer soccer programs for their

town residents. Tr. p. 29. But there is no evidence in the record that these Park Districts are required, by law, to offer soccer programs or to provide facilities for soccer training. Campton cannot be reducing a burden on government because there is no evidence that government is “burdened” with providing revenue for soccer programs or facilities for soccer training.

In Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 478 (1st Dist. 1991), the Yale Club identified and evaluated applicants to Yale, stimulated interest in Yale among alumni and the public at large and maintained a “Yale presence” in Chicago. The Court noted that an organization designed to benefit Yale exclusively does not appear to dispense its benefits to an indefinite number of people. I have reached this same conclusion about Campton’s benefits which are primarily for a limited number of persons, Campton’s members. In Yale Club, the Court stated further that “[T]he State of Illinois and its taxpayers receive no apparent relief from any economic burden by the [Yale Club’s] activities.” Similarly, I am unable to determine that the State of Illinois or its taxpayers receive any “apparent relief from an economic burden” from Campton’s soccer related activities.

Counsel for Campton also argued in his closing argument that Campton’s circumstances are “akin to the situation” in Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist. 1988). However, the granting of a charitable tax exemption in Decatur and the court’s finding that the Foundation lessened a burden on government were based on completely different facts from Campton. In Decatur, a representative from the local park district testified that without use of the Foundation’s field, the park district would have to build more diamonds, reschedule games to less desirable times or reduce the number of games. “This is sufficient evidence from which to conclude the Foundation reduces the burden of government by privately supplementing public recreational facilities.” *Id.* at 706.

However, the “sufficient evidence,” as the court termed it, is completely lacking in the Campton case. There is no evidence in the record that Campton “privately supplements public recreational facilities.” There was no evidence that Campton allows the local Park Districts to use the subject property for their own soccer programs. There was no testimony from a Park District representative, as in Decatur, that the Park Districts would incur costs if Campton did not exist. The court noted further in Decatur that the “[F]oundation does not require membership in order to use the field.” *Id.* at 706. As discussed previously, Campton is a membership organization charging hefty fees to use its facilities. Campton’s reliance on Decatur for its argument that it lessens a burden on government is misplaced.

There is nothing in the record of this case which would lead me to conclude that the State of Illinois would have an increased economic burden if Campton did not own and operate the subject property. I am unable to conclude from the record that the benefits derived from Campton are for an indefinite number of persons or that Campton reduces a burden on government. Campton’s use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (2): 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, Campton has failed to prove that the majority of its funds were derived from public and private donations. Campton’s Form 990, “Return of Organization Exempt from Income Tax” for 2011 to 2012, shows Contributions of \$7,229 (less than 1% of Total Revenue), Program Service Revenue of \$1,040,713 (98%), and Net Income from Fundraising Events of \$12,254 (1%), for Total Revenue of \$1,060,196. Program Service

Revenue is 73% “Player Registration Fees” 11% “Midwest Cup Tournament,” 5% “Player Uniform Fee,” 5% “Player Tournament Fees,” 4% “Training Programs” and 1% “Other.” Campton had a loss for the year of \$10,467. Campton’s Form 990, for 2012 to 2013, shows Contributions of \$9,308 (less than 1% of Total Revenue), Program Service Revenue of \$1,169,571 (97%), Net Income from Fundraising Events of \$25,716 (2%) for Total Revenue of \$1,204,595. Campton had net income for the year of \$83,196. The breakdown of Program Service Revenue for 2012-2013 is similar in percentage to the breakdown for 2011-2012. Tr. pp. 39-46, 51-52; App. Ex. G, H, I and J.

As the financial data indicates, the great majority of Campton’s revenue is earned from selling its programs to its members. 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). Because of the high level of revenue derived from Program Service Fees, I must conclude that Campton’s primary purpose and the primary use of the subject property is to provide “soccer related training” to those who are able to pay for it.

In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 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. For Campton, 98% of its revenue is derived from Program Service Fees. 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. 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 Campton, is not a “use” of property that has been recognized by Illinois courts as “charitable.”

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 derived almost entirely from Campton’s “soccer related training” on the subject property indicates that the primary use of the property is recreational, not charitable. Campton may be holding funds for the objects and purposes expressed in its charter but these purposes are recreational, not charitable. Campton has failed to prove that the majority of its funding is from public and private charity and that it holds these funds for charitable purposes. Campton’s use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (4): Charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it.

Mr. Albrecht testified that in the 2011-2012 soccer season, 22 children in 18 families received financial assistance from Campton totaling over \$18,000 and in the 2012-2013 soccer season, 29 children in 23 families received financial assistance totaling over \$27,000. While testifying on this matter, Mr. Albrecht was reading from a “summary of the number of families and participants and the dollar amount.” Tr. pp. 35-38. Whatever document he was reading from was not admitted into evidence and, accordingly, there is no documentary evidence in the record supporting his testimony on Campton’s financial assistance for these years.

Mr. Albrecht testified that Campton provided complete fee waivers and partial fee waivers. Tr. pp. 33-34. But there was no testimony as to the number of complete and partial fee waivers. It must also be noted that according to Campton’s “Tryout Flyer” and “Application for

Financial Assistance,” an extended payment plan is also considered financial assistance. App. Ex. F. It is unclear from the record if some of the financial assistance testified to by Mr. Albrecht included an extended payment plan. No documentary evidence was offered to support any of Campton’s financial assistance data and, accordingly, it is possible that the majority of the financial assistance consisted of extended payment plans.

One can make a gift by charging nothing at all or one can make a gift by undercharging a person. But for 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), aff’d, 236 Ill. 2d 368 (2010). Extended payment plans are an accommodation. My research indicates no case in Illinois where deferring the payment of full-cost fees was considered “charity.” Furthermore, there is no testimony in the record as to how many children or families applied for financial assistance and were denied. Without evidence on this matter, I am unable to conclude that charity is dispensed to all who need and apply for it.

Assuming, *arguendo*, that the financial assistance figures represent actual charity and not extended payment plans, the assistance in 2011-2012 of \$18,000 represents 1.7% of Campton’s Total Revenue for the year. The assistance for 2012-2013 of \$27,000 represents 2.2% of Campton’s Total Revenue for the year. Mr. Albrecht testified that Campton has “roughly” 600 players. Tr. p. 17. Campton provided financial assistance to 3.6% (22/600) of these players in 2011-2012 and 4.8% (29/600) in 2012-2013. “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). I am unable to conclude from the record that Campton has given “liberally.” The disparity between Campton’s financial assistance and its Total Revenue is so extreme that it would be disingenuous to maintain that the primary purpose

of the organization is to provide charity. “The property of a club or other organization, to be exempt from taxation, must be used primarily for charitable purposes.” Oak Park Club v. Lindheimer, 369 Ill. 462, 465 (1938). The figures showing Campton’s financial assistance in the years at issue, both in terms of dollars and in terms of members receiving assistance, fall far short of meeting the primary purpose standard.

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). Based on the record in this case, I conclude that Campton has failed to prove that the organization dispenses charity to all who need and apply for it and its 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.

Campton’s “Tryout Flyer” contains the following language: “Any financial hardship application must be received at registration with \$100 non-refundable application fee and all required documentation.” “Applications received after registration may not be considered.” The “Application for Financial Assistance” states that a \$100 financial assistance application fee and \$200 mandatory fundraiser fee and full uniform must be paid at registration. The mandatory fundraiser fee is never waived because, according to Mr. Albrecht, Campton feels “that people should put some effort into helping defer the cost.” Applicants for financial aid must also submit the previous year’s federal tax returns and recent pay stubs. Campton Board members review the

Application and determine what level of financial assistance the family requires, either an extended payment plan or an appropriate level of assistance or full assistance. The Application does not state that the \$100 non-refundable application fee may be waived. Tr. pp. 30-33, 52-53; App. Ex. F.

Campton places several obstacles in the way of those who need and would avail themselves of their “charitable” benefits. The first obstacle is the \$100 application fee that a family asking for financial assistance must pay upfront in order to be able to ask for assistance. The second obstacle is the \$200 mandatory fundraiser fees and uniform fees that must be paid at registration. Before a family can even ask for financial assistance, they must pay \$100. If their application for financial assistance is approved (and the assistance may be in the form of an extended payment plan) they must pay the \$200 fundraising fee and uniform fee. The fundraising fee is never waived. There was no testimony as to whether the uniform fee was ever waived. In its closing argument, counsel for the Department stated as follows: “This is a huge obstacle for people who want to participate. I mean \$300 is just not going to be affordable to some people.” According to the Department, the Korzen factor “is obviously not met, when you have a \$300 requirement to be [paid] before you can even be considered for financial assistance.” Tr. p. 56. The \$300 requirement for application, fundraising and uniform fees appears to be “lacking in the warmth and spontaneity indicative of a charitable impulse.” Korzen supra at 158.

Mr. Albrecht testified that in “truly hardship cases” if the family cannot afford the \$100 financial assistance application fee, we’ll waive the fee.” According to his testimony, the \$100 fee was waived in 2012. Tr. pp. 32-33. No documentary evidence was offered to support this testimony. In addition, the Application does not state that the \$100 fee can be waived. A document, entitled “Financial Assistance Program,” attached to the Application, states that at

registration, a family fills out all registration paperwork and “must” pay a \$100 financial assistance application fee. App. Ex. F. It is unclear how a family needing financial assistance would know that the word “must” is really voluntary. This is also an obstacle in the way of anyone who wants to apply for financial assistance but cannot afford the \$100 fee. It simply is not logical to conclude that a parent needing financial assistance would know that the fee could be waived.

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. Department 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 “Alivio 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.

A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 287 (2004). Campton obstructs the path to its benefits with the \$100 application fee, the \$200 fund-raising fee and the uniform fee. Furthermore, there is no evidence that the general public would know that the \$100 application fee could be waived and this is also a significant obstacle in the way of those who wish to join Campton but cannot afford this fee. The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena

Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010). I am unable to conclude from the record of this case that Campton does not place obstacles in the way of those needing charitable assistance and Campton's use of the subject property is not consistent with this characteristic of a charitable organization.

Korzen factor (6): The exclusive (primary) use of the property is for charitable purposes.

Assuming *arguendo*, that Campton was a charitable organization, I am unable to conclude that the subject property is used "exclusively" 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 or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430, 436 (1st Dist. 1987.). Incidental acts of beneficence are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

Mr. Albrecht testified that the subject property is 25,000 square feet, 5 acres, located in St. Charles, Illinois. The property contains office space and parking spaces for 80 cars. "Soccer-related training" occurs in the building. Tr. pp. 46-50. This is the only testimony in the record about the subject property. Considering the small amount of charitable assistance provided by Campton to a limited number of its members, as discussed above, I am unable to conclude that the primary use of the subject property in 2012 was for charitable purposes. The charity dispensed by Campton represents an incidental use of the subject property. Campton had the burden of proving here, 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). Campton has failed to prove that the subject

property was exclusively used for charitable purposes in 2012, as is required by 35 ILCS 200/15-65.

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 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 Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Campton has failed to prove that the subject property falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2012 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Kane County Parcel, Property Index Number 09-29-100-010 should not be exempt from 2012 real estate taxes.

Kenneth J. Galvin
Administrative Law Judge

April 14 2015