

ST 19-02

Tax Type: Sales Tax

Ta Issue: Exemption from tax (Charitable and other exempt entities)

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

	)	Docket Nos.	16-PT-000, 16-ST-000
In re	)		15-00-000
Exemption Applications of	)	PINs	XX-XX-XXX-XXX-0000, -XX-XX-XXX-
	)		XXX-0000, XX-XX-XXX-XXX-0000, XX-
	)		XX-XXX-XXX-0000, XX-XX-XXX-XXX-
	)		0000, XX-XX-XXX-XXX-0000
OPQ CHARITIES	)	John E. White,	
	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Michael Wynne, Jennifer Waryjas, and Douglas Wick, Jones Day, appeared for OPQ Charities; Eugene Edwards, John Izzo, and Joel DeTella, Hauser, Izzo, Petrarca, Gleason and Stillman, LLC, appeared for Intervener, Elementary School District XXX; Paula Hunter, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves OPQ Charities' (OPQ or Applicant) applications for two statutory tax exemptions. One application seeks an exemption identification number, pursuant to § 1g of the Retailers Occupation Tax Act (ROTA), 35 ILCS 120/1g, which would permit it to purchase tangible personal property, at retail, without paying Illinois use tax to the retailer, or to the Department, directly. The other seeks a non-homestead property tax exemption, pursuant to § 15-65 of Illinois' Property Tax Code (PTC), 35 ILCS 200/15-65, regarding several parcels of real property which are situated in Cook County, Illinois. After receiving notice of Applicant's property tax exemption

application, Elementary School District 159 (Intervenor) intervened, to challenge Applicant's claimed right to an exemption regarding the properties. The Illinois Department of Revenue's (Department) initial determinations denied both of Applicant's exemption applications. Applicant protested those denials and asked for a hearing.

The parties agreed to hold a single hearing regarding the separate exemption applications, which was held at the Department's offices in Chicago. Applicant presented evidence consisting of books and records and other documents, as well as the testimony of several witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the Department's prior denials, for the following reasons: (1) Applicant does not own the Property, and the person which does own the Property is not one of the persons described in PTC § 15-65(i), (ii) or (iii); (2) Applicant has failed to establish that it is organized and operated primarily for charitable purposes, or an institution of public charity; and (3) Applicant has failed to establish that the Property is actually being used primarily for charitable purposes.

Stipulations and Findings of Fact:

Facts Regarding the Property, Applicant, and its Organization

1. The Non-Homestead Property Tax Exemption application at issue is for the 2014-2015 tax years regarding the following parcels of real property (hereafter, the Property) situated in ANYWHERE, Illinois, which parcels have the following PINs: XX-XX-XXX-XXX-0000, XX-XX-XXX-XXXX-0000, XX-XX-XXX-XXX-0000, XX-XX-XXX-XXX-0000, XX-XX-XXX-XXX-0000, XX-XX-XXX-XXX-0000.

- Stipulation (Stip.) Exhibit (Ex.) 2, titled, Stipulation for Facility (hereafter, F. Stip. ¶ 7.
2. The Property contains an 18-hole golf course, practice facility (including a driving range), a clubhouse, and ancillary buildings. F. Stip. ¶ 8.
 3. Throughout the period at issue, the golf course and driving range had been open to the public, at the fees set by Applicant. App. Ex. 5.3 (copy of completed and filed Form 1023, titled Application for Recognition of Exemption), Ex. C (titled, Narrative Description of Activities), pp. 1-2 (of Ex. C).
 4. Applicant was incorporated on December 17, 2013, in Illinois. F. Stip. ¶ 1.
 5. OPQ Golf Foundation, LLC (OPQ Foundation) was organized on December 11, 2013, in Illinois. F. Stip. ¶ 3.
 6. On paragraph 5 of OPQ Foundation’s Articles of Organization, in response to a request for a statement of the “Purpose for which the Limited Liability Company is organized:” the preparer wrote, “[t]he transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act.” App. Ex. 5.4 (copy of OPQ Foundation’s Articles of Organization).
 7. OPQ Golf Foundation Operating, LLC (OPQ Operating) was organized on December 11, 2013, in Illinois, to operate the golf course and provide trainings and programs to the charitable beneficiaries of OPQ. F. Stip. ¶ 4.
 8. OPQ Golf Foundation Holdings, LLC (OPQ Holdings) was organized on December 11, 2013, in Illinois, to own golf course equipment and fixtures. F. Stip. ¶ 5.
 9. Applicant is the sole member (owner) of OPQ Foundation. Applicant Exhibit (App. Ex.) 5.3 (copy of completed and filed Form 1023, Application for Recognition for

Exemption (hereafter, Form 1023), Ex. C (Narrative Description of Activities), p. 1 (of Ex. C).

10. OPQ Foundation is the sole member (owner) of OPQ Operating and OPQ Holdings. App. Ex. 5.3, Form 1023, Ex. C, p. 1.
11. OPQ Foundation holds legal title to, and owns, the Property. App. Ex. 1.8 (copy of Applicant's 2014 Consolidated Financial Reports), p. 8; App. Ex. 1.11 (copies of deeds to Property in OPQ Foundation's name); Hearing Transcript (Tr.) Vol. I,¹ pp. 95, 127 (testimony of Robert C (C), Applicant's secretary and treasurer); 805 ILCS 180/30-1(a).
12. Applicant's Mission Statement provides that it was formed to operate a golf course to provide therapeutic golf experiences for United States (US) military active service personnel, veterans who have served in the US Military after 1990, and children who are emotionally, mentally, or physically challenged. *See* F. Stip. ¶ 6.
13. The Internal Revenue Service (IRS) granted Applicant § 501(c)(3) exempt status in a letter dated July 13, 2015. F. Stip. ¶ 15; App. Ex. 1.5 (identified at hearing as App. Ex. A-8) (copy of IRS exemption letter). The IRS determined that Applicant was a § 509(a)(2) public charity based on its expectation of public support. App. Ex. 1.5.
14. The Illinois Attorney General informed Applicant, in a letter dated July 17, 2015, of its registration as a Charitable Trust under the Solicitation for Charity Act. F. Stip. ¶ 16.

¹ The hearing was held over two days, and resulted in three transcripts, which will be referred to in this recommendation as Tr. Vol. I, II, or III.

15. Prior to the creation of Applicant, the golf course, known as OPQ Golf Course, was owned by three affiliated companies, and operated as a for-profit golf club, since the mid-1990's, when it was first constructed. App. Ex. 5.3, Form 1023, Ex. C, p. 1.
16. The three affiliated companies previously operating the golf club, and which Applicant's directors owned and controlled, are OPQ Golf Club Operating Limited Partnership, OPQ Golf Club Limited Partnership (both Limited Partnerships organized under the laws of Illinois) and HF Company, LLC (an Illinois limited liability company), which collectively donated the real estate containing the golf course, along with associated buildings, fixtures, inventory, and equipment, to Applicant. App. Ex. 5.3, Form 1023, Ex. C, p. 1.
17. For the year regarding which it applied for a property tax exemption, and thereafter, Applicant caused to have Consolidated Financial reports prepared. Applicant Exs. 1.8 (reports for 2014), 5.17 (reports for 2015), 5.18 (reports for 2016).
18. Notes 1 and 3 to Applicant's 2014 Consolidated Financial reports describe some of the circumstances leading to Applicant's creation, and provide, in pertinent part:

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Note 1 – Nature of Business and Significant Accounting Policies

Nature of Organization and Consolidation - OPQ Charities (OPQ or the "Organization") is a not-for-profit corporation that was formed to operate a golf course for the purpose of providing therapeutic golf experience for United States military active service personnel, veterans who have served in the U.S. military after 1990, and children who are emotionally, mentally, or physically challenged.

OPQ Golf Foundation LLC (the "Foundation"), an Illinois limited liability company, was formed in December 2013 to own the real estate. OPQ Charities is the sole member of the Foundation.

OPQ Golf Foundation Holding, LLC (Holding LLC), an Illinois limited liability company was formed in December 2013 to hold any golf course equipment or fixtures. The Foundation is the sole member of Holding LLC.

OPQ Golf Foundation Operating, LLC (Operating LLC), an Illinois limited liability company was formed in December 2013 to operate the golf course and provide trainings and programs to charitable beneficiaries. The Foundation is the sole member of operating LLC.

The golf course known as OPQ Golf Course previously operated as a for-profit golf club. In December 2013, the golf course and related property and equipment were donated to OPQ Charities and its wholly owned subsidiaries, Foundation, Holding LLC and Operating LLC. Additionally, partnership interests in limited partnerships were contributed to Operating LLC and Holding LLC in December 2013. See Note 3 for further information related to the donation of partnership interest.

Note 3 – Assignment of Partnership Interests and Merger

On December 13, 2013, Operating LLC and Holding LLC were assigned, individually, the general and limited partnership interests in OPQ Golf Club Operating LP (previous owner of golf course) and OPQ Golf Club LP (previous owner of golf course equipment and fixtures), respectively. The 99 percent limited partnership interests were previously owned by OPQ Holdings, Ltd. and the 1 percent general partnership interest was previously owned by ICD. The assignment of these interests qualified as an unrestricted contribution and, as such, was recognized as of December 30, 2013 at the fair value of a net deficit of \$363,417.

These limited partnerships were then merged into Operating LLC and Holding LLC. The merger documents were prepared in December 2013 but were accepted by the State of Illinois on January 22, 2014. The merger was one of entities under common control and are accounted for at carrying value as of the date of the merger. Operating LLC and Holding LLC are the surviving organizations of this merger.

App. Ex. 1.8, pp. 6 (Bates number 51), 11 (Bates number 56).

19. During all times at issue, Applicant's directors have been AA HI, LL HI, and PP HI.

App. Ex. 1.7 (copies of, respectively, Applicant's December 18, 2013 Board of Directors Meeting minutes, and Applicant's Bylaws), p. 2 (of exhibit, Bates number 63).

20. Applicant's Bylaws provide that Applicant's property, business and affairs are managed by its board of directors. App. Ex. 1.7, p. 4 (of exhibit, Bates number 65).

21. Article III, section 9 of Applicant's Bylaws provides as follows:

Quorum. A majority of the whole Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws.

App. Ex. 1.7, p. 6 (of exhibit, Bates number 67).

22. The minutes of Applicant's initial meeting of its board of directors provide, in pertinent part:

Mr. HI then announced that the Charity should have a conflicts of interest policy, in particular because of the various operational procedures to the proximity of the Golf course to other businesses owned by companies controlled by the members of the board of directors of the Charity. The directors then discussed the proposed Conflicts of Interest Policy which had previously been distributed to them. Upon motion duly made and seconded, the Conflicts of Interest Policy was adopted.

App. Ex. 1.7, p. 2 (of exhibit, Bates number 63).

23. Applicant's Conflicts of Interest Policy provides, in pertinent part, as follows:

OPQ Charities, Inc.

Conflict of Interest Policy

The Board of Directors of OPQ Charities, Inc., hereafter "Charity," do hereby adopt this conflict of interest policy, as may be amended from time to time, to ensure that the directors, officers, agents, and employees of charities will at all times act in accordance with this policy to avoid and minimize any conflicts of interest with charity.

The directors, officers, agents and employees all owe a duty of faithfulness to Charity so that it can implement its stated charitable and operational purposes. A conflict of interest occurs when any such director, officer, agent or employee, or any affiliate or family

member of the same, would stand to gain, either directly or indirectly, from a transaction that could cause harm or additional expense to charity.

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The Board of Directors understands that its directors, officers, agents and employees may engage in political or other charitable activities and does not place any broad limits on such activities. However, the Board of Directors reserves the right to identify certain activities which may create reputational risk to the Charity, or which may conflict with the Charity's intended purposes, and to require that such activities be curtailed or that such person be no longer affiliated with the Charity.

Whenever reasonably possible, conflicts of interest should be completely avoided.

When a conflict cannot be reasonably avoided, the person whose interests may be in conflict with the interest of the Charity, should act to alleviate the conflict. Whenever a conflict is apparent, is possible, or could be perceived, the director, officer, agent, or employee in question should disclose the conflict or possible conflict to the Board of Directors, and should abstain from making any decision about the transaction which creates, or could appear to create, the conflict of interest. In the event the Board of Directors is notified of any such potential conflict, it will determine whether, in fact, a conflict of interest has or will occur, and will give direction to the officers, agents, or employees, as to how the conflict shall be avoided or resolved.

Whenever a conflict of interest involves transactions done or to be done with directors, officers, agents or employees, or their family members or affiliates, as counterparties, the Board of Directors requires that such transactions be conducted at fair market value, at the same price, and on the same terms, that completely unrelated parties would undertake such transactions. The Board of Directors further requires that Charity be supplied with and retain documentary evidence, wherever possible, supporting that such transactions are conducted at fair market value.

Certain Unavoidable Conflicts of Interest

Due to the proximity of an OPQ Golf Course to the OPQ Banquet real estate (which is indirectly owned to a large part by affiliates of certain directors) certain potential conflicts of interest are unavoidable. In order to alleviate these conflicts of interest, the Board of Directors has ascertained that: (i) the rent charge by OPQ Banquets for the pro shop, locker rooms, and cart storage areas, all located in the OPQ Banquet building, is not and will not be above fair market value; (ii) that the easement agreement governing land use between OPQ Banquets and the OPQ golf course, and their successors for ingress, egress, parking and allocation of maintenance costs for the same, are at fair market value; (iii) that the patrons of OPQ golf course who desire to use the golf facilities will not be required to purchase any food or beverage from OPQ Banquets, and if they do voluntarily purchase food or beverage from OPQ Banquets, it shall not be at rates above fair market value as established by OPQ Banquets normal rates available to the public at

large; (iv) OPQ Banquets will at all times when the golf course is in operation provide food and beverage service for patrons on the golf course (halfway house and beverage cart, for example) at normal rates for a first class gold course near ANYWHERE, Illinois, and will not charge the Charity any fee for producing such food and beverage service even if such service results in a loss to OPQ Banquets; (v) the lease between the Charity, as landlord, and OPQ Banquets, as tenant, for the sports bar located on the golf course property is and shall at all times be at or below fair market value; and finally, (vi) the agreement under which OPQ Banquets provides personnel, book keeping, accounting, IT, and accounts payable support is and shall be at all times at or below fair market value.

App. Ex. 5.3, Form 1023, Ex. D.

24. In Part IV of its Form 1023, Applicant provided the following narrative description of its planned programs:

OPQ charities was formed to operate a golf course for the purpose of providing therapeutic golf experiences for United States military active service personnel, veterans who have served in the US military after 1990, and children who are emotionally, mentally, or physically challenged. Through the use of our golf course, driving range, and practice facility, OPQ Charities will also offer instruction, practice, and education to veterans and special needs children. OPQ charities will also provide use of the golf course to qualified charities for their use in fundraising activities or otherwise at greatly reduced rates.

The golf course known as OPQ golf course, is an 18-hole championship golf course located in a middle-class, racially varied neighborhood in Tinley Park Illinois, a suburb of Chicago. Prior to the establishment of OPQ charities, it was owned by three affiliated companies, OPQ Golf Club Operating Limited Partnership, OPQ Golf Club Limited Partnership, (both limited partnerships organized under the laws of the state of Illinois) and HF Family Company LLC (an Illinois limited liability company) which collectively donated the real estate containing the golf course, along with associated buildings, fixtures, inventory, and equipment, to OPQ Charities, as described in the next paragraph. The golf course had previously been operated as a for profit golf club since the mid-1990s, when it was first constructed.

To accomplish the transfer of the golf course to OPQ Charities, three limited liability companies were created: OPQ Golf Foundation, LLC ("Foundation"), solely owned by OPQ Charities, to own the golf course real estate; OPQ Foundation Operating, LLC ("Operating LLC"), solely owned by Foundation, to operate a golf course and practice facilities and to provide the training to the charitable beneficiaries; and OPQ Foundation Holding, LLC ("Holding LLC"), solely owned by Foundation, to operate the golf course and the practice facilities and to provide the training to the charitable beneficiaries; and OPQ Foundation Holding LLC ("Holding LLC"), solely owned by Foundation, to own the golf course equipment and fixtures. Initially, the real estate was deeded to

Foundation, and the ownership of OPQ Golf Operating Limited Partnership and OPQ Golf Club Limited Partnership was assigned to Foundation. Then OPQ Golf Club Operating Limited Partnership was merged with and into Operating LLC and OPQ Golf Club Limited Partnership was merged with and into Holding LLC. See documentation of these transactions at Exhibit G.

The golf course will continue to be open to the public during times when it is not reserved specifically for used by veterans, challenged children, or other charitable organizations. The website address for the golf course is www.XXXXX.com During these times, the standard fees for the public are described later in this paragraph. However, the course will also be available at these times to US military veterans at the discounted fee schedule that is described in the Veteran’s program later in this narrative. The standard cost of playing the course varies based upon the time of year, spring and fall being less expensive than prime summer months, the day of the week, with weekends being more expensive, and the time of day, with early morning and late afternoon being less expensive than prime time. The public prices are based upon the prevailing rates charged by competitor golf courses, taking into account the quality and location of the competitive courses. In recent years, the golf course has average approximately \$XX per round based upon slightly more than 20,000 rounds per year. While prices will continue to vary, current public prices for the spring, 2015 are:

Weekdays	Cart	Walk
Open to 9 am	\$XX	XX
9 am to 2 pm	\$XX	XX
2 pm to Dark	\$XX	XX
Weekends		
Open to 1 pm	\$XX	XX
1 pm to 3 pm	\$XX	XX
3 pm to dark	\$XX	XX

As detailed below, the charitable activities are accomplished by providing the golf and practice facilities either for free, or at a very great discount from the regular public prices.

Challenged Children's Program

This program will benefit emotionally, psychologically, and physically challenged children. It is well-established that participation in recreational sports, including golf, is an excellent way to help people with disabilities to develop independence, confidence and fitness, all qualities that are admirably suited to help individuals overcome or otherwise live with their disabilities.

OPQ Charities will provide instruction to challenged children, ordinarily on the driving range, either singly or on a group basis. This will be supervised by OPQ Charity’s professional staff, which includes one individual who is certified to work with handicapped children. In addition, volunteers will assist and will provide chaperone

services. Such children will also benefit from the enjoyment and confidence building that recreational golf can provide. OPQ Charities will seek out qualified candidates through local children's hospitals, local and state agencies, and local school districts, and will also publicize this program through such channels. These entities will deliver the children to the facility and provide some on-site supervision. It is currently anticipated that two group lessons will be held each week during golf season. Each lesson typically last for 90 minutes on the driving range, the chipping range, and the practice putting greens, and is provided free of charge to participating in children. OPQ Charities provides the clubs and golf balls. In addition, OPQ Charities also provides lunch, and a souvenir.

Veteran's Program

OPQ Charities will provide golf and free golf instruction to armed forces veterans under a variety of programs. Many combat veterans are suffering from post-combat stress syndrome or are having difficulty with socialization back home. Many combat veterans are youthful and vigorous yet have suffered disabling wounds. Golf is a form of sport that can be used to help socialization skills, that can be used to bring together similarly challenged people, and that can be played by the physically disabled. But golf is generally too expensive for veterans to afford on a regular basis.

While the program will vary from time to time to better serve our intended beneficiaries, the current slate of veterans' programs are:

- Discounted 18-hole play on the golf course with priority reservations, for persons who served in the active duty military from 1990 and thereafter. This covers the veterans who served in the armed conflicts in Bosnia, Desert Storm (Iraq), Afghanistan, and the second Iraq war, and all current active duty personnel. They can play golf, with a cart, for \$XX for 18 holes.
- Discounted league plan on the golf course, for persons who served in the active duty military from 1990 and thereafter. The nine-hole league to be made up of veterans only, will cost \$X per round with a cart.
- Discounted practice facility play on the driving range, putting green, and chipping green, for persons who served in the active duty military from 1990 and thereafter. The cost for a full bucket of balls for the range and unlimited use of the chipping and putting facility is \$1.
- Discounted group golf lessons at the practice facility for persons who served in the active duty military from 1999 and thereafter. The cost of the one-hour group lesson is \$1 per person.
- Discounted 18-hole play on the golf course for veterans only golf outings. These outings are limited to veterans who served in the active duty military, but not limited to post 1990 service. The cost of thee outings, including golf cart, is \$15 per person. In addition to the golf, OPQ Charities provides a hot lunch, snacks, and prizes.

- Discounted golf for all veterans in the OPQ Veterans Club. All US Military veterans are eligible. Members receive a free Veterans Club golf hat, \$5 off the cost of golf cart good at any time, and \$2 off golf range balls good at any time.
- Private and group golf instruction for physically handicapped or wounded veterans will be provided free of charge by OPQ personnel.

App. Ex. 5.3, Form 1023, Ex. C, pp. 1-4 (of exhibit C)

Working with Other Charitable Organizations

OPQ Charities will make its golf and practice facility available to other qualified Charitable and governmental organizations to hold fund raisers and to provide recreational opportunities for their own membership or charitable constituency at significantly discounted rates. The organizations must qualify as either 501(c)(3) organizations, or they must be governmental organizations. OPQ Charities will accept applications for these events and select the organizations that may participate. The charge for 18 holes of golf, including cart, for these events will be \$XX per person, which is substantially below regular rates. OPQ Holdings, Ltd. expects to limit these events to 1 per week during the golf season so as not to crowd out other programs.

App. Ex 5.3, Form 1023, Ex. C, pp. 1-4 (of exhibit C)

Facts Regarding OPQ's Operations:

25. Part V of a Form 1023 is titled, Compensation and Other Financial Arrangements with your officers, directors, trustees, employees and independent contractors, and question 2 to that Part provides:

- 2a Are any of your officers, directors, or trustees **related** to each other through **family** or **business relationships**? If "Yes," identify the individuals and explain the relationship.
- b Do you have a business relationship with any of your officers, directors, or trustees other than through their position as an officer, director, or trustee? If "Yes," identify the individuals and describe the business relationship with each of your officers, directors, or trustees.
- c Are any of your officers, directors, or trustees related to your highest compensated employees or highest compensated independent contractors listed on lines 1b or 1c through family or business relationships? If "Yes," identify the individuals and explain the relationship.

App. Ex. 5.3, Form 1023, Ex. C, p. 3 (emphasis original).

26. Applicant's response to the requests in Part V, question 2 of its completed Form 1023 provides as follows:

Part V, Item 2a (Page 3)

AA HI, PP HI, and LL HI are siblings. In addition, AA, LL and PP collectively control or own more than 70% of OPQ Holdings Ltd. and its subsidiaries, and of HF Company LLC. These two companies and their subsidiaries contributed the old course and all of its related assets to OPQ Charity in December 2013.

In addition, AA, LL and PP HI collectively own or control more than 70% of QRS Bancorp Co., and its subsidiary, QRS Bank of Chicago. QRS Bank of Chicago, which serves the general public, provides depository banking services to OPQ Charities at normal market terms and rates.

Part V, Item 2b (Page 3)

There are certain business relationships with companies owned and controlled by AA HI, PP HI and LL HI which are more fully described in the response to Part V, Item 9, below.

App. Ex. 5.3, Form 1023, Ex. C, p. 4.

27. Part V, question 9 of a Form 1023 provides:

- 9a Do you or will you have any leases, contracts, loans, or other agreements with any organization in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest? If "Yes," provide the information requested in lines 9b through 9f.
- b Describe any written or oral arrangements you made or intend to make.
- c Identify with whom you have or will have such arrangements.
- d Explain how the terms are or will be negotiated at arm's length.
- e Explain how you determine or will determine you pay no more than fair market value or that you are paid at least fair market value.
- f Attach a copy of any signed leases, contracts, loans, or other agreements relating to such arrangements.

App. Ex. 5.3, Form 1023, Ex. C, pp. 4-5.

28. Applicant's response to the requests quoted above provides as follows:

Part V, Item 9 (Page 4)

OPQ Charities has entered into the following arrangements with business entities owned or controlled by its Directors at terms that are fair market or better:

1. In order to minimize overhead costs OPQ Charities will lease the general manager and greens keeper of the golf course from an affiliate of OPQ Holdings Ltd., an Illinois corporation controlled by AA, PP, and LL HI. Under this arrangement, the general manager and greens keeper will work full-time running the golf course and OPQ Charities will reimburse the affiliate at actual cost, including the actual cost of employee benefits and payroll taxes and insurance. The general manager and greens keeper will perform no services for any affiliated companies and will not be compensated for any other services by affiliated companies or by OPQ Charities other than as described herein. A copy of the lease agreement is attached as Exhibit E-1.
2. A subsidiary of OPQ Holdings Ltd. will provide business management, human resources, payroll processing, accounts payable processing, accounting, IT network administration, insurance administration, tax preparation, financial statement preparation, and governmental reporting services for OPQ Charities. The affiliate will be compensated at the rate of 5% of annual revenue from the golf course (exclusive of contributions and investment income) which is estimated to be \$40,000 per year. Outside golf course management companies generally charge a much higher fee and perform fewer services. In addition, there will be a cap of \$50,000 per year, regardless of the extent of revenue realized from the golf course.

Although the management company is owned and operated by the directors of OPQ Charities, its selection as the management company is appropriate for several reasons: (i) it will charge management fees for substantially lower than the fees ordinarily payable in the industry; (ii) the management company has been managing the OPQ Golf Course since it opened in the mid-1990s and therefore is familiar with the operations at the course; (iii) the manager will provide more services than the typical golf course management company can provide in terms of the charitable reporting and tax return preparation, and (iv) the directors want to ensure that an outside management company doesn't over-focus on the business side of the golf course operations to the detriment of the charitable operations. A copy of the management agreement is attached as Exhibit E-2.

3. The real property consisting of a golf course, practice facility, and certain ancillary businesses buildings are located contiguous to and inter-dependent on real estate held by certain subsidiaries of OPQ Holdings Ltd. Some portions of the property owned by the affiliates are utilized by OPQ Charities. OPQ Charities and affiliates utilize a common parking lot, common detention ponds, and a common driveway from the street. In order to establish each other's rights and obligations at terms that are fair value or at better than fair value in favor of OPQ Charities, the following agreements have been entered into:

- a) Easement agreement. OPQ Banquets Limited Partnership (“Banquet RE”) is a wholly owned subsidiary of OPQ Holdings Ltd, which is majority owned and controlled by the directors of OPQ Charities. Banquet RE owns the real property contiguous to the golf course, through an Illinois land trust known as Chicago Title Land Trust 0000 which consist of the banquet hall building, the jointly used parking lot and the jointly used driveway. OPQ Charities, through its subsidiary OPQ Golf Foundation, LLC, owns the golf course real property, which includes a small snack bar known as the halfway house, and two small gazebos. Through the Easement Agreement, Banquet RE gives OPQ Charities the right of ingress and parking on the driveways and parking lots, and OPQ Charities gives Banquet RE the right to use the gazebos, halfway house, and cart path to provide banquet and food service functions. There is no cost to either party for these easements. Banquet RE agrees to absorb 2/3 of the cost, and OPQ Charities agrees to absorb 1/3 of the cost of maintaining the driveway, and entry road. This Easement Agreement was entered into shortly before and in anticipation of the golf course being donated to OPQ Charities. It was entered into so that OPQ Charities would be permanently protected by having a large parking lot and driveway access to the public street. The allocation of the cost of maintenance and based on the relative number of cars for both golf and banquets that use the parking lot and driveway. The golf course generates approximately 50% of the traffic of the facility, but in an abundance of caution so as not to overcharge OPQ Charities, the charity is only responsible for 33.33% of the maintenance and repair costs. The Easement Agreement was known at the time the golf course was appraised for purposes of its donation. Accordingly, the fair market consequences of the easement agreement are embedded in the value of the golf course donation. A copy of the Easement Agreement is attached as Exhibit E-3.
- b) Sports Bar and Restaurant Lease. The practice facility is owned by OPQ Charity through it wholly owned subsidiary OPQ Golf Foundation LLC. The practice facility includes a 6963 square foot building that services the driving range and practice facility and also includes a sports bar and short order restaurant that occupies 1641 square feet of the building. Since OPQ Charity is not staffed to operate food and beverage service, but since most first-class practice facilities have food and beverage service available for their patrons, the Charity has leased the facility to TWA Banquets Limited Partnership (“Banquet Operator”). TWA Operator is a wholly owned subsidiary of OPQ Holdings, Ltd, which is majority owned and controlled by the directors of the Charity. The lease is for a five-year term. The rent is \$XX per square foot per year. Banquet Operator has a right of first refusal to purchase the practice facility real estate (but not the golf course) should the Charity indicate they have accepted a bona fide offer from an independent third-party. In addition, Banquet Operator has an option to purchase the practice facility at its then appraised market value, in cash, for the term of the lease. The terms of the lease were determined to be at fair market value. The Board of Directors obtained an evaluation from an independent MAI appraiser

that the terms were fair and equitable to the Charity. The lease is attached as Exhibit E-4. The appraiser evaluation is attached as Exhibit E-5.

- c) The Pro Shop Lease. The operation of the golf course requires a pro shop, at which customers pay for their golf, purchase golf equipment or apparel they may need for play that day, and a locker room. This Pro shop has always been and is located in the 40,000 square foot banquet building owned by OPQ Banquets Limited Partnership. The golf course desires to store its golf carts when they are not being used at an indoor storage facility to protect them from the elements and to lengthen their useful lives. The storage facility has always been and is located in the lower level of the banquet building owned by OPQ Banquets Limited Partnership. It is not feasible for the pro shop to be relocated because of the lack of usable space near the main parking lot and near the first tee. Also, it would be an economic hardship on the Charity to build a new cart storage facility, and it would be an operational hardship because there is no room for a new building anywhere near first tee. Therefore, the Charity has entered into a lease with Banquet RE for the pro shop, locker room, and cart storage facility. The pro shop, locker room, and card storage occupy 1,235, 1,965, and 10,438 square feet of the 40,000 square foot three story banquet building. The term of the lease is 5 years, with options to renew for 4 additional five-year terms. The initial rent was set at \$25 per square foot triple net for the pro shop and locker room space, and \$7 per square foot triple net, for the storage space. The terms of the lease were determined to be fair market value. The Board of Directors obtained an evaluation from an independent MAI appraiser that the terms of the lease were fair and equitable. The lease is attached as Exhibit E-6. The appraiser evaluation is attached as Exhibit E-7.
- d) Banking services. QRS Bank of Chicago provides depository services for OPQ Charities and its subsidiaries. They maintain a checking account and a money market account at the bank. QRS Bank of Chicago is majority owned and controlled by the directors of OPQ Charities. The rates charged by the bank are the same as for all other customers and are at fair market.
- e) Lending arrangement. From time to time, OPQ Charities has operating deficits and insufficient cash to pay its operating bills. OPQ Holdings Ltd. has in the past and does continue to lend money on an as needed basis for OPQ Charities to operate until donations or operations provide sufficient funds. To date, OPQ Charities has not paid back any cash advances, and OPQ Holdings Ltd. has agreed to donate the advanced amounts to OPQ Charities on an annual basis. OPQ Holdings Ltd. charges no interest to OPQ Charities and takes no collateral for these cash advances.
- f) Employee Leasing. As previously described, OPQ Charities leases two employees from TWA Banquets Limited Partnership, the General Manger, and

Greenskeeper, at the actual cost incurred by TWA Banquets Limited Partnership. A copy of the leasing agreement is attached as exhibit E-1.

- g) Management Services Agreement. As previously described, in order to reduce overhead costs, Inter-TWA Real Estate and Development Company provides certain management services to OPQ Charities that OPQ Charities is unable to provide through its own staff. A copy of this Management agreement is attached as Exhibit E-2.

App. Ex. 5.3, Form 1023, Ex. C, pp. 8-11.

29. On January 1, 2014, OPQ Foundation entered into a lease agreement, as lessor, with TWA Banquets Limited Partnership (TWA Banquets), an Illinois limited partnership, to lease 1,641 square feet plus the non-exclusive use of the common areas located on the Property so that TWA Banquets could operate a sports bar on the Property (Sports Bar Lease). F. Stip. ¶ 10; App. Ex. 5.3, Exhibit E-4 thereto (copy of Sports Bar Lease). The minimum annual rent is \$XXXX. F. Stip. ¶ 10. The Sports Bar Lease was assigned to Sweet Spot Sports Bar, LLC, an Illinois limited liability company, which is also owned or controlled by Applicant's directors, on February 19, 2016. *Id.*; App. Ex. 5.3, Form 1023, Ex. C, p. 4.
30. On January 1, 2014, OPQ Banquets Limited Partnership (OPQ Banquets), an Illinois limited partnership owned and controlled by Applicant's directors, entered into a lease agreement, as lessor, with OPQ Operating, so that OPQ Operating could operate a pro-shop, locker room, and golf cart storage on the Property (Pro Shop Lease). F. Stip. ¶ 11; App. Ex. 5.3, Form 1023, Ex. E-6 (copy of Pro Shop Lease). AA HI signed that Pro Shop Lease, for OPQ Operating, as manager of OPQ Foundation, OPQ Operating's sole member. App. Ex. 5.3, Form 1023, Ex. E-6 (signature page of lease).
31. The minimum annual rent OPQ Operating agreed to pay OPQ Banquets, pursuant to the Pro Shop Lease, has scheduled increases, in five-year steps, from \$XXXXXXX in

2014 to \$203,863.95 in 2039. F. Stip. ¶ 11; App. Ex. 5.3, Form 1023, Ex. C (pp. 8-11) & Ex. E-6 (p. 2 of Pro Shop Lease).

32. Assuming the Pro Shop Lease remained in place all its 25-year term, OPQ Operating planned and agreed to pay OPQ Banquets the following amounts:

	Minimum Annual Rent	Five Year Total Rent	Lease Term Total Rent
Years 1-5	153,166	XXXXXX	
2-10	153,166 x 5	XXXXXX	
11-15	168,482* x 5	XXXXXX	
16-20	185,330* x 5	XXXXXX	
21-25	203,863* x 5	XXXXXXXX	XXXXXXXX

App. Ex. 5.3, Form 1023, Exs. C & E-6 (p. 2 of Pro-Shop Lease) (*the table above uses truncated, whole dollar amounts, instead of using additional cents).

33. On January 1, 2014, Applicant, OPQ Foundation, OPQ Operating, and OPQ Holdings entered into a management agreement (Management Agreement) with Inter-TWA Real Estate and Development Corporation (Inter-TWA), to hire Inter-TWA to provide them with certain business, accounting, and management services for the OPQ Golf Course and OPQ Golf Academy. F. Stip. ¶ 12; App. Ex. 5.3, Form 1023, Exs. C & E-6.

34. Pursuant to the Management Agreement, Applicant agreed to pay a management fee to Inter-TWA in the respective amounts of \$XXXXXX, \$XXXXXX, \$XXXXXX, and \$38,949, during 2014 through 2017. App. Ex. 5.18, pp. 9-11 (Bates numbers 54-56); App. Ex. A-13, pp. 2, 4, 6, 8.

35. On December 30, 2013, the Metron Group prepared an assessment of the Property. The Market Value “as is” was determined to be \$ XXXXXXXXX, effective December 27, 2013. F. Stip. ¶ 9.

36. On May 15, 2015 the Metron Group prepared a Lease Rate Analysis and found that the Sports Bar Lease was reasonable and supported in the market. F. Stip. ¶ 13.
37. On May 15, 2015 the Metron Group prepared a Lease Rate Analysis and found that the Pro Shop Lease was reasonable and supported in the market. F. Stip. ¶ 14.
38. Applicant uses a system of tracking use of OPQ Foundation’s golf course and driving range, by counting the number of times each is used. *See* Intervenor Ex. 1A (copy of Intervenor’s First Set of Interrogatories to Applicant), ¶¶ 5, 11; Intervenor Ex. 1 (copy of Applicant’s Response to Intervenor’s First Set of Interrogatories to Applicant), ¶¶ 5, 11; Tr. Vols. I-II, pp. 59, 109-111 (ST).
39. Using the system Applicant had in place to track use of the golf course and driving range, Applicant kept and provided the following breakdown of the total usage of the golf course and driving range during 2014-2016:

Number of Individuals Using Golf Course

Year	Customers	Customers Receiving Discount
2014	20,572	2,201
2015	21,104	3,620
2016	22,066	5,580

Number of Individuals Using Driving Range

Year	Customers	Customers Receiving Discount
2014	8,964	18
2015	11,925	843
2016	11,967	2,245

Intervenor Ex. 1A, ¶ 5; Intervenor Ex. 1, ¶ 5.

40. Applicant uses the same system when tracking the number of participants in its programs devoted to providing physically, emotionally and mentally disabled children a golfing experience” (hereafter, Special Needs Children’s Program) Intervenor Ex. 1A, ¶ 11; Intervenor Ex. 1, ¶ 11.

41. Applicant kept and provided the following breakdown of the participants in its Special Needs Children’s Program during the following years:

Year	Special Needs Children’s Program Participants
2014	11
2016	181
2017	242

Intervenor Ex. 1A, ¶ 11; Intervenor Ex. 1, ¶ 11.

Facts Regarding Applicant’s Financial Operations

42. Applicant had Consolidated Financial reports prepared regarding its operations.

Applicant Exs. 1.8 (reports for 2014), 5.17 (reports for 2015), 5.18 (reports for 2016).

43. For the years 2014-2016, one of Applicant’s Consolidated Financial reports, to wit:

its Consolidated Statements of Activities and Change in Net Assets, provided, in pertinent part, as follows:

	2014	2015	2016
Revenue and Support	*REDACTED	*REDACTED	*REDACTED
Contributions (Note 2)	*REDACTED	*REDACTED	*REDACTED
Fee for services	*REDACTED	*REDACTED	*REDACTED
Interest income	*REDACTED	*REDACTED	*REDACTED
Rental income (Note 2)	*REDACTED	*REDACTED	*REDACTED
Misc[] income (Note 2)	*REDACTED	*REDACTED	*REDACTED
Total revenue and support	*REDACTED	*REDACTED	*REDACTED
	*REDACTED	*REDACTED	*REDACTED
Expenses	*REDACTED	*REDACTED	*REDACTED
Program services	*REDACTED	*REDACTED	*REDACTED
Salaries	*REDACTED	*REDACTED	*REDACTED
Payroll taxes	*REDACTED	*REDACTED	*REDACTED
Employee benefits	*REDACTED	*REDACTED	*REDACTED
Operating Costs	*REDACTED	*REDACTED	*REDACTED
Occupancy expenses	*REDACTED	*REDACTED	*REDACTED
Selling expenses	*REDACTED	*REDACTED	*REDACTED
Total program services	*REDACTED	*REDACTED	*REDACTED
Support services – Management and general	*REDACTED	*REDACTED	*REDACTED
Total expenses	*REDACTED	*REDACTED	*REDACTED
	*REDACTED	*REDACTED	*REDACTED
Decrease in Net Assets	*REDACTED	*REDACTED	*REDACTED
Net Assets-Beginning of year	*REDACTED	*REDACTED	*REDACTED

Net Assets-End of year	\$XXXXXX	\$XXXXXX	\$XXXXXX
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Applicant Exs. 1.8, 5.17, 5.18.

44. Note 1 to Applicant’s Consolidated Financial reports for 2014 through 2016 each provide, in part, a virtually identical statement regarding federal income taxes, with the only difference being the years stated in the paragraph, as in the following example:

**Note 1 - Nature of Business and Significant Accounting Policies
(Continued)**

[***]

Federal Income Taxes - In June 2015, The Organization received notification from the Internal Revenue Service (IRS) of its approval of the Organization's application to be exempt from income tax under provisions of Internal Revenue Code Section 501(c)(3). Accounting principles generally accepted in the United States of America require management to evaluate income tax positions taken by the Organization and recognize an income tax liability if the Organization has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS or other applicable taxing authorities. Management has analyzed the tax positions taken by the Organization, noting the existence of certain significant unrelated business activities; however, it has concluded that as of December 31, 2015 and 2014, there are no uncertain positions taken or expected to be taken that would require recognition of a liability or disclosure in the consolidated financial statements, given the overall losses from operations to date. Management will continue to monitor the relative volumes of direct mission activities and the unrelated business activities as the Organization continues to develop and expand its mission plans. The Organization is subject to routine audits by taxing jurisdictions; however, there are currently no audits for any tax periods in progress.

[***]

App. Ex. 1.8, p. 8 (Bates number 53); *accord*, App. Ex. 5.16, p. 8 (Bates number 90); App. Ex. 5.17, p. 8 (Bates number 104).

45. Note 2 to Applicant’s Consolidated Financial reports for 2014 provided as follows:

Note 2 – Related Party Transactions

Accounts Receivable – At December 31, 2014 and 2013, the Organization had accounts receivable from related parties totaling \$166,380 and \$177,946, respectively.

On January 1, 2014, the Organization executed an agreement to lease certain space to TWA Banquets Limited Partnership, an entity related through common board members

who were the original contributing donors of the golf course and related property and equipment. The minimum annual rent for the five-year lease term is \$XXXXXXX per year. For the year ended December 31, 2014, rental income and common area maintenance charges amounted to \$XXXXXXX are included in the consolidated statement of financial position as part of the net related party receivable.

Additionally, as of December 31, 2014, TWA Banquets Limited Partnership owed Holding LLC insurance proceeds of one to \$ XXXXXX. The insurance proceeds relates to a storm in 2014 resulting in various damage to the golf course. TWA Banquets Limited Partnership holds the insurance policy and allocated a portion of the proceeds to Holding LLC. This amount is also included in the net related party receivable.

As part of the assignment of partnership interest transaction (see Note 3), OPQ Holdings Limited, an entity related through common the board members, who were the original contributing donors of the golf course and related property and equipment, promised to pay the Foundation's 2013 property taxes. The contribution receivable of \$XXXXXXX is included in the related party receivable balance as of December 31, 2013. Additionally, \$XXXXX was owed to the Foundation for certain expenditures paid on behalf of other related parties.

Accounts payable – At December 31, 2014 and 2013, the organization had accounts payable to related parties totaling \$170,512 and \$362,742, respectively.

On January 1, 2014, the Organization executed a lease agreement between the Foundation and TWA Banquets Limited Partnership (Banquets), an entity related through common board members who were the original contributing donors of the golf course and related property and equipment. The lease agreement requires the organization to pay \$12,764 per month and expires in 2038 for the purpose of operating a pro shop, locker room within the clubhouse and golf cart storage facilities owned by Banquets. Rent expense for the year ended December 31, 2014 was \$172,802, which \$153,166 is payable to Banquets as of December 31, 2014 and \$19,636 is included as deferred rent.

On January 1, 2014, the Organization executed a management agreement with Inter - TWA Real Estate and Development Corporation (ICD), an entity related through common board members who were the original contributing donors of the golf course and related property and equipment. The contract provides for a management fee of 5 percent of gross revenue of the golf course and practice facility, but excludes charitable contributions or sponsorship revenue of the Organization. During 2014, management fees incurred and paid were \$XXXXXXX an hour and are included in management and general expenses on the consolidated statement of activities and changes in net assets.

During 2014, ICD advanced certain operating expenses to the Organization. The Organization issued \$XXXXXXX of golf gift certificates to satisfy the payable. As of

December 31, 2014, no gift certificates were redeemed and \$XXXXXXX is included as an unredeemed liability on the consolidated statement of financial position.

Additionally, as of December 31, 2014, \$XXXXX was payable to ICD and banquets for miscellaneous operating expenses paid by these entities on behalf of the Organization.

As of December 31, 2013, the Organization owed Banquets \$XXXXXXX for various operating advances that were assigned to the Organization upon the merger. In 2014, Banquets forgave this amount owed. The Organization recorded as contribution revenue in the consolidated statement of activities and changes in net assets for the year ended December 31, 2014.

On November 1, 2014, the Organization entered into an employee leasing agreement with TWA Banquets Limited Partnership to lease certain employees. For the year ended December 31, 2014, this amounted to \$XXXXXXX, of which \$XXXXXXX was payable as of December 31, 2014.

For the year ended December 31, 2014, the Organization incurred \$XXXXXXX of vehicle leasing expenses to OPQ Leasing, an entity that is related through common board members. As of December 31, 2014, \$XXXXXXX is payable to OPQ Leasing.

Easement Agreement – Banquets owns the real property contiguous to the golf course, which consists of the banquet hall building, the jointly used parking lot, and the jointly used driveway. Through an easement agreement, Banquets gives the right of ingress and parking on the driveways and parking lots. There is no cost to the Organization for these easements.

App. Ex. 1.8, pp. 9-11 (Bates numbers 54-56).

46. Note I to each of Applicant's Consolidated Financial reports provide that the term "Fee for Service ... represents fees received by patrons of the golf course. These fees are determined to be exchange transactions and are recognized as services are provided." *E.g.* App. Ex. 5.16, p. 7 (Bates number 89), 5.17, p. 8 (Bates number 104).

47. 2 to Applicant's Consolidated Financial reports for 2015 provided as follows:

Note 2 – Related Party Transactions (Continued)

Accounts Payable - At December 31, 2015 and 2014, the organization had accounts payable to related parties totaling \$XXXXXXX and \$XXXXXXX, respectively. The December

31, 2015 amount is due to TWA Banquets Limited Partnership (“Banquets”) for equipment purchased throughout the year.

Operating Lease – on January 1, 2014, the Organization executed a lease agreement between the Foundation and TWA Banquets Limited Partnership (Banquets), an entity related through common board members, who were the original contributing donors of the golf course and related property and equipment. The lease agreement has escalating rent payments, which the organization records on a straight line basis of \$XXXXXXX per month which expires in 2038 for the purpose of operating a pro shop, locker room within the clubhouse, and golf cart storage facilities own by Banquets. Rent expense for the year ended December 31, 2015 was \$XXXXXXX of which \$XXXXXXX was forgiven by Banquet and recorded as contribution revenue on the statement of activities and changes in net assets and \$XXXXXXX is included as the deferred rent. Rent expense for the year ended December 31, 2014 was \$XXXXXXX, of which \$XXXXXXX payable to banquets as of December 31, 2014 and \$XXXXXXX is included as deferred rent.

[***]

App. Ex. 5.17, p. 10 (Bates number 92).

48. Note 2 to Applicant’s Consolidated Financial reports for 2016 provided as follows:

Note 2 - Related Party Transactions

[***]

Accounts Payable - At December 31, 2016 and 2015, the Organization had accounts payable to related parties totaling \$210,469 and \$46,145, respectively. The December 31, 2016 amount is due to multiple related parties, including Banquets, OPQ Banquets Limited, OPQ leasing LLC, and Inter TWA Real Estate Development Corporation. These entities are related through a common board members.

Operating Lease - on January 1, 2014, the Organization executed a lease agreement between the Foundation and Banquets, which were the original contributing donors of the golf course and related property and equipment. The lease agreement has escalated rent payments, which the organization records on a straight-line basis of \$XXXXXXX per month, which expires in 2038 for the purpose of operating a pro shop, locker room within the clubhouse, and golf cart storage facilities owned by Banquets. Rent expense for the year ended December 31, 2016 was \$XXXXXXX, of which \$ XXXXXX was payable to Banquet and \$XXXXXXX is included as deferred rent. Rent expense for the year ended December 31, 2015 with \$172,802, of which \$XXXXXXX is included as deferred rent. Additionally,

\$XXXXXXX was forgiven by Banquets and recorded as contribution revenue on the consolidated statement of activities and changes in net assets for the year ended December 31, 2015.

[***]

App. Ex. 5.18, p. 10 (Bates number 106).

49. Applicant caused to have federal Forms 990 filed with the IRS, and copies of its completed and filed Forms 990 were admitted into evidence. App. Exs. 5.20—5.24 (copies of, respectively, Applicant’s Forms 990 for 2013 through 2017).

50. Part III, line 4 of a federal Form 990 asks that the taxpayer “[d]escribe the organization’s program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.” *E.g.* App. Ex. 5.24 (copy of Applicant’s 2017 Form 990), p. 2.

51. On each of Applicant’s completed and filed Forms 990, Applicant listed a single program service, to wit: “Operation of Golf Course and related facilities.” App. Ex. 5.21 (copy of Applicant’s 2014 Form 990), p. 2; App. Ex. 5.22 (copy of Applicant’s 2015 Form 990), p. 15 (of exhibit); App. Ex. 5.23 (copy of Applicant’s 2016 Form 990), p. 2; App. Ex. 5.24 (copy of Applicant’s 2017 Form 990), p. 2.

52. Schedule A to a federal Form 990 is titled, “Public Charity Status and Public Support[.]” *E.g.*, App. Ex. 5.24 (unnumbered p. 13 of exhibit). Applicant’s completed 2017 Form 990, Schedule A, Part III, reflects Applicant’s reports of the amounts of public and total support for 2014 through 2017, and provides:

Section A. Public Support

Calendar year [...]	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
1 Gifts, grants, contributions, and membership fees received. [...]	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
3 Gross receipts from activities that are not an unrelated trade or business under [§] 513.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
5 The value of services or facilities furnished by a governmental unit to the organization without charge.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
6 Total. Add lines 1 through 5.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
7a Amounts included on lines 1, 2, and 3 received from disqualified persons.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
c Add lines 7a and 7b	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
8 Public support. (Subtract line 7c from line 6.)	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Section B. Total Support					
Calendar year [...]	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
9 Amounts from line 6	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources.	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
c Add lines 10a and 10b	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED
13 Total support. (Add lines 9, 10c, 11, and 12.)	*REDACTED	*REDACTED	*REDACTED	*REDACTED	*REDACTED

App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit).

53. As Schedule A, Part II of Applicant's completed 2017 Form 990 reflects, the

contributions Applicant received from related (disqualified) persons constitute part of its total support, but not part of its public support. *Id.*

54. All of Applicant’s public support revenues are derived from persons who pay Applicant fees to use the golf course or driving range, that is, from fees for services. App. Ex. 5.24, p. 3 (of Schedule A) (p. 15 of exhibit); *see* App. Exs. 5.16, p. 7 (Bates number 89), 5.17, p. 8 (Bates number 104).

55. OPQ Operating prepares and keeps a record of the revenues realized and expenses incurred related to operating OPQ Foundation’s Property. App. Ex. A-13 (copy of Budget Profit & Loss Y.T.D. Comparison) (Budget records).

56. Applicant admitted no financial books and records which document the amount of revenues realized directly from each of the separate charitable programs described in its Form 1023, or in Applicant Exhibits 5.31 to 5.33. App. Ex. A-13.

57. Beginning in 2016, OPQ Operating began to record amounts described as “Program Revenue–Foundation,” as part of its Budget records. App. Ex. A-13. C described such amounts as the amount of donations Applicant received, as a result of fundraising, from persons other than persons related to Applicant’s directors. Tr. pp. 100-01 (C).

58. For the years of 2014-2017, OPQ Operating’s Budget records reflect the following statements of revenues:

REVENUE	2014	2015	2016	2017
Green Fee & Cart Fees	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Cost of Sales	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Gross Margin	*REDACTED	*REDACTED	*REDACTED	*REDACTED
	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Driving Range Fees	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Program Revenue–Foundation	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Pro Shop Sales	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Cost of Sales	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Gross Margin	*REDACTED	*REDACTED	*REDACTED	*REDACTED

TOTAL REVENUE				
Cost of Sales	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Gross Margin	*REDACTED	*REDACTED	*REDACTED	*REDACTED
TOTAL GROSS PROFIT	*REDACTED	*REDACTED	*REDACTED	*REDACTED

App. Ex. A-13, pp. 1, 3, 5, 7.

59. For the years of 2014-2017, OPQ Operating’s Budget records reflect the following categories of expenses, and the following total expenses for each category:

EXPENSES	2014	2015	2016	2017
Direct Wage & Salaries	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total Other Employment Exp	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total Other Operating Cost	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total Sales Expense	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total Occupancy Expense	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total General & Administrative Exp	*REDACTED	*REDACTED	*REDACTED	*REDACTED
	*REDACTED	*REDACTED	*REDACTED	*REDACTED
TOTAL EXPENSE	*REDACTED	*REDACTED	*REDACTED	*REDACTED

App. Ex. A-13, pp. 1-8.

60. Applicant’s revenues are primarily used to pay salaries, and to pay the operating and occupancy costs associated with maintaining and operating OPQ Foundation’s golf course and facilities. App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit); App. Ex. A-13, pp. 1-8.

61. Beginning in 2016, OPQ Operating began to record amounts described as “Program Expenses–Foundation,” as a component of its General and Administrative expenses. App. Ex. A-13, pp. 2, 4. During 2016 and 2017, OPQ Operating’s Budget records reflected Program Expenses in the respective amounts of \$XXXXXX and \$XXXXXX. App. Ex. A-13, pp. 2, 4.

62. In 2016, Applicant hired AA HI’s wife, LL HI, to be Applicant’s executive director and chief operating officer, with a salary of \$ XXXXXX. Tr. pp. 82-83 (C); Applicant’s

Post-Hearing Brief (Applicant’s Brief), p. 20 & n.46.

63. OPQ Operating’s Budget records show that it regularly recorded the expenses for the rent OPQ Operating agreed to pay to OPQ Banquets for the Pro Shop Lease during 2014 through 2017. App. Ex. A-13, pp. 2, 4, 6, 8. On its Forms 990, Applicant reported such lease payments, to the IRS, as occupancy expenses. App. Ex. 5.21-5.24 (Schedule L (Transactions with Interested Persons), Parts II, IV-V), Schedule O, and Schedule R, of each Form).
64. At hearing, however, C testified that OPQ Operating did not, in fact, pay any such rent to OPQ Banquets. *See* Tr. Vol I, pp. 85-86 (C).
65. Applicant’s Consolidated Financial reports note when amounts owed by Applicant (directly or indirectly) to related persons have been forgiven, and/or recorded as a contribution to Applicant by the related person. App. Exs. 1.8; 5.17; 5.18.
66. Two of Applicant’s Consolidated Financial reports state that \$XXXXXX of the \$XXXXXX rent Applicant owed to OPQ Banquets for 2015 had been forgiven and treated as a contribution to Applicant. App. Exs. 5.17, p. 10 (Bates number 92); 5.18 p. 10 (Bates number 106). None of the other Consolidated Financial reports state that any of the other amounts of rent Applicant owed OPQ Banquets for the Pro Shop Lease, for years other than 2015, had been forgiven. App. Exs. 5.16; 5.19.
67. The following table takes into account and adds the amounts set forth in OPQ Operating’s Budget records as expenses owed pursuant to the Pro Shop Lease and Management Agreement for 2014-2017, and compares such expense totals with the Budget records’ statements of Applicant’s total revenues during those years:

	2014	2015	2016	2017
Pro Shop Rent	*REDACTED	*REDACTED	*REDACTED	*REDACTED

Mgmt. Fee	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total paid	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total revenues	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Percentage of Applicant's total revenues paid, or agreed to be paid, to related persons	24.9%	24%	20.2%	19.2%

App. Ex. A-13, pp. 2, 4, 6, 8.

68. The following table performs the same function as the table above, but takes into account Applicant's Consolidated Financial reports' statements that some of the Pro Shop Lease rent Applicant owed for 2015 was forgiven by the related payee:

	2014	2015	2016	2017
Pro Shop Rent	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Mgmt. Fee	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total paid	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Total revenues	*REDACTED	*REDACTED	*REDACTED	*REDACTED
Percentage of Applicant's total revenues paid, or agreed to be paid, to related persons	24.9%	16.5%	20.2%	19.2%

App. Ex. A-13, pp. 2, 4, 6, 8; App. Ex. 5.17, p. 10; App. Ex. 5.18, p. 10.

69. Applicant admitted no regularly made and kept financial books and records which document the expenses directly incurred to provide each of the separate charitable programs described in its Form 1023, and which were actually conducted during 2014 through 2017. *See* App. Ex. A-13, pp. 2, 4, 6, 8.

70. Instead of making and keeping financial books and records which document the revenues and expenses directly attributable to Applicant's direct mission activities (*see* App. Ex. 1.8, p. 8 (Bates number 53); App. Ex. 5.16, p. 8 (Bates number 90); App. Ex. 5.17, p. 8 (Bates number 104)), ST, an employee of OPQ Foundation, prepared documents referred to as Activity Reports. App. Ex. 2 (identified at hearing as App. Ex. A-15) titled, OPQ Golf Foundation Charitable Activity Users Report 2016-2015-2014 Comparison (hereafter, 2014-2016 Activity Report); App. Ex. 5.27

- 2 small school buses
- 2 teachers
- 11 chaperones
- 1 supervisor
- 4 parents

The above expenses were paid for by Twin Hearts Foundation

App. Ex. 5.27.

72. The 2015-2016 Activity Report provides:

App. Ex. 5.31.

73. The 2014-2016 Activity Report provides:

OPQ Golf Foundation Charitable Activity Users Report

2016-2015-2014 Comparison

Veterans Day Special, November 11, 2016	174 played (6 days)	40 played (1 day)	New for 2015
<ul style="list-style-type: none"> • Free Greens Fees for all Veterans • \$5 Golf Cart Fee 			
War on Terror Veterans Range Balls	490 buckets	240 buckets	7 buckets
<ul style="list-style-type: none"> • 1 bucket per day for \$1.00 			
All Veterans Membership Discount at Driving Range	891 buckets	215 buckets	New for 2015
<ul style="list-style-type: none"> • \$4 off buckets of balls 			

- All Veterans Wednesday Golf Clinic 608 students 374 students New for 2015
 - Every Wednesday from 10:00am to 11:30am year round
 - \$1 per bucket

501(c)(3) Charity Golf Outings

- \$25 fee for golf and cart
- TOTAL PLAYERS 1,558 players 1,358 players 1,171 players
- TOTAL EVENTS 19 events 17 events 13 events
-

Total Golfers & Driving Range Customers Who Received a Charitable Discount

2014	20,572 golfers	2,201 received a charitable discount
2015	23,498 golfers	3,620 received a charitable discount
2016	23,234 golfers	5,580 received a charitable discount
2014	8,964 range users	18 received a charitable discount
2015	12,496 range users	843 received a charitable discount
2016	12,474 range users	2,245 received a charitable discount

TOTALS

2014	2,219 golfers/range users received a charitable discount
2015	4,428 golfers/range users received a charitable discount, an increase of 2,209 golfers/range users from 2014
2016	7,825 golfers/range users received a charitable discount, an increase of 3,397 golfers/range users from 2015

*****14,473 users received a charitable discount in first three years of foundation*****

App. Ex. 2.

74. The numbers of total golfers/range users reported in each of the Activity Reports are not consistent from year to year. App. Exs. 2, 5.27; 5.31. More specifically, the Activity Reports state that the following numbers of persons received charitable discounts for the same years:

2014 Activity Report	2015-2016 Activity Report	2014-2016 Activity Report
----------------------	---------------------------	---------------------------

2014	2015	2016	2014	2015	2016
2,321	4,062	7,211	2,219	4,428	7,825

App. Exs. 2, 5.27; 5.31.

75. Notwithstanding the statements included in any one of the three Activity Reports admitted as evidence, each such report reflects the numbers of rounds of golf played on OPQ Foundation’s course, and the numbers of times OPQ’s Foundation’s driving range was used, and do not reflect the numbers of unique persons who accepted a discount from fees charged to play golf, or to use the driving range. Tr. Vols I-II, pp. 59, 109-111 (ST).

76. One of Applicant’s programs regularly provided virtually free access to OPQ Foundation’s driving range to a community of special needs persons, during 2016 and 2017. App. Ex. 5.32; Tr. Vol. II, pp. 6-21 (testimony of MOLLY P (P), an employee of GUIDE Manor).

77. GUIDE Manor is an intermediate care facility for adults whose disabilities will not allow the residents to live on their own. App. Ex. 5.32.

78. OPQ Foundation’s golf program is an hour and half long weekly program whose focus is to provide both therapeutic and recreational benefits through golf. App. Ex. 5.32. The participants are taught to hit golf balls, chip and putt. *Id.*

79. Applicant Exhibit 5.32 summarizes the dates the GUIDE Manor program was held in 2016 and 2017, and the respective numbers of weekly participants and instructors, as follows:

2016 dates	# of students	# of instructors	2017 dates	# of students	# of instructors
4/4	10	4	4/10	7	4
4/11	13	4	4/7	8	4
4/18	14	4	4/24	10	4

4/25	16	5			
5/2	8	5	5/1	9	3
5/9	11	4	5/8	10	4
5/16	14	4	5/15	10	5
5/23	14	5	5/22	10	4
6/6	14	5	6/5	10	4
6/13	9	4	6/12	10	4
6/20	10	4	6/26	6	4
6/27	7	4			
7/18	9	4	7/3	6	3
7/25	13	3	7/17	7	4
			7/24	7	4
			7/31	6	4
8/1	4	3	8/7	6	3
8/8	9	3	8/14	6	3
8/22	4	2	8/21	6	4
			8/28	*	*

App. Ex. 5.32 (* the numbers of students and instructors who might have participated in the program on 8/28/17, if any, are not included on the exhibit).

Conclusions of Law:

Illinois Law Regarding the Statutory Exemption Authorized by PTC § 15-65

The Illinois Supreme Court recently summarized the law underlying Illinois' statutory exemption for property used primarily for charitable purposes, in Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 389-90, 925 N.E.2d 1131, 1144-45 (2010) (hereafter, "Provena, [.]"). There, the Court explained:

Authority to exempt certain real property from taxation emanates from article IX, section 6, of the 1970 Illinois Constitution [all citations omitted] Section 6 provides that the General Assembly may, by law, exempt from taxation property owned by "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." ...

Section 6 is not self-executing. It merely authorizes the General Assembly to enact legislation exempting certain property from taxation. ... The General Assembly is not required to exercise that authority. Where it does elect to recognize an exemption, it must remain within the limitations imposed by the constitution. No other subjects of property tax exemption are permitted. The legislature cannot add to or broaden the exemptions specified in section 6. ...

While the General Assembly has no authority to grant exemptions beyond those authorized by section 6, it "may place restrictions, limitations, and conditions on [property tax] exemptions as may be proper by general law." ... In accordance with this power, the legislature has elected to impose additional restrictions with respect to section 6's charitable exemption. Pursuant to section 15-65 of the Property Tax Code ..., eligibility for a charitable exemption requires not only that the property be "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit," but also that it be owned by an institution of public charity or certain other entities, including "old people's homes," qualifying not-for-profit health maintenance organizations, free public libraries and historical societies. ...

Provena, 236 Ill. 2d at 389-90, 925 N.E.2d at 1144-45.

Further,

The burden of establishing entitlement to a tax exemption rests upon the person seeking it. ... The burden is a very heavy one. The party claiming an exemption must prove 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. ... A basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation ..., and every presumption is against the intention of the state to exempt property from taxation If there is any doubt as to applicability of an exemption, it must be resolved in favor of requiring that tax be paid.

Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144.

The Department denied Applicant's property tax exemption application after determining that the property was not in exempt ownership, and that it was not in exempt use. Department Ex. 1. Each of those determinations forms an independent basis for denial. Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1147 ("As detailed earlier in this opinion, eligibility for a charitable exemption under section 15-65 ... requires not only charitable ownership, but charitable use.").

Section 15-65 of the PTC provides, in relevant part:

§ 15-65 Charitable purposes. 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.

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held

- (i) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property,
- (ii) by an entity that is organized as a partnership or limited liability company, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner of the

partnership or managing member of the limited liability company, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986, as amended, or

(iii) for any assessment year including and subsequent to January 1, 1996 for which an application for exemption has been filed and a decision on which has not become final and nonappealable, by a limited liability company organized under the Limited Liability Company Act provided that

(A) the limited liability company's sole member or members, as that term is used in Section 1-5 of the Limited Liability Company Act, are the institutions of public charity that actually and exclusively use the property for charitable and beneficent purposes;

(B) the limited liability company is a disregarded entity for federal and Illinois income tax purposes and, as a result, the limited liability company is deemed exempt from income tax liability by virtue of the Internal Revenue Code Section 501(c)(3) status of its sole member or members; and

(C) the limited liability company does not lease the property or otherwise use it with a view to profit.

35 ILCS 200/15-65 (as amended by P.A. 96-763, eff. August 25, 2009). In the text of the final paragraph of § 15-65, quoted above, I have placed each of the romanettes — (i), (ii) and (iii) — on separate lines, to help make the text of that paragraph easier to understand.

Section 3-5 of Illinois' Use Tax Act (UTA) provides, in pertinent part:

Sec. 3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

(4) Personal property purchased by a ... a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or by a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department.

35 ILCS 120/3-5(4); *accord* 35 ILCS 120/2-5(11) (complementary § of ROTA).

With regard to Applicant's property tax exemption, I start by noting that Applicant is the person seeking the exemption, but it does not hold legal title to the Property. OPQ Foundation holds legal title to the Property (App. Ex. 1.11; Tr. Vol. I, pp. 95, 127 (C), and Applicant is OPQ Foundation's sole member. App. Ex. 5.3, Form 1023, Ex. C, p. 1; F. Stip. ¶ 3.

This is a good place to address the parties' arguments on this point. In its brief, the Department brought up the final paragraph of PTC § 15-65, and argued that OPQ Foundation, and not Applicant, was the title holder and owner of the Property. Department's Brief in Response (Department's Brief), pp. 13-14. It contended that, since Applicant failed to offer OPQ Foundation's operating agreement or other organizational documents to establish that Applicant was OPQ Foundation's sole member, it did not meet the requirements of the final paragraph of PTC § 15-65.

In its brief, Intervenor argued that Applicant failed to prove that it is the owner of the Property. Intervenor's Closing Argument (Intervenor's Brief), p. 9. It then cited to cases decided prior to the 2009 amendment to PTC § 15-65, when arguing that ownership of property might reside in someone other than a titleholder. *Id.*, pp. 9-11. Intervenor argues that the close relationship between Applicant, OPQ Foundation, and the for-profit entities controlled by Applicant's directors "severely undermines [Applicant's ...] ability to prove that it owns the Property for which exemption is sought." *Id.*, p. 11.

In response to those arguments, Applicant argued that "[t]here was substantial un rebutted relevant evidence of [its] ownership of the subject property." Applicant's

Post-Hearing Reply Brief (Applicant’s Reply), p. 7 (emphasis original). The evidence Applicant cites to support that proposition is that “[Applicant] ... is the whole owner of OPQ ... Foundation ... and that the Foundation is a ‘disregarded entity’ for federal tax purposes. The Foundation holds title and has no interest conflicting with those of its owner; nothing more needs to be established.” *Id.*, p. 8. As authority for this argument, Applicant cites Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill. App. 3d 73 (1st Dist. 1989) and Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (1981). Applicant’s Reply, p. 8 n.28.

The evidence clearly and convincingly shows that OPQ Foundation is the legal title-holder, and the owner, of the Property. App. Ex. 1.11; Tr. pp. 95, 127 (C); Old Salem Chautauqua Ass’n v. Illinois Dist. Council of the Assembly of God, 16 Ill. 2d 470, 475, 158 N.E.2d 38, 41 (1959). While Applicant is OPQ Foundation’s sole member, as a matter of Illinois law, such a relationship does not mean that Applicant and OPQ Foundation are the same person, or that Applicant is the owner or co-owner of OPQ Foundation’s Property.

Illinois law is clear that “[a] limited liability company is a legal entity distinct from its members. 805 ILCS 180/5-1. An LLC “is an independent legal entity which has legal rights and obligations” Peabody-Waterside Development, LLC v. Islands of Waterside, LLC, 2013 IL App (5th) 120490, ¶ 9, 995 N.E.2d 1021, 1024. Illinois law is also clear that “membership in a limited liability company does not confer any ownership interest in the property, real or personal, of the LLC. [citing and quoting 805 ILCS 180/30-1(a)]. A member of an LLC owns only its membership interest in the LLC.” *Id.*; *see also* 13 Ill. Law & Practice *Corporations* § 147 (August 2010) (“Shareholders do not

own the property of the corporation. ... [footnotes omitted] The title to the corporate property is vested in the corporation itself, and the shareholders own not its property, but the shares of the corporation; ... that is, an intangible interest in the corporation, ... with a right to share the net profits on distribution and to secure a proportionate share of the net assets on dissolution.”) (and cases cited therein).

The PTC is similarly clear that a corporation and a company are distinct persons. 35 ILCS 200/1-125 (definition of “person”). Applicant, a corporation, and OPQ Foundation, an LLC, are not the same person. *Id.*; 805 ILCS 180/5-1. Applicant owns OPQ Foundation, the LLC, but it does not own the LLC’s Property. 805 ILCS 180/30-1(a); Peabody-Waterside Development, LLC, 2013 IL App (5th) 120490, ¶ 9; 995 N.E.2d at 1024).

As to Applicant’s argument that it should be considered the owner of the Property because OPQ Foundation is a disregarded entity for federal tax reporting purposes (Applicant’s Reply, p. 8), that undisputed fact is certainly relevant when determining whether OPQ Foundation is an entity described in PTC § 15-65(iii), but it has no bearing on whether Applicant or OPQ Foundation is the owner of the Property. As a matter of Illinois corporate and property law, OPQ Foundation owns the Property to which it holds legal title, Applicant does not. 805 ILCS 180/5-1; 805 ILCS 180/30-1(a); Peabody-Waterside Development, LLC, 2013 IL App (5th) 120490, ¶ 9; 995 N.E.2d at 1024; 35 ILCS 200/15-65(i)-(iii).

The remaining question of Illinois law is whether Applicant shall, or shall not, lose a charitable property tax exemption regarding Property whose legal title is held by OPQ Foundation. That question must be resolved by reference to PTC § 15-65, and not

by reference to federal income tax law, unless PTC § 15-65 expressly refers to such federal law. 35 ILCS 200/15-65(i)-(ii) (discussed *infra*, pp. 34, 36); Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 290, 821 N.E.2d 240, 250 (2004) (“it is well settled that the requirement of federal tax-exempt status cannot be deemed dispositive.”).

Regarding the parties’ citations to cases decided prior to the 2009 amendment which added the last full paragraph to § 15-65, and which involved issues regarding the equitable ownership of property, as opposed to legal title to such property, I initially note that the Department is an administrative agency, and has no equitable powers. Parliament Insurance Co. v. Department of Revenue, 50 Ill. App. 3d 341, 347, 365 N.E.2d 667, 671 (1st Dist. 1977) (“The law is well established that an administrative agency has no inherent or common law powers, but is empowered to act only according to authority properly conferred upon the agency by law.”). And even if the Department had equitable powers, Applicant has offered no evidence which persuasively shows how equity would be served by ignoring the documentary evidence manifesting the obvious planning and care with which Applicant, OPQ Foundation, OPQ Holdings, and OPQ Operating were separately created, organized and operated, and the different items of real and personal property to which each separate entity was granted, or acquired, ownership. App. Exs. 5.3 to 5.6; Tr. Vol. I, pp. 95-96 (C).

More importantly, the General Assembly amended PTC § 15-65 after Community Mental Health Council and other cases cited by the parties were decided. The applicable

exemption statute — the law — changed.² When adding the last paragraph to PTC § 15-65, the legislature made clear that it intended the newly added text to apply in situations where legal title to property claimed to be exempt is held by a person other than one of the charitable applicants described in § 15-65(a)-(f). 35 ILCS 200/15-65. That is precisely the situation presented by this case. I read the final paragraph of PTC § 15-65 as the Illinois General Assembly’s very careful attempt to address the issues directly confronted by Illinois courts in cases like Community Mental Health Council, and others cited by the parties, and to notify persons described in § 15-65(a)-(f), and the public, of the types of entities it intended to be able to hold legal title to property, other than a charitable applicant, without losing the statutory exemption. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145. After the passage of that statutory amendment, if legal title to property claimed as being exempt under § 15-65(a)-(f) was held by an entity other than the applicant, § 15-65 gave notice to all affected persons that such an applicant “shall not lose its exemption,” so long as the entity holding legal title was one of the three types of entities described in § 15-65(i)-(iii).

Moving now from the issue of ownership, in the last paragraph of PTC § 15-65, the legislature expressly identified three classes of entities which it permitted to hold legal title to property — other than a putative charitable applicant — without losing the statutory exemption. I read that text as expressing a legislative intent to include *only* those three classes of entities, and no others. North Shore MRI Centre v. Illinois Department of Revenue, 309 Ill. App. 3d 895, 900, 723 N.E.2d 726, 730 (1st Dist. 1999)

² This is not to suggest that, in tax exemption cases, Illinois courts will no longer entertain disputes regarding claims that one person is the equitable owner of property whose legal title is held by another. That equitable power has always been with the judicial branch.

(“*Expressio unius est exclusio alterius* is a rule of statutory construction which recognizes that ‘the enumeration of one thing in a statute implies the exclusion of all others.’ *Baker v. Miller*, 159 Ill.2d 249, 260, 201 Ill.Dec. 119, 636 N.E.2d 551 (1994)”). So, when reading the words “[p]roperty otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held ... [by one of three classes of entities] ...[,]” I understand that phrase to mean that if legal title to property is held by an entity which does *not* meet one of the three sets of express statutory conditions set forth in § 15-65(i), (ii) or (iii), such property *shall lose* the exemption. 35 ILCS 200/15-65. That is because, in such a case, title to the property will not, in fact, be held by one of the persons described in § 15-65(a)-(f), or by one of the entities described in § 15-65(i)-(iii). 35 ILCS 200/15-65; North Shore MRI Centre, 309 Ill. App. 3d at 900, 723 N.E.2d at 730. The General Assembly’s identification of only three classes of entities in § 15-65(i)-(iii), and the conditions expressed regarding each described class, are some of the “legislative restrictions, limitations, and conditions on [property tax] exemptions as may be proper by general law.” Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145.

Since a person other than Applicant holds legal title to the Property, Applicant had the burden to show that OPQ Foundation is one of the three types of entities described in PTC § 15-65(i)-(iii). If OPQ Foundation is not one of the three types of entities described in PTC § 15-65(i)-(iii), OPQ Foundation’s Property shall not be exempt. 35 ILCS 200/15-65; Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144 (“The party claiming an exemption must prove 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.”).

The three different classes of entities described in § 15-65(i)-(iii) are joined by the word “or.” 35 ILCS 200/15-65(i)-(iii). “As used in its ordinary sense, the word ‘or’ marks an alternative indicating the various parts of the sentence which it connects are to be taken separately.” Elementary School Dist. 159 v. Schiller, 221 Ill.2d 130, 145, 849 N.E.2d 130, 359 (2006). This means that if OPQ Foundation meets one of any of the three sets of conditions set forth in § 15-65 (i)-(iii), the Property shall not lose its exemption — so long as Applicant and the Property otherwise qualify for an exemption under PTC § 15-65(a)-(f). 35 ILCS 200/15-65(i)-(iii). The next part of this recommendation will examine whether Applicant has met its burden to show that OPQ Foundation is one of the entities described in PTC § 15-65(i)-(iii).

Is OPQ Foundation One of the Entities Described in PTC § 15-65(i)-(iii)?

PTC § 15-65(ii)

This is the most obvious of the three romanettes. OPQ Foundation clearly is not an entity described in PTC § 15-65(ii), since the Property is not “a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986, as amended” *Compare* 35 ILCS 200/15-65(ii) *with* F. Stip. ¶ 8.

PTC § 15-65(i)

The evidence also clearly shows that OPQ Foundation is not an organization described in PTC § 15-65(i). There are two conditions set forth in this romanette, and those conditions are joined by the word “and.” *Id.* This means that Applicant must show that OPQ Foundation satisfies both conditions. In re M.M., 2016 IL 119932, ¶ 21, 72 N.E.3d 260, 266 (2016) (“It is well settled that, generally, the use of a conjunctive such

as “and” indicates that the legislature intended that *all* of the listed requirements be met.”) (emphasis original). The evidence, however, shows that OPQ Foundation does not satisfy the first condition, and Applicant offered no evidence regarding the second.

The first condition is that OPQ Foundation “is organized solely to hold ... title [to the property]” 35 ILCS 200/15-65(i). The word “solely,” as used in § 15-65(i) is not defined, so it is to be given its ordinary and commonly understood meaning. Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill. 2d 262, 270, 695 N.E.2d 481, 485 (1998). The first two entries in the dictionary definition of solely are: “1. as the only one or ones: solely responsible. 2. exclusively or only: plants found solely in the tropics.” Webster’s Encyclopedic Unabridged Dictionary of the English Language 1815 (1996).

A corporation’s organizational documents control any questions regarding the purposes for which it was organized. Oak Park Club v. Lindheimer, 369 Ill. 462, 465, 17 N.E.2d 32, 33 (1938). Regarding this fact question, OPQ Foundation’s Articles of Organization are part of the record, and, by its own express statement, its purpose was “[t]he transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act.” App. Ex. 5.4. A company whose stated purpose is to transact any and all lawful business was not created to do solely one thing — in this case, to hold title to the Property. To conclude otherwise would render the statutory term, solely, meaningless. That is not the proper way to read or apply statutory text. Texaco-Cities Service Pipeline Co., 182 Ill. 2d at 270, 695 N.E.2d at 485 (“The court should evaluate the statute as a whole and construe it, if possible, so that no term is rendered superfluous or meaningless.”).

And OPQ Foundation was not just organized to transact any and all lawful business, it also transacted or conducted different business operations in Illinois. For example, OPQ Foundation was one of the parties to the Management Agreement with Inter-TWA, in which it agreed to hire that for-profit business to provide management services for it. App. Ex. 5.3, Form 1023, Ex. E-2. OPQ Foundation also entered into the Sports Bar Lease, as the Lessor, with TWA Banquets, and AA HI signed that lease as OPQ Foundation's manager. App. Ex. 5.3, Form 1023, Ex. E-4. That was the lease in which OPQ Foundation granted to TWA Banquets an option to purchase the part of the Property comprising the driving range. *Id.*, pp. 15-16 (of Sports Bar Lease). Finally, AA HI signed the Pro-Shop Lease, as OPQ Foundation's manager, when OPQ Foundation, acting as OPQ Operating's sole member, entered into the Pro-Shop Lease, naming OPQ Operating as the Lessee. App. Ex. 5.3, Form 1023, Ex. E-6. Illinois courts have held that the act of entering into leases for real and personal property situated in Illinois constitutes transacting business in Illinois. *E.g.*, Community Merchant Services, Inc. v. Jonas, 354 Ill. App. 3d 1077, 1087, 822 N.E.2d 515, 524-25 (4th Dist. 2004). Here, the statutory text is clear, and the documentary evidence clearly and convincingly establishes, as a matter of fact, that OPQ Foundation was not created solely to hold title to the Property. App. Ex. 5.3, Form 1023, Exs. E-2, E-4, E-6; App. Ex. 5.4.

The second condition set forth in § 15-65(i) is that the title-holding entity “qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor” 35 ILCS 200/15-65(i). Applicant offered no evidence on this point, and the absence of evidence must be construed against Applicant, since Applicant bears the burdens of production and persuasion. Arts Club of Chicago v. Department of Revenue,

334 Ill. App. 3d 235, 246, 777 N.E.2d 700, 709 (1st Dist. 2002). Moreover, whether OPQ Foundation qualified as a § 501(c)(2) organization is a question that is similar to whether Applicant qualified as a § 501(c)(3) organization. That is, it was an issue on which documentary evidence would be probative and should readily be available. If OPQ Foundation did qualify as a § 501(c)(2) organization, it, or Applicant, was in the best position to have documentary evidence in its possession to offer at hearing, just as Applicant had and presented documentary evidence to show that it qualified as a § 501(c)(3) organization. App. Ex. 1.5 (identified at hearing as App. Ex. A-8).

In sum, OPQ Foundation's express purpose is to transact any and all business, and, in fact, it conducted and transacted different business operations in Illinois. App. Ex. 5.4; App. Ex. 5.3, Form 1023, Exs. E-2, E-4, E-6; Community Merchant Services, Inc., 354 Ill. App. 3d at 1087, 822 N.E.2d at 524-25. Therefore, even if Applicant had offered evidence that OPQ Foundation qualified under § 501(c)(2) of the Internal Revenue Code (IRC), it could not satisfy both conditions expressed for entities described in PTC § 15-65(i).

PTC § 15-65(iii)

The last type of entity whose ownership of property shall not preclude an exemption is described in § 15-65(iii). 35 ILCS 200/15-65(iii). There are three conditions expressed in this final romanette, and those conditions are joined by the word "and." *Id.* Again, that means the entity must satisfy all of the conditions expressed in the statute. In re M.M., at ¶ 21, 72 N.E.3d at 266. Here, the evidence shows that OPQ Foundation satisfies the second condition, had the opportunity to show that it satisfies the first (*see infra*, starting at p. 51, analyzing whether Applicant satisfies the Methodist Old Peoples

Home guidelines), but it clearly cannot satisfy the third. 35 ILCS 200/15-65(iii)(C). That is because there is no dispute that OPQ Foundation leases part of the Property to which it holds legal title, for valuable consideration. App. Ex. 5.3, Form 1023, Ex. E-4 (Sports Bar Lease); App. Ex. 5.18, p. 9 (Bates number 54) (Note 2 to Applicant’s Consolidated Financial Statements for 2014); App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit, line 10(b)).

Each of the romanettes in the last paragraph of § 15-65 describes a different class or type of entity. Section 15-65(i) expressly allows for a title-holder to rent the property to a charitable user, and § 15-65(f)(ii) expressly provides that the property will be used as “a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986, as amended” 35 ILCS 200/15-65(f)(i)-(ii). In contrast, § 15-65(iii)’s last express condition is that “the limited liability company does not lease the property or otherwise use it with a view to profit.” 35 ILCS 200/15-65(iii)(C). “When the legislature uses certain language in one part of a statute and different language in another, we may assume different meanings were intended.” Carver v. Bond/Fayette/Effingham Reg. Bd. of School Trustees, 146 Ill. 2d 347, 353, 586 N.E.2d 1273, 1276 (1992).

The legislature’s express distinction between the entities described in § 15-65(i)-(ii), and those in § 15-65(iii), is so plain that it cannot have been unintended. The entities described in § 15-65(iii) are not like the ones described in § 15-65(i)-(ii), and the statutory conditions for each are strikingly different. The last condition expressed for entities described in § 15-65(iii) is that “the limited liability company does not lease the property or otherwise use it with a view to profit.” 35 ILCS 200/15-65(iii)(C). Given this

express statutory text, it would be error to treat OPQ Foundation, an LLC which does, in fact, lease part of the Property to which it holds legal title, and which is claimed as being exempt, as being an entity which meets all the statutory conditions set by PTC § 15-65(iii). In re M.M., at ¶ 21, 72 N.E.3d at 266; Texaco-Cities Service Pipeline Co., 182 Ill. 2d at 270, 695 N.E.2d at 485. The more reasonable way to read and apply § 15-65(iii)(C), I respectfully submit, is that it reflects the legislature’s plainly stated intent that not leasing property claimed as being exempt is one of the express conditions precedent for any LLC described in PTC § 15-65(iii) to be included within the last class of entities which might hold legal title to property — other than the charitable applicant — without losing the exemption. Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144.

The evidence clearly shows that OPQ Foundation leases part of the Property to TWA Banquets, a for-profit business owned and controlled by Applicant’s directors, for valuable consideration. F. Stip. ¶ 10; App. Ex. 5.3, Form 1023, Ex. E-4 (Sports Bar Lease); App. Ex. 5.18, p. 9 (Bates number 54) (Note 2 to Applicant’s Consolidated Financial Statements for 2014); App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit, line 10(b)); People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140, 143 N.E. 414, 415 (1924) (“the meaning of the phrase ‘not leased or otherwise used with a view to profit’ has the ordinary meaning of the words. If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.”). Since OPQ Foundation leases part of the Property to which it holds legal title, it does not satisfy the last condition expressed in PTC § 15-65(iii)(C), and it is not an entity described in PTC § 15-65(iii). 35 ILCS 200/15-65(iii); Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144.

In sum, the evidence clearly and convincingly shows that the Property is not owned by Applicant, the person who is claiming to be an institution of public charity, and OPQ Foundation, the person who does hold legal title to, and owns, the Property, is not one of the three types of entities described in PTC § 15-65(i), (ii), or (iii). Regardless whether Applicant, itself, might be an institution of public charity, under the plain text of PTC § 15-65, Applicant is not entitled to a statutory exemption for OPQ Foundation's Property. 35 ILCS 200/15-65; Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144 (“The party claiming an exemption must prove by clear and convincing evidence that the property in question falls within ... the terms of the statute under which the exemption is claimed.”).

Notwithstanding the plain meaning of the text of § 15-65(i)-(iii), I also recognize that my recommended conclusions regarding the meaning of the plain text of the last paragraph of § 15-65 are conclusions of law. *E.g.* Cinkus v. Village of Stickney Municipal Officers Electoral Bd., 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008) (“... an agency's interpretation of the meaning of the language of a statute constitutes a pure question of law.”). To avoid the possibility of remand, therefore, the next part of this recommendation will analyze whether the Applicant has presented clear and convincing evidence that it is organized and operated primarily for charitable purposes, that it is an institution of public charity, and that the Property was actually being used primarily for charitable purposes during the years at issue.

Does the LIC Property Qualify for the Exemptions Authorized by UTA § 3-5(4) & PTC § 15-65(a)

When considering whether an entity is an institution of public charity, Illinois courts and the Department follow the guidelines the Illinois Supreme Court set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968). Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145. The Methodist Old Peoples Home guidelines also apply when considering whether an entity is exempt from Illinois use tax and retailer's occupation tax, because it is organized and operated exclusively for charitable purposes. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459, 654 N.E.2d 608, 611 (2d Dist. 1995). For purposes of Article IX, § 6 of the Illinois Constitution and Illinois' tax statutes, the term "exclusively" means "primarily." People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1st Dist. 1987).

Applicant asserts that it satisfies all the criteria to be considered an institution of public charity. Applicant's Brief. The Department responds that the evidence shows that Applicant satisfies only the first Methodist Old Peoples Home guideline, and thus has not met its burden to show entitlement to the statutory exemptions. Department's Brief, pp. 4-13. Intervenor agrees that Applicant did not establish that it used the property primarily for charitable purposes. Intervenor's Brief, pp. 16-18. It also argues that the discrepancy between C's testimony and the Budget records regarding the agreements entered between Applicant and other for-profit businesses owned and controlled by Applicant's directors, makes it impossible to determine whether Applicant's operations provide gain in a private sense to the Applicant's insiders. *Id.* pp. 14-16.

First Guideline

The first guideline asks whether the organization seeking the exemption has any capital, capital stock, or shareholders. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145. Applicant has presented its organizational documents into evidence, and that evidence clearly and convincingly shows that it satisfies this guideline.

Second Guideline

The second guideline asks whether Applicant earns any profits or dividends, and whether it derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145; Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 541. The evidence supports a conclusion that Applicant satisfies the first part of this guideline but does not satisfy the second part.

My conclusions regarding this second guideline are primarily based on the entries within Applicant's Consolidated Financial reports, OPQ Operating's Budget records, and Applicant's Forms 990. Such records clearly show that Applicant has never had any excess revenues, that is, more revenues than expenses, during the years it operated. App. Ex. A-13. As an aside, Applicant Exhibit A-13, which are OPQ Operating's budget records, does, in fact, use the term "Total Gross Profit," to denote the difference between Total Revenues and Cost of Sales. App. Ex. A-13. But that exhibit also clearly reflects that Total Expenses always exceeded Total Gross Profit for each year. *Id.* Put a different way, I do consider the exhibit's use of the word "profit" as some type of admission by Applicant regarding this guideline. When I consider the word "dividends," as used in this second guideline, I understand it to have the commonly understood meaning, as a

distribution of profit to shareholders or partners. Based on the financial books and records admitted into evidence, I conclude that Applicant has shown that it earns no profits or dividends.

The next step is to determine whether Applicant derives its funds mainly from private and public charity. When used in this guideline, and in all the other guidelines, the term “charity” means “a gift to be applied for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reducing the burdens of government.” Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145; Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 541. For the reasons detailed below, I am recommending that the Director conclude that Applicant’s operation and maintenance of OPQ Foundation’s Property does not constitute its provision of charity, as that term has been construed by Illinois courts. As a result, Applicant cannot show that it derives its funds mainly from private and public charity. Nor can it show that it holds its revenues, in trust, for charitable purposes.

First, Applicant’s own books and records show that it received all its public support in the form of fees for services. App. Ex. A-13, pp. 1, 3, 5, 7; App. Exs. 1.8, 5.17, 5.18; App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit). A non-profit organization’s provision of athletic facilities for a fee is not the grant of charity, and one’s payment for such services is not a charitable contribution. Provena, 236 Ill. 2d at 401, 925 N.E.2d at 1151 (“When patients are treated for a fee, consideration is passed. The treatment therefore would not qualify as a gift. If it were not a gift, it could not be charitable.”); 26 U.S.C. § 170(a), (c)(2)(B).³

³ Section 170(c)(2)(B) of the IRC provides, in pertinent part, as follows:
26 U.S. Code § 170. Charitable, etc., contributions and gifts

The vast majority of Applicant’s fees for services, moreover, were provided by members of the public, to whom Applicant neither offered nor provided a discount. Intervenor Ex. 1A, ¶¶ 6, 11; Intervenor Ex. 1, ¶¶ 6, 11; Provena, 236 Ill. 2d at 392-93, 925 N.E.2d at 1146 (“Provena Hospitals plainly fails to meet the second criterion: its funds are not derived mainly from private and public charity and held in trust for the purposes expressed in the charter. They are generated, overwhelmingly, by providing medical services for a fee.”).

More fundamentally, Applicant has failed to show or explain how its operation of a golf course persuades its customers, or the persons to be served by the programs described in Applicant’s Form 1023, to some educational or religious conviction, provides for their general welfare, or in some way reduces the burdens of government. Provena, 236 Ill. 2d at 395, 925 N.E.2d at 1148 (“it is a *sine qua non* of charitable status that those seeking a charitable exemption be able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(c) Charitable contribution defined For purposes of this section, the term “charitable contribution” means a contribution or gift to or for the use of—

(2) A corporation, trust, or community chest, fund, or foundation—

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (**but only if no part of its activities involve the provision of athletic facilities or equipment**), or for the prevention of cruelty to children or animals;

26 U.S.C. § 170(a), (c)(2)(B) (emphasis added).

their governmental functions.”). Golf is a recreational activity, and a golf course is generally considered — and here, OPQ Foundation’s golf course is — a place where people go and pay to participate in that activity. A golf course is not ordinarily the place where the public is offered, for example, art, music, or education, which are the traditional subjects of the legislature’s, and the Illinois Constitution’s, recognition of activities considered worthy of exemption. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 768, 894 N.E.2d 452, 481 (4th Dist. 2008) (“our constitution already enumerates the uses of property that are categorically worthy of exemption — e.g., schools, cemeteries, agricultural and horticultural societies — and hospitals are not among them.” (*citing* Ill. Const. 1970, art. IX, § 6); 35 ILCS 105/3-5(3) *aff’d*, Provera, *supra*).

Regarding this point, Applicant’s stated purpose is to offer golf as a therapeutic activity, and Applicant presented out-of-court statements by others that golf may be used as a therapeutic activity. App. Exs. 5.28-5.29. I have no doubt that golf might be therapeutic — what physical activity cannot be considered therapy? Primal scream, meditation, massage, yoga, soul cycling, cross-fit, walking, running, indeed, exercise of all stripes. Applicant also offered evidence to show that one veteran, Edward H, who suffered a traumatic brain injury while serving in the military, benefited from being physically present with other veterans while using OPQ Foundation’s golf course. Tr. Vol. III, pp. 120-28 (H); Applicant’s Brief, pp. 32-36.

But again, this guideline asks whether an applicant’s purposes and operations provide charity, and the undeniable fact here is that Applicant’s primary purpose and functions were to operate and maintain OPQ Foundation’s golf course and related

facilities, by making them available to the public for fees. App. Ex. A-13; App. Exs. 1.8, 5.17; 5.18 (Note 1 of each Consolidated Financial report, defining “fees for services”). Persons who provide therapy to others for fees are generally considered to be engaged in commercial transactions, and not providing charity. Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1148 (“As the appellate court correctly recognized, “services extended *** for value received *** do not relieve the [s]tate of its burden.”); *see also* Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 145, 192 N.E.780, 784 (1934) (“The use of an organization’s property for athletic and social purposes by members who pay dues and by nonmembers upon the payment of fees does not constitute a dedication of the property to charitable purposes.”).

Regarding the fact question of whether its programs constitute charity, Applicant has cited several cases in which Illinois courts decided that certain operations by different applicants constituted the applicant’s provision of charity, or charitable benefits. Applicant’s Brief, pp. 27-36 (and cases cited therein). However, there is no reason to compare whether, for example, Applicant’s operations are sufficiently like the operations of any of the applicants described in the different cases Applicant cites. That is because “[w]hether a particular institution qualifies as a charitable institution and is exempt from property tax is a question which must be determined on a case-by-case basis.” Provena, 236 Ill. 2d at 391, 925 N.E.2d at 1145.

Next, I do not view Applicant’s practice of offering discounts to certain veterans, or to members of the military, from the fees charged to play on OPQ Foundation’s Property, as Applicant’s provision of charity to such persons, or to the public at large. When a person offers goods, services or facilities to the public for a fee, and decides to

offer a discounted fee for such goods, services, or facilities, to a certain subset of the public, the person is not commonly understood to be extending charity to such potential customers. Provena, 384 Ill. App. 3d at 762, 894 N.E.2d at 476 (“Because a gift is, as we have explained, an uncompensated transfer, the hospital cannot be someone's creditor with respect to a certain sum and simultaneously be the person's charitable benefactor with respect to that same sum.”), *aff'd*, Provena, *supra*.

More fundamentally, the underlying premise for Applicant's claim that its provisions of discounts to veterans constitute charity almost requires me to conclude that Applicant views active duty members of the military, or veterans, as being inherently in need of some educational or religious conviction, or in need of some provision for their general welfare. In short, that such persons are, because of their status, always in need of, or seeking, charity. Provena, 236 Ill. 2d at 395, 925 N.E.2d at 1148. Although no Illinois case has, to my knowledge, addressed the distinction, I consider Applicant's offer of discounted fees to veterans more as a form of tribute, and not as its provision of charity to them. *Compare* Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145 *with* 330 ILCS 140/5 (Veterans' and Military Discount Program Act) (Legislative findings)⁴ *and* Webster's

⁴ Section 5 of the Veterans' and Military Discount Program Act provides:

Legislative findings. The General Assembly finds that though there is no way to adequately repay our nation's military personnel for their service and sacrifice, we can demonstrate our gratitude by forging a collaborative effort between businesses and government that will connect veterans and active duty service members with merchants who choose to honor their military service through special discounts and promotions.

The Veterans' and Military Discount Program, created under this Act, will enable veterans (those honorably discharged and other veterans generally discharged for reasons other than discipline, misconduct, resignation in lieu of misconduct charges, unfitness for duty, voluntary resignation, or court martial) and military personnel currently serving our country to receive a discount on goods and services from participating merchants, or another appropriate money-saving promotion of a merchant's choice.

Encyclopedic Unabridged Dictionary of the English Language 2019 (1996) (“tribute” means “a gift, testimonial, compliment, or the like, given as due or in acknowledgment of gratitude or esteem”).

For example, if a recently returned member of the military were to be at a place of public accommodation, and some other patron, or the “house,” bought him or her dinner, or a drink, I would not consider that gesture to be the provision of charity. For similar reasons, I would not consider a neighborhood restaurant, which offers a uniformed police officer the opportunity to pay a lesser price for a meal eaten there, to be providing charity to the officer. Applicant’s offers of discounts off the standard fees Applicant would charge other persons to play or practice golf provide no charity to its veteran or military customers, because those customers do not come to Applicant seeking alms, or some other educational or spiritual relief, from it; they simply accepted Applicant’s offer of a discount from the fee charged to play or practice golf.

Related to this point, veterans, or current members of the military, are frequently a favored subset of the public, by many persons engaged in the business of offering goods or services for sale. What I mean is, lots of businesses offer discounts to members of the military and to veterans. As just one anecdotal example, on January 25, 2019, an online Google search for “military discounts” yielded about 258,000,000 (258 *million*) results. Pursuant to the Veterans' and Military Discount Program Act, the Illinois Department of Veterans Affairs also keeps a listing of businesses offering discounts to members of the

The Veterans' and Military Discount Program will be mutually beneficial, helping active duty service members and veterans in the State save money with discounts on goods and services, and helping business owners to enjoy increased traffic and sales in their stores.
330 ILCS 140/5.

military and veterans. 330 ILCS 140/1 *et. seq.*; <https://www2.illinois.gov/veterans/features/Documents/Businesslisting.pdf> (listing, by county, Illinois businesses publicly offering discounts from fees for goods and services to veterans).

Such discounts are certainly nice for the recipients, and, I am confident, appreciated by them. Likely too, Applicant's offer of discounts might persuade the favored recipients to use OPQ Foundation's facility, instead of other area golf courses, when deciding where to play in the future. *See* 330 ILCS 140/5 ("The Veterans' and Military Discount Program will be mutually beneficial, helping active duty service members and veterans in the State save money with discounts on goods and services, and helping business owners to enjoy increased traffic and sales in their stores."). The building of such customer preference, no doubt, is part of the reason why retailers and service providers often offer such discounts to customers who agree to become members of the sellers, like the veterans who agreed, and paid, to become members of Applicant's Veteran's Club, so they could receive discounts when using OPQ Foundation's golf course and range. App. Ex. 2 (identified at hearing as App. Ex. A-15, p. 2 (showing numbers of veteran memberships for 2014-2016)); App. Ex. 3 (identified at hearing as App. Ex. A-16) (copies of OPQ Foundation's Veteran's Club Application forms). It is the pricing and marketing nature of Applicant's discounts — like all discounts on fees for services — as well as the Illinois Supreme Court's holdings and persuasive dicta in Provena, which lead me to conclude that Applicant's act of offering discounted fees to veterans, to play golf on OPQ Foundation's Property, does not constitute a charitable gift to them, or one which is applied for the benefit of an indefinite number of persons. Provena, 236 Ill. 2d at 401, 925 N.E.2d at 1151.

Finally, on the question of whether Applicant's operations in some way reduce the burdens of government, both the United States and the State of Illinois have Departments of Veterans Affairs (VA). 38 U.S.C. §§ 301-323; 20 ILCS 2805/0.01 to 20 ILCS 2805/37. The federal VA and Congress have undertaken the burden to reimburse a veteran's payments for certain educational expenses. 38 U.S.C. § 3002. But the federal VA has expressly excluded from such reimbursement expenses for avocational or recreational programs, pursuant to a federal regulation (38 C.F.R. § 21.7120) which provides, in pertinent part:

§ 21.7120 Courses included in programs of education.

(a) General. Generally, VA will approve, and will authorize payment of educational assistance, for the individual's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7220 of this part and which forms a part of a program of education as defined in § 21.7020(b)(23) of this part. Restrictions on this general rule are stated in § 21.7222(b) of this part, however.

(b) Avocational and recreational courses are restricted.

(1) VA will not pay educational assistance for an enrollment in any course--

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) VA presumes that the following courses are avocational or recreational in character unless the veteran or servicemember justifies their pursuit to VA as provided in paragraph (b)(3) of this section. The courses are:

(i) Any photography course or entertainment course, or

(ii) Any music course, instrumental or vocal, public speaking course or courses in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

38 C.F.R. § 21.7120(b)(2)(ii) (authorized by 38 U.S.C. §§ 3002(3), 3452; Pub.L. 98-525)

(emphasis added).

The Illinois VA, and Illinois, through the Illinois General Assembly, have also undertaken certain burdens regarding veterans and active members of the military. 20 ILCS 2805/0.01 to /37 (Department of Veterans' Affairs Act); 330 ILCS 5 to 330 ILCS 140; Applicant's Brief, pp 32-33. None of those Acts or programs, however, reflect that Illinois has undertaken the burden to pay for veteran's or active duty member's golf games, driving practices, or for any other type of recreational activity. *See id.* The Illinois VA, for example, is charged with promoting the Veterans' and Military Discount Program, but neither it nor Illinois has agreed to underwrite the discounts offered by retailers and service providers. 330 ILCS 140/15. Perhaps most importantly, there is nothing in the Veterans' and Military Discount Program which reflects that the General Assembly intended that a not for profit business which offered such discounts to veterans would, thereby, be entitled to a blanket exemption from Illinois sales, use, and property taxes. Again, Applicant's offers of discounts to veterans from fees charged to use OPQ Foundation's Property are manifestly good things, but they are not charity, as that term has been used in Illinois' tax exemption statutes. and construed by Illinois courts.

The next step is to address whether Applicant held the revenues it realized in the form of fees for services, in trust, for its stated charitable purposes. It is impossible to conclude that Applicant did so, because it never made and kept records which documented the revenues and costs directly attributable to such programs. On this point, I consider Applicant's own statements, in its Consolidated Financial reports, and quoted below, as an admission:

*** Management has analyzed the tax positions taken by the Organization, noting the existence of certain significant unrelated

business activities; however, it has concluded that, as of December 31, 201[] and 201[], there are no uncertain positions taken or expected to be taken that would require recognition of a liability or disclosure in the consolidated financial statements, given the overall losses from operations to date. **Management will continue to monitor the relative volumes of direct mission activities and the unrelated business activities as the Organization continues to develop and expand its mission plans.**

App. Exs. 1.8, 5.17; 5.18 (Note 1 of each Consolidated Financial report) (emphasis added).

At hearing, Applicant's witnesses testified that the expenses related to operating the golf course could not be separated from its charitable operations (Tr. Vol. III, pp. 100-02 (ST)), so Applicant's prior written statements that it had business activities which were unrelated to its direct mission activities is inconsistent with Applicant's position at hearing. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379, 519 N.E.2d 1010, 1014 (1st Dist. 1988) *aff'd* 131 Ill. 2d 541 (1989) ("Contradictory statements of a party constitute substantive evidence against the party of facts stated. ... Generally, any statement made by a party or on his behalf which is inconsistent with his position in litigation may be introduced into evidence against him."). The admission I infer from Applicant's prior written statements is that Applicant's operation of OPQ Foundation's Property, on a fee for services basis, was a significant, not-for-profit business activity that was, if nothing else, severable from the direct mission activities described in its organizational documents and in its Form 1023.⁵

It is one thing for Applicant to inform the IRS of what it anticipates its programs

⁵ And if I am mistaken by inferring that it is Applicant's operation of a golf course and related facilities which constitutes Applicant's unrelated business activities, that only means that Applicant was repeatedly referring to some other, undisclosed, significant business activities which are not related to Applicant's claimed direct mission activities. App. Exs. 1.8, 5.17; 5.18 (Note 1 of each Consolidated Financial report).

might provide, and another to keep detailed records of the revenues and expenses which document the extent to which such programs are, in fact, being provided. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542 (“the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used”). Applicant did the former, but not the latter. Milward v. Paschen, 16 Ill. 2d 302, 312, 157 N.E.2d 1, 6 (1959) (“We are provided with no evidence as to the cost of operating the ‘school,’ the number of scholarships provided, or if in fact any are or have been given. If alms are given, we are not informed of that fact.”).

Instead of making detailed records of the revenues and expenses attributable to its claimed direct mission activities of providing use of OPQ Foundation’s golf course to veterans and special needs children for recreational and therapeutic purposes (App. Ex. A-13; App. Ex. 5.21, p. 1 (Part I (Summary), line 1), OPQ Operating made and kept detailed records of the revenues and expenses generally related to operating OPQ Foundation’s golf course and related facilities. App. Ex. A-13; App. Ex. 5.21, p. 2 (Part III (Statement of Program Service Accomplishments), line 4a). Those are the revenues and expenses Applicant reported to the IRS, on its Forms 990. App. Exs. 5.21-5.24. For the years from 2014-2017, for example, OPQ Operating kept detailed records of how much it spent on supplies and chemicals used on the golf course (App. Ex. A-13, pp. 2, 4, 6, 8), but none which regularly document the amounts spent, for example, to provide its special needs children’s program. While Applicant repeatedly represented that it would “continue to monitor the relative volumes of direct mission activities and the unrelated

business activities as the Organization continues to develop and expand its mission plans” (App. Exs. 1.8; 5.17; 5.18 (Note 1 of each Consolidated Financial report)), whatever monitoring it did perform does not permit a fact-finder confidently to conclude that Applicant’s revenues were held, in trust, and dedicated to its direct charitable mission activities, as opposed to being primarily dedicated to funding its not-for-profit business of operating and maintaining OPQ Foundation’s golf course.

To support its claim of primary charitable operations, Applicant offered into evidence three Activity Reports, which were prepared by an employee who summarized the numbers of persons who used OPQ Foundation’s golf course and facilities, and the amounts of discounted fees, for different years. App. Ex. 2 (identified at hearing as App. Ex. A-15); App. Ex. 5.27 (identified at hearing as App. Ex. A-14); App. Ex. 5.31; Tr. Vol. II, pp. 39-40 (ST). On each of those Activity Reports, ST referred to the discounted fees as “charitable discounts.” App. Exs. 2, 5.27, 5.31. For the following reasons, I give the Activity Reports no weight as credible evidence reflecting that Applicant’s revenues were held in trust and dedicated primarily to its provision of charity. App. Exs. 2, 5.27, 5.31.

First, I repeat my conclusion that Applicant’s offer of discounts to veterans or members of the military, from the fees paid to use OPQ Foundation’s Property, does not constitute Applicant’s provision of charity. Next, none of the Activity Reports can be closely tied to any of Applicant’s or OPQ Operating’s regularly kept financial books and records. *Compare* App. Exs. 2, 5.27, 5.31 *with* App. Ex. A-13. Nor was there any mention, at hearing, of the source documents from which such summaries were obtained. The lack of supporting source documents is particularly troubling because the Activity

Reports themselves inconsistently report the numbers of persons to whom Applicant claims to have provided charitable discounts, for the same years. App. Ex. 2; 5.27; 5.31.

Specifically, the Activity Reports reflect the following, differing, numbers of persons who received charitable discounts for the same years:

2014 Activity Report	2015-2016 Activity Report		2014-2015-2016 Activity Report		
2014	2015	2016	2014	2015	2016
2,321	4,062	7,211	2,219	4,428	7,825

App. Exs. 2, 5.27; 5.31. They cannot all be correct. The Activity Reports do not inspire confidence that they accurately measure the scope and extent of Applicant’s claimed direct mission activities.

Next, ST testified, during both direct and cross-examination, that the numbers reported on the Activity Reports really identify only rounds of golf played, or driving range uses, and not the number of unique persons who accepted a discount. Tr. Vols. II-III, pp. 58, 109-111 (ST). What that means is, that on any day on which one, individual member of Applicant’s Veterans Club used both OPQ Foundations’ golf course and driving range, the Activity Report would reflect that two users received discounts (or three users, if the member hit 2 buckets of balls on the driving range; Tr. p. 111 (ST)), when in fact, only one person did. This, in turn, means that, if even only some small fraction of Applicant’s 681 Veteran Club members in 2016 were regular golfers, it is possible that it is they who received the lion’s share of the charitable discounts Applicant claims to have provided for that year, and not the potentially inflated numbers of persons reflected on the Activity Reports. *See* App. Exs. 2; 5.31 (reporting, respectively, that 7,211 and 7,825 golfers/driving users received charitable discounts during 2016).

A more specific example will better illustrate my point. Assume that less than a

quarter of Applicant's 681 veterans club members, let's say 150 of them, played golf and used the range once a week, for example, every Wednesday, during the prime season months of June through September 2016. There were 18 Wednesdays during those months. So, for each club member who started with a bucket of balls at OPQ Foundation's driving range, then played a round of golf, Applicant's 2016 Activity Report would report two separate discounts, for each day. Multiply that by 150, and, even though there were only 150 veterans who might have accepted discounts off the fees each paid to use OPQ Foundation's Property during those months, Applicant's 2016 Activity Report would reflect that 5,400 users received charitable discounts. *Compare App. Exs. 2 and 5.31 with Tr. Vols. II-III, pp. 58, 109-111 (ST) (150 x 2 x 18 = 5,400)*. Even if I were persuaded that Applicant's offers of discounts to veterans constituted charity, the way Applicant has chosen to monitor and document its putative charitable operations fails accurately to identify how many unique persons accepted Applicant's offers of discounts.

The final reason why I give Applicant's Activity Reports little weight, is that the numbers summarized in those Activity Reports are inconsistent with Applicant's sworn discovery responses, which were admitted as substantive evidence of the facts stated. *Compare Stip. App. Exs. 5.27 and 5.31 with Intervenor Ex. 1A, ¶¶ 5, 11; Intervenor Ex. 1, ¶¶ 5, 11 and Tr. Vol I, pp. 111-12 (C)*. In sum, the evidence shows that the Activity Reports do not actually reflect what Applicant suggests they do, which is why I give those Reports no weight, at all, as credible evidence which shows that Applicant held its revenues, in trust, for its claimed charitable purposes, and dedicated them for such purposes.

The evidence clearly and convincingly shows that Applicant does not derive its

funds mainly from private and public charity, and does not hold such funds, in trust, primarily for the charitable purposes described in its organizational documents and in its Form 1023. Instead, Applicant's and OPQ Operating's records reflect that Applicant's public support revenues were obtained primarily by making OPQ Foundation's Property and facilities open to the public, for standard fees for services. App. Ex. A-13, pp. 1, 3, 5, 7; App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit). Thereafter, Applicant used those revenues primarily to pay the ordinary expenses associated with operating and maintaining OPQ Foundation's Property and facilities, as a non-profit business. App. Ex. A-13, pp. 2, 3, 4, 6. The evidence clearly and convincingly shows that Applicant does not satisfy the second Methodist Old Peoples Home guideline.

Third and Fifth Guidelines

Because they are interrelated, these two guidelines will be discussed together. The third guideline asks whether the organization dispenses charity to all who need and apply for it. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145. The fifth asks whether the organization places any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. *Id.*

Here, Applicant operates and maintains OPQ Foundation's Property as a golf course and related facilities, which is primarily used by the public, on a fee for services basis. Such activities constitute Applicant's primary operations, and do not constitute Applicant's provision of charity to the members of the public, or to anyone else who pays Applicant fees to obtain such services. Provena, 236 Ill. 2d at 397, 925 N.E.2d at 1148 ("As the appellate court correctly recognized, ""services extended *** for value received *** do not relieve the [s]tate of its burden.""); Turnverein Lincoln, 358 Ill. at 145, 192

N.E. at 784. Contrary to C's opinion (Tr. Vol. I, p. 122 (C)), and Applicant's arguments (Applicant's Brief, p. 33), members of the public who pay fees to Applicant to use OPQ Foundation's Property are not, themselves, making a charitable use of the Property. Again, a non-profit organization's provision of athletic facilities for a fee is not the grant of charity, and one's payment for such services is not a charitable contribution. Provena, 236 Ill. 2d at 401, 925 N.E.2d at 1151; 26 U.S.C. § 170(a), (c)(2)(B).

The primary benefit Applicant offers is its offers of discounts to certain veterans and members of the military, who pay reduced fees to play or practice golf at OPQ Foundation's Property. App. Exs. 2, 5.27, 5.31. Such discounts do not constitute charity. Provena, 236 Ill. 2d at 401, 925 N.E.2d at 1151; 26 U.S.C. § 170(a), (c)(2)(B). The evidence clearly and convincingly shows that Applicant's programs do not provide charity to all who ask.

And even if Applicant's discounted fees were to be considered charity, the evidence shows that Applicant places obstacles in the way of those who pay such discounted fees. App. Ex. 3 (identified at hearing as App. Ex. A-7); Tr. Vol. III, pp. 93-95 (ST). First, Applicant charges different fees to the different types of veterans to whom it offers discounts. App. Ex. 2 (identified at hearing as App. Ex. A-15); App. Ex. 3 (identified at hearing as App. Ex. A-16); Tr. Vols. II-III, pp. 44-47, 86-88, 93-94 (ST)). Next, and as ST himself made clear, not all veterans are eligible for Applicant's discounts. Tr. Vol. II, p. 46 (ST). ST for example, testified that he would not be eligible for a discounted fee to play in Applicant's War on Terror veteran's league, because he was discharged from the military long before the war on terror. *Id.*

Next, Applicant requires veterans who wish to obtain a discount from the standard

fees charged to play golf or use OPQ Foundation's driving range to apply, and pay, for a membership card. App. Exs. 2 (identified at hearing as App. Ex. A-15); App. Ex. 3 (identified at hearing as App. Ex. A-16); Tr. Vols. II-III, pp. 46, 86-88, (ST).

Notwithstanding the obstacles Applicant placed before the persons to whom it offered discounted fees, the record does contain credible documentary and other evidence showing that, during 2016 and 2017, which is after the years at issue regarding the property tax exemption period, Applicant's GUIDE Manor program began to offer approximately 1.5 hours per week of virtually free access to OPQ Foundation's driving range to a small number of special needs persons. F. Stip. ¶ 7; App. Ex. 5.32; Tr. Vol. II, pp. 6-21 (P), 64-68 (ST).

The documentary evidence offered on this point consists of Applicant's narrative description of its GUIDE Manor program, as well as a schedule showing the number of participants and instructors for each week the program was held in 2016 and 2017. App. Ex. 5.32. I presume that Applicant Exhibit 5.32, like Applicant's Activity Reports, similarly reflect the numbers of persons taking part in each weekly program, and not the number of unique individuals granted virtually free access to, and use of, OPQ Foundation's driving range. That is, it is entirely possible that 5 or 6, or more, of the persons participating in each weekly program were the same individuals. So, during 2016, perhaps 193, or perhaps many less, of the 11,967 persons who used OPQ Foundation's driving range, participated in the GUIDE Manor program. *Id.*; Intervenor Ex. 1A, ¶ 5; Intervenor Ex. 1, ¶ 5. During 2017, perhaps 134, or perhaps many less, participated in the GUIDE program.

Even if one considered Applicant's GUIDE Manor program, and its use of OPQ's

Foundation's driving range to conduct that program, to constitute Applicant's provision of charity, I would still conclude that the program is only an incident of Applicant's primary operations, and not the primary operation.

The credible evidence included in this record clearly and convincingly shows that Applicant satisfies neither the third nor the fifth Methodist Old Peoples Home guidelines.

Fourth Guideline

The fourth guideline asks whether the organization provides gain or profit in a private sense to any person connected with it. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145; Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542. Both federal and Illinois courts recognize this essential characteristic as the inurement test. United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173, 1176 (7th Cir. 1999); DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 470, 654 N.E.2d 240, 246 (2d Dist. 1995). For example, the United States Tax Court has written that:

Section 501(c)(3) requires, among other things, that an organization be operated exclusively for one or more specified purposes and that no part of the net earnings of the organization "inures to the benefit of any private shareholder or individual." See also sec. 1.501(c)(3)-1(c)(1), Income Tax Regs. An organization is not operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Sec. 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Sec. 1.501(c)(3)-1(c)(2), Income Tax Regs. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization. Sec. 1.501(a)-1(c), Income Tax Regs.

The presence of a single substantial nonexempt purpose destroys the exemption regardless of the number or importance of the exempt purposes. *Better Bus. Bureau v. United States*, 326 U.S. 279, 283, 66 S.Ct. 112, 90 L.Ed. 67 (1945); *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1065, 1989 WL 49678 (1989). When an

organization operates for the benefit of private interests, the organization by definition does not operate exclusively for exempt purposes. *American Campaign Academy v. Commissioner, supra* at 1065. Prohibited benefits may include advantage, profit, or gain. *Id.* at 1065- 1066.

Anclote Psychiatric Center, Inc. v. Commissioner, T.C. Memo 1998-273 (July 27, 1998).

When reviewing another Tax Court decision involving inurement, Justice Posner of the Seventh Circuit Court of Appeals noted that:

The term “any private shareholder or individual” in the inurement clause of section 501(c)(3) of the Internal Revenue Code has been interpreted to mean an insider of the charity. *Orange County Agricultural Society, Inc. v. Commissioner*, 893 F.2d 529, 534 (2d Cir.1990); *Church of Scientology v. Commissioner, supra*, 823 F.2d at 1316-19; *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387, 1392 (9th Cir.1985); *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1066, 1989 WL 49678 (1989). A charity is not to siphon its earnings to its founder, or the members of its board, or their families, or anyone else fairly to be described as an insider, that is, as the equivalent of an owner or manager.

*** The [inurement] provision is designed to prevent the siphoning of charitable receipts to insiders of the charity ***

United Cancer Council, Inc. v. Commissioner, 165 F.3d 1173, 1176 (7th Cir. 1999).

Illinois courts have recognized that the determining feature of profit with respect to a charitable institution is whether there is inurement of benefit to private interests. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470, 654 N.E.2d at 246. Profit has been found not only where there is a direct pecuniary benefit to an insider of the organization (*e.g.*, People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 264 N.E.2d 4 (1970)), but also where the members of an organization obtain some benefit which non-members cannot obtain. For example, an art club that allowed only members to show and sell their works at club fairs was found to provide private inurement to members. DuPage Art League v. Department of Revenue,

177 Ill. App. 3d 895, 901-02, 532 N.E.2d 1116, 1120 (2d Dist. 1988) (primary purpose of organization was to benefit its members, and was, therefore, not entitled to the statutory exemption).

In Provena, the Illinois Supreme Court addressed the Department's argument that a not-for-profit hospital's agreements with for-profit entities to operate certain discrete functions on hospital property constituted a private inurement. In response to that argument, the Court wrote:

The fact that an organization contracts with third-party, for-profit providers for ancillary services does not, in itself, preclude the organization from being characterized as an institution of charity within the meaning of section 15-65 of the Property Tax Code. [all citations omitted] Virtually all charities must contract with for-profit vendors to one degree or another in order to carry on their operations and perform their charitable functions. ... The real concern is whether any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in *managing* the organization. The authority cited by the *Korzen* case with respect to the prohibition against private gain or profit so holds. ... No private enrichment of that type is evident in this case.

Provena, 236 Ill. 2d at 391-92, 925 N.E.2d at 1145-46 (emphasis original).

In this matter, the evidence is clear that Applicant was organized and operated with an original intent that Applicant would operate and maintain OPQ Foundation's Property, in part, by entering into self-dealing agreements with for-profit businesses which were also owned and directed by Applicant's directors. App. Ex. 1.7; App. Ex. 5.3, Form 1023, Exs. C, E-2, E-6; App. Ex. 5.18, pp. 9-11 (Bates numbers 54-56). The agreements here, in other words, are not like the agreements in Provena, which were between Provena and businesses which had no relation to Provena's managers.

Under Illinois corporation law, moreover, each of Applicant's directors have a

fiduciary relationship with Applicant. Mile-O-Mo Fishing Club, Inc. v. Noble, 62 Ill. App. 3d 50, 56-57, 210 N.E.2d 12, 15 (5th Dist. 1965) (“the rule is well established in Illinois that directors of a corporation occupy a fiduciary relation to the corporation.”). Duties imposed upon a corporate director as a fiduciary require him to manage the corporation with undivided and unqualified loyalty and prohibit him from profiting personally at corporate expense or permitting his private interests to clash with those of his corporation. Weiss Medical Complex, Ltd. v. Kim, 87 Ill. App. 3d 111, 115, 408 N.E.2d 959, 963 (1st Dist. 1980); 805 ILCS 105/108.60 (Director conflict of interest section of Illinois’ General Not for Profit Corporation Act of 1986 (NFPCA)).⁶

⁶ Section 108.60 of Illinois’ NFPCA sets forth Illinois’ conflicts of interest law for all non-profit directors, and it provides:

§ 108.60. Director conflict of interest.

(a) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction is not grounds for invalidating the transaction.

(b) In a proceeding contesting the validity of a transaction described in subsection (a), the person asserting validity has the burden of proving fairness unless:

(1) The material facts of the transaction and the director's interest or relationship were disclosed or known to the board of directors or a committee consisting entirely of directors and the board or committee authorized, approved or ratified the transaction by the affirmative votes of a majority of disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts of the transaction and the director's interest or relationship were disclosed or known to the members entitled to vote, if any, and they authorized, approved or ratified the transaction without counting the vote of any member who is an interested director.

(c) The presence of the director, who is directly or indirectly a party to the transaction described in subsection (a), or a director who is otherwise not disinterested, may be counted in determining whether a quorum is present but may not be counted when the board of directors or a committee of the board takes action on the transaction.

(d) **For purposes of this Section, a director is “indirectly” a party to a transaction if the other party to the transaction is an entity in which the director has a material financial interest or of which the director is an officer, director or general partner;** except that if a director is an officer or director of both parties to a transaction involving a grant or contribution, without consideration, from one entity to the other, that director is not “indirectly” a party

Where the existence of a fiduciary relation is established, Illinois law presumes that any transaction between a fiduciary and the not-for profit by which the fiduciary has profited, is fraudulent. Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16. When a director of a non-profit corporation enters into a self-interested transaction, the fraud that Illinois law presumes to have occurred is that the fiduciary has depleted the non-profit's funds available to conduct the operations for which it was organized, by directing that those funds be used to provide a private benefit directly or indirectly. *See Mile-O-Mo Fishing Club, Inc.*, 62 Ill. App. 3d at 57, 210 N.E.2d at 16. The burden rests on the fiduciary to overcome the presumption by clear and convincing proof that he has exercised good faith. *Id.*; 805 ILCS 105/108.60(b).

Importantly, § 108.60 of Illinois' NFPCA precluded Applicant's directors from voting to authorize the Pro Shop Lease and the Management Agreement, on Applicant's behalf, since they also owned and/or controlled the businesses on the other side of those agreements. 805 ILCS 105/108.60(d); App. Ex. 5.3, Form 1023, Ex. C, pp. 8-11, Exs. E-2, E-6. Interested directors of a non-profit may be counted for purposes of establishing a quorum, but they may not, themselves, vote to approve any agreements between the non-profit and a for-profit entity in which each either owned a material financial interest, or directed. 805 ILCS 105/108.60(c)-(d). Applicant's own bylaws provide that Applicant's property, business and affairs are managed by its board of directors. App. Ex. 1.7, p. 4 (of exhibit, Bates number 65). The bylaws further provide that "[t]he act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board

to the transaction provided the director does not have a material financial interest in the entity that receives the grant or contribution.

(e) (Blank).

805 ILCS 105/108.60 (emphasis added).

of Directors *unless the act of a greater number is required by law*, the Articles of Incorporation or these Bylaws. App. Ex. 1.7, p. 6 (of exhibit, Bates number 67) (emphasis added).

Under Illinois not-for-profit law, and the terms of Applicant's own bylaws, the only way Applicant could have properly authorized any of its self-dealing agreements was if each such agreement had been approved by a majority of a quorum of Applicant's disinterested directors. *Id.*; 805 ILCS 105/108.60. But Applicant has only three directors, and none of them were disinterested in the agreements between Applicant and its related, for-profit businesses. *See* App. Ex. 5.3, Form 1023, Ex. C. Applicant's very organization precluded it from properly — and by properly, I mean consistent with Illinois not-for-profit law — entering into the self-dealing contracts which are part of this record. Since Applicant had no disinterested directors, and its interested directors voted or otherwise authorized Applicant to enter into self-interested agreements with for-profit businesses which were owned and controlled by Applicant's directors, Illinois not-for-profit law requires me to presume that the related, for-profit businesses received gain, in a private sense, from such agreements. 805 ILCS 105/108.60; Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16.

When making conclusions regarding this guideline, I give no weight to Applicant's argument that its self-dealing agreements met its own conflicts of interest policy (Applicant's Reply, p. 11), since that policy fails to take into account Illinois not-for-profit law. When it comes to Applicant's operations, moreover, a conflict of interest between Applicant and its related, for-profit businesses was not merely a possibility, it was Applicant's directors' intended plan, all along. As that policy expressly provided, the

conflicts anticipated by Applicant's self-dealing agreements were "unavoidable[.]" App. Ex. 5.3, Form 1023, Ex. D. From the date of Applicant's first board meeting, it was part of Applicant's directors' organizational plan to have related, for-profit entities directly involved in the non-profit's operations and management. *Id.*; App. Ex. 1.7 (Applicant's initial board of director meeting minutes), p. 2 (Bates number 63).

Additionally, while Applicant's conflicts policy required it to not pay more than fair market value to related persons, that does not mean that Applicant's agreed-upon payments to related persons did not constitute gain, in a private sense, to them. Fair market value *is* valuable consideration. The term fair market value assumes some sort of gain (that is, value) to the persons on either side of a transaction, on the date made — it's the mutual perception of the gain to be obtained through the transaction which makes the value fair. *See, e.g., U.S. v. Miller*, 317 U.S. 369, 374, 63 S.Ct. 276, 280 (1943) ("The term 'fair' hardly adds anything to the phrase 'market value', which denotes what 'it fairly may be believed that a purchaser in fair market conditions would have given', [footnote omitted] or, more concisely, 'market value fairly determined'.") (internal quotation marks original); *County of Du Page v. Property Tax Appeal Bd.*, 277 Ill. App. 3d 532, 660 N.E.2d 985 (2d Dist. 1995) ("fair market value, is defined as the price at which ready, willing, and able buyers and sellers would agree.").

In *Provena*, the court held that a non-profit's agreement to pay third party, for profit businesses, who conduct operations on or regarding property sought to be exempt, would not violate this fourth guideline's prohibition against private gain or inurement, where there is no connection between those who manage the not-for profit and the third parties with whom it contracted. *Provena*, 236 Ill. 2d at 391-92, 925 N.E.2d at 1145-46.

But here, OPQ Banquets and Inter-TWA are not third parties to Applicant — they are related to Applicant because Applicant’s directors own or control both of those for profit businesses. App. Ex. 5.3, Form 1023, Ex. C, pp. 8-11; 805 ILCS 105/108.60(c)-(d). The evidence clearly and convincingly shows that Applicant was organized and operated with a manifest intent to provide a not insignificant amount of its revenues (as measured by the fair market value to be paid for the services provided) to two, related for-profit businesses. App. Ex. A-13, pp. 2, 4, 6, 8; App. Ex. 5.3, Form 1023, Exs. C, E-2 (Management Agreement), E-6 (Pro Shop Lease).

This purpose, moreover, is not merely an incident of Applicant’s organization and operations. Pursuant to the Pro Shop Lease, Applicant, as OPQ Operating’s sole member, agreed to pay rent to OPQ Banquets in the amount of \$XXXXXX during each of 2014 and 2015, \$XXXXXX during 2016, and \$XXXXXX during 2017. App. Ex. 5.3, Form 1023, Ex. E-6; App. Ex. A-13, pp. 2, 4, 6, 8. Pursuant to the Management Agreement, Applicant agreed annually to pay Inter-TWA a management fee of, respectively, \$XXXXXX, \$XXXXXX, \$XXXXXX, and \$XXXXXX, during 2014 through 2017. App. Ex. 5.3, Form 1023, Ex. E-2; App. Ex. A-13, pp. 2, 4, 6, 8. When those amounts are added together and compared with Applicant’s total public support revenues, Applicant agreed to make annual payments to related for-profit businesses which represented, respectively, 24.9%, 24%, 20.2% and 19.2% of the revenues Applicant realized from its non-profit business operations. App. Ex. A-13, pp. 2, 4, 6, 8 (and table displayed, *supra*, p. 28, in finding of fact number 67).

Since I just cited to the payments Applicant agreed to make to OPQ Banquets for the Pro Shop Lease, I take a moment here to discuss the inconsistent evidence reflected

by, on one hand, OPQ Operating's Budget records and Applicant's Consolidated Financial records, and, on the other, C's testimony regarding those rent payments.

OPQ Operating's Budget records show that Applicant regularly recorded the expenses for the rent payments it contractually agreed to pay to OPQ Banquets for the Pro Shop Lease. App. Ex. A-13, pp. 2, 4, 6, 8. On its Forms 990, moreover, Applicant reported to the IRS that it made such lease payments, as occupancy expenses. App. Ex. 5.21-5.24 (Schedule L (Transactions with Interested Persons), Parts II, IV-V), Schedule O, and Schedule R, of each Form). At hearing, however, C testified that Applicant did not, in fact, pay any such rent to OPQ Banquets. *See* Tr. Vol I, pp. 85-86 (C). Therein lies the dilemma — if C's testimony is correct; Applicant's books and records are not.

When considering which evidence is more probative, I first note that C's testimony is not so incredible as being unworthy of belief. It is certainly not unheard of for a corporate insider to admit that the corporation's records are not accurate. *See, e.g. Puleo v Department of Revenue*, 117 Ill. App. 3d 260, 263-64, 453 N.E.2d 48, 50-51 (4th Dist. 1983) (partner of business told Department agents that he did not keep a record of sales, that he would estimate sales and give figure to the bookkeeper, that he had not filed correct tax returns, and he knew he was understating and underreporting purchases and sales). On the other hand, if I were to give more weight to C's testimony than to OPQ Operating's and Applicant's financial records, I would also have to make the corresponding factual determination that OPQ Operating's Budget records are neither accurate, nor trustworthy. And, of course, I would also have to find that OPQ Operating not only repeatedly made the decision to make and keep inaccurate records of Applicant's actual expenses, but that Applicant also regularly made material

misrepresentations to the IRS of the amounts paid to a related for-profit business, on its Forms 990.

There is, of course, the possibility that OPQ Operating's Budget records accurately identify that a rent expense accrued to Applicant for each of the years it kept such records, even though such expense were not actually paid by Applicant to the related party. But if OPQ Banquets, in fact, forgave all the rent payments Applicant (through OPQ Operating) contractually owed it, that fact is worthy of noting, as a significant accounting practice. As it happens, Applicant's Consolidated financial reports do, in fact, note when amounts owed by Applicant to related persons have been forgiven, and recorded as a contribution to Applicant by the related person. Two of Applicant's Consolidated Financial reports state that \$68,033 of the \$172,802 rent Applicant owed to OPQ Banquets for 2015 had been forgiven and treated as a contribution to Applicant for that year. App. Exs. 5.17, p. 10 (Bates number 92); 5.18 p. 10 (Bates number 106). Applicant's other Consolidated Financial reports, however, do not reflect that any other amounts of the rent Applicant owed OPQ Banquets were forgiven.

So, regarding a material question of fact, the record contains inconsistent evidence. Applicant's documentary evidence shows that Applicant agreed to pay a significant amount of its revenues, each year, to two for-profit business owned and controlled by Applicant's directors. OPQ Operating's Budget records, and Applicant's Forms 990, show that these rent and management fees were reported as expenses for each year. Applicant's witness, however, said none of the documented rent expenses were paid. Tr. pp. 85-86 (C); Applicant's Brief, pp. 19-20 & n.44.

This is a tax exemption case, and, notwithstanding Applicant's arguments

(Applicant's Reply, pp. 5-6), in tax cases, books and records carry more weight than mere testimony. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542 ("the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used").

Applicant, moreover, is seeking an exemption identification number authorized by ROTA § 1g, so that it can purchase tangible personal property, at retail, for use in Illinois, without paying Illinois use tax to the retailer, or to the Department, directly. Under § 11 of the UTA, persons who purchase tangible personal property at retail for use in Illinois are required to keep books and records which would document any claim that any of its purchases are exempt from, or not subject to, tax. 35 ILCS 105/11. Section 12 of the UTA also incorporates ROTA § 7, which provides, in pertinent part:

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax hereunder, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable hereunder.

35 ILCS 120/7.

Applicant is also seeking an exemption from Illinois property tax, for property owned by OPQ Foundation. Regarding property taxes, the Illinois Supreme Court has long recognized the succinct rule that “taxation is the rule[, t]ax exemption is the exception.” Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1143. Further, “every presumption is against the intention of the state to exempt property from taxation” *Id.*, 925 N.E.2d at 1144. To the extent Applicant is serious when it argues that mere testimony, alone, would satisfy its burden to provide clear and convincing evidence that, for example, it satisfies the pertinent Methodist Old Peoples Home guidelines (Applicant’s Reply, pp. 5-6), that argument is not well taken. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542.

Testimony that is consistent or closely identified with a taxpayer’s books and records, and which is not so incredible as to be unworthy of belief, may constitute evidence which tends to make it more or less likely that an applicant satisfies a particular guideline. *Id.*; *see also* Vitale v. Illinois Department of Revenue, 118 Ill. App. 3d 210, 213, 454 N.E.2d 799, 802 (3rd Dist. 1983) (“The taxpayer can overcome the Department’s prima facie case, but only if he produces competent evidence, identified with the taxpayer’s books and records, showing that the Department of Revenue’s corrected returns are inaccurate.”). But C’s testimony, that Applicant paid *none* of the Pro Shop Lease rent, is not consistent with Applicant’s books and records. As between the two types of evidence, I give more weight to Applicant’s and OPQ Operating’s books and records than to C’s testimony, and I recommend that the Director do so, too. The Consolidated Financial reports simply do not corroborate C’s testimony that none of the

rent expenses recorded on OPQ Operating's Budget records, and on Applicant's Forms 990, was paid to OPQ Banquets. At best, Applicant's and OPQ Operating's regularly kept financial records corroborate that some of the rent owed to OPQ Banquets, for 2015 only, was not paid. App. Ex. 5.17, p. 10; App. Ex. 5.18, p. 10.

After taking into account the amount of Pro-Shop Lease rent documented as having been forgiven by OPQ Banquets, the documentary evidence still shows that Applicant paid, or agreed to pay, two for-profit businesses which were owned and controlled by Applicant's directors, rent or fees in the following amounts:

	2014	2015	2016	2017
Pro Shop Rent				
Mgmt. Fee				
Total paid				
Total revenues				
Percentage of Applicant's total revenues paid, or agreed to be paid, to persons owned and controlled by Applicant's directors	24.9%	16.5%	20.2%	19.2%

App. Ex. A-13, pp. 2, 4, 6, 8; App. Ex. 5.17, p. 10; App. Ex. 5.18, p. 10.

When discussing the extent of Applicant's agreed-upon payments to related, for-profit businesses pursuant to the Pro Shop Lease and Management Agreement, I also acknowledge that together, such payments totaled less, each year, than the total contributions other related for-profit businesses made to Applicant, which contributions were not part of Applicant's public support. *Compare id. with* App. Ex. 5.24, p. 3 (of Schedule A to 2017 Form 990) (p. 15 of exhibit); App. Ex. 5.3, Form 1023, Ex. C, p. 11. But those greater amounts of contributions do not mitigate either the effect, or the fact, of Applicant's written agreements to make regular payments to for-profit businesses which are owned and controlled by Applicant's directors, and which payments, from 2014 through 2017, averaged about 20% of Applicant's annual revenues. App. Ex. A-13, pp. 2,

4, 6, 8; 5.17, p. 10; 5.18, p. 10 ((XXXXXX) / (XXXXXX) = XXXXXX).

Finally, as between the contributions to Applicant from persons related to Applicant, and Applicant's payments to related, for-profit businesses, only the latter are based on written, enforceable agreements. That is, this record contains no evidence showing that the related, for profit businesses owned and controlled by Applicant's directors had contractually obligated themselves to make, or continue to make, any of the contributions reported on Applicant's Consolidated Financial reports or Forms 990. *See* App. Exs. 1.8, 5.17, 5.18, 5.19 (copies of Consolidated Financial reports). In contrast, Applicant contractually agreed to pay rent to OPQ Banquets, pursuant to the Pro Shop Lease, for 25 years. App. Ex. 5.3, Form 1023, Exs. C & E-6 (p. 2 of Pro Shop Lease).

The Pro Shop Lease and Management Agreements, and the agreed-upon payments from Applicant to the two for profit businesses who were parties to those agreements, were a significant, intended, part of Applicant's organizational plan (App. Ex. 1.7; App. Ex. 5.3, Form 1023, Exs. C-D), and a significant, intended, part of Applicant's operations. App. Ex. A-13, pp. 2, 4, 6, 8. If a substantial purpose or activity of an applicant claiming entitlement to one of the statutory exemptions authorized by 35 ILCS 105/3-5 or PTC § 15-65 is not charitable, religious or educational, the applicant cannot be said to be organized and operated exclusively for charitable, religious or educational purposes. Gas Research Institute, 154 Ill. App. 3d at 436, 507 N.E.2d at 145.

Applicant had the burden to show that its operations did not provide gain or profit in a private sense to any person connected with it. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145; Methodist Old Peoples Home, 39 Ill. 2d at 156-57, 233 N.E.2d at 542. After considering the evidence, I think Intervenor was in error. *See* Intervenor's Brief, pp. 14-

16. The evidence does not make it impossible to determine whether Applicant's operations provided a prohibited private gain or profit to an insider of Applicant. To the contrary, the record includes clear and convincing, documentary, evidence that Applicant's operations were always intended to provide a significant amount of Applicant's revenues — that is, gain, in a private sense — to two for-profit businesses which were owned and controlled by Applicant's directors. Gas Research Institute, 154 Ill. App. 3d at 436, 507 N.E.2d at 145. Applicant is managed by its three directors, and none of them were disinterested in the agreements Applicant entered into with related, for-profit businesses. 805 ILCS 105/108.60(d); Mile-O-Mo Fishing Club, Inc., 62 Ill. App. 3d at 57, 210 N.E.2d at 16. The evidence not only demonstrates that Applicant cannot satisfy the fourth Methodist Old Peoples Home guideline, it also clearly and convincingly shows that Applicant was not, in fact, organized and operated primarily for charitable purposes, and is not an institution of public charity. DuPage Art League, 177 Ill. App. 3d at 901, 532 N.E.2d at 1119-20; Gas Research Institute, 154 Ill. App. 3d at 436, 507 N.E.2d at 145.

Sixth Guideline

The final guideline calls for an examination of whether the property is actually used primarily for charitable purposes. Methodist Old Peoples Home, 39 Ill. 2d at 157, 233 N.E.2d at 542.

The evidence shows that the Property is primarily used by the public, who pay standard fees to play golf on OPQ Foundation's Property, and to use its driving range. A non-profit organization's provision of athletic facilities for a fee is not the grant of charity, and one's payment for such services is not a charitable contribution. Provena,

236 Ill. 2d at 401, 925 N.E.2d at 1151; 26 U.S.C. § 170(a), (c)(2)(B). The Property was not, in fact, used primarily for charitable purposes.

Additionally, Applicant's actual operations on the Property provided — and were always intended to provide — gain, in a private sense, to two for-profit businesses which are also owned and controlled by Applicant's directors. Applicant Exs. 1.7, 5.3, Form 1023, Exs. C, E-2, E-6; Provena, 236 Ill. 2d at 392, 925 N.E.2d at 1146; DuPage Art League, 177 Ill. App. 3d at 901-02, 532 N.E.2d at 1120.

My conclusion that Applicant did not use the property primarily for charitable purposes does not ignore that Applicant did, in fact, provide virtually free access to OPQ Foundation's Property to small numbers of individuals. To the extent a reviewing court might consider that provision of free use of OPQ Foundation's Property to constitute charity, it was only an incident of Applicant's operations on OPQ Foundation's Property and did not amount to the primary use of the Property.

Conclusion:

The evidence clearly and convincingly shows that Applicant does not own the Property, and that OPQ Foundation, the person which does own the Property, does not satisfy any of the three sets of conditions expressed in PTC § 15-65(i), (ii), or (iii). Since the Property is not owned by an institution of public charity, or by a person described in PTC § 15-65(i), (ii), or (iii), OPQ Foundation's Property is not entitled to the exemption set forth in PTC § 15-65.

To the extent the following considerations are relevant, the evidence clearly and convincingly shows that Applicant satisfies only the first of the Methodist Old Peoples Home guidelines. The evidence clearly and convincingly shows that Applicant was not,

in fact, organized and operated primarily for charitable purposes, and that it is not an institution of public charity, as such phrases are used in ROTA § 2-5(11), UTA § 3-5(3), and PTC § 15-65, because it was organized and operated with a manifest intent to provide gain, in a private sense, to two for-profit businesses which are related to Applicant through Applicant's directors. Finally, Applicant has not clearly and convincingly established that the Property is actually and primarily being used for charitable purposes.

I respectfully recommend that the Director finalize the Department's prior Denials as issued, that Applicant not receive an exemption identification number, and that the Property remain on the tax rolls.

Date: July 11, 2019

John E. White, Administrative Law Judge



**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

	)	Docket Nos.	16-PT-024, 16-ST-259
In re	)		15-16-587
Exemption Applications of	)	PINs	31-07-400-009-0000, 31-07-201-003-0000,
	)		31-07-203-060-0000, 31-07-102-002-0000,
	)		31-07-202-001-0000, 31-07-401-004-0000
OPQ CHARITIES	)	John E. White,	
	)	Administrative Law Judge	

NOTICE OF DISPOSITION

To:

Michael Wynne, Jennifer Waryjas
Jones Day
77 West Wacker Dr Suite 3500
Chicago, IL 60601

Paula Hunter
Illinois Department of Revenue
100 W Randolph St 7th Floor
Chicago, IL 60601

Thomas Skallas, John Riccione
Taft Stettinius & Hollister, LLP
111 E Wacker Dr Suite 2800
Chicago, IL 60601-3713

Cook County State's Attorney
Attn: Property Tax Exemptions
69 W Washington St Room 3200
Chicago, IL 60602

Eugene Edwards, John Izzo
Hauser, Izzo, Petrarca, Gleason & Stillman, LLC
19730 Governors Highway Suite 10
Flossmoor, IL 60422

YOU ARE HEREBY NOTIFIED that the attached Order or Recommendation for Disposition of the Office of Administrative Hearings of the Illinois Department of Revenue in the above entitled cause has been accepted by the Director as dispositive of the issues therein. Unless you otherwise request a rehearing pursuant to the provisions of 35 ILCS 200/8-35 of the Property Tax Code, this determination shall become a final administrative decision 30 days from the date of issuance. Following the expiration of the 30 days, or after the issuance of a denial for rehearing, should one be requested, or after a rehearing decision is issued, you may pursue your rights to administrative review by filing a complaint in the circuit court, within 35 days, under the requirements of 735 ILCS 5/3-101 *et seq.*

Date: August 13, 2019

David Harris, Director
Illinois Department of Revenue