

PT 10-05

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

LUTHERAN LIFE COMMUNITIES,

APPLICANT

v.

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

No. 08 PT 0049 (07-16-1101)

Real Estate Tax Exemption

For 2007 Tax Year

P.I.N. 02-25-100-031-0000

Cook County Parcel

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Steven A. Salzman, Schmidt, Salzman & Moran, Ltd., on behalf of Lutheran Life Communities; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether a building, partially used as administrative headquarters, located on Cook County P.I.N. 02-25-100-031-0000, qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-65(a), wherein all property owned by charitable institutions and used for charitable and beneficent purposes and not leased or otherwise used with a view to profit, is exempt.

The controversy arises as follows: On June 12, 2008, Lutheran Life Communities (hereinafter “Lutheran Life”) filed an Application for Property Tax Exemption for P.I.N. 02-25-100-031-0000 for tax year 2007 with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed the Application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that 24,814 square feet of the 36,381 square foot building be exempt for the 2007 assessment year.¹ On October 17, 2008, the Department rejected the Board’s recommendation finding that the property was not in exempt ownership or exempt use in 2007. Dept. Ex. No. 1. On November 21, 2008, Lutheran Life filed a timely request for a hearing as to the denial of the exemption.

On January 26, 2010, Lutheran Life presented evidence at a formal hearing with Mr. Carl Moellenkamp, Senior Vice-President of Corporate Finance and Chief Financial Officer of Lutheran Life, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination that Cook County P.I.N. 02-25-100-031-0000 was not in exempt ownership or use during 2007 should be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that Cook County P.I.N. 02-25-100-031-0000 was not in exempt ownership or use in 2007. Tr. pp. 8-9; Dept. Ex. No. 1.

¹ The Board noted that 11,567 square feet were “leased to profit business.” Lutheran Life is not seeking an exemption for the leased portion. Tr. p. 84.

2. Lutheran Life was incorporated on July 21, 2005 “for the purpose of developing new and innovative services for seniors, establishing a senior living system, and providing day-to-day supervision and management to the facilities.” Lutheran Life has roots back to 1892, when August Rinkey built the Evangelical Old People’s Home in Arlington Heights to care for the aged. This building has transitioned to the “Lutheran Home for the Aged,” built in 1953 in Arlington Heights. Tr. pp. 10-14.
3. Lutheran Life controls the following subsidiaries: Lutheran Life Communities Foundation, which coordinates fund-raising activities that support the benevolent care and other programs at Lutheran Life; Lutheran Home and Services for the Aged, which provides management services to affiliates and also operates a 100 unit senior congregate housing facility; Lutheran Home for the Aged (the “Home”), comprised of 262 skilled and 60 intermediate licensed nursing care beds and 70 licensed shelter care units; Lutheran Foundation for the Aged, which supports fundraising activities that support the benevolent care and other programs for the Home; Lutheran Community Services for the Aged, which offers family support services, child care services, home health services, and counseling to residents of the Home, their families, staff and surrounding community; Wittenberg Lutheran Village, (Crown Point, Indiana), comprised of 155 skilled nursing care beds providing nursing and other services; Wittenberg Lutheran Village Endowment, (Crown Point, Indiana), comprised of a 72 cottage retirement community and a 33 unit assisted living facility; Pleasant View Lutheran Home, (Ottawa, Illinois), comprised of 36 independent living units and a 182 bed skilled nursing facility; Luther Oaks, (Bloomington, Illinois), comprised of 90 independent living units and 58 assisted living units; VeriSpring, a

for-profit corporation, incorporated in 2006, to develop new innovation in senior care that meets the desires of seniors wanting to remain in their homes as they age; and St. Paul's House and Health Care Center, (Chicago), comprised of 68 assisted living units and a 110 bed skilled nursing facility. Tr. pp. 14-19, 22-27, 58-59; App. Ex. No. 10.

4. VeriSpring provided higher-end services to seniors for a fee. It was in operation in 2007, the year at issue in these proceedings. In fiscal year 2008, the operations of VeriSpring were combined with the operations of Lutheran Community Services for the Aged. Tr. pp. 58-59, 66; App. Ex. No. 10.
5. Lutheran Home for the Aged is not subject to property taxes. Wittenberg Lutheran Village is not subject to property taxes. At Pleasant View Lutheran Home, the nursing facility is not subject to property taxes; the independent living units are subject to property taxes. At Luther Oaks, the assisted living units are not subject to property taxes; the independent living units are subject to property taxes. St. Paul's House and Health Care Center is not subject to property taxes. Tr. pp. 17-19, 68.
6. The subject property, purchased on November 30, 2006, is located at 3150 Salt Creek Lane in Arlington Heights. It is a one-story building set up for office purposes. Prior to its use by Lutheran Life, each subsidiary of Lutheran Life had its own administrative facilities, but corporate administration for all subsidiaries was located at Lutheran Home for the Aged. The subject property is located approximately 1.2 miles from Lutheran Home for the Aged. Tr. pp. 20-21, 26-27, 68-69; App. Ex. No. 9.

7. Lutheran Life occupied 8,800 square feet of the subject property on March 31, 2007. There was one non-affiliated, existing tenant in the subject property occupying approximately 11,567 square feet. Tr. pp. 28-29, 34-36; App. Ex. No. 8A and 8B.
8. The 8,800 square feet was in “move-in” status when purchased because it had previously been used as office space. Between the purchase and the move-in to the 8,800 square feet, Lutheran Life did some repairing, repainting, carpeting and purchased furniture. Computer networks, technology, phone and security systems were installed. Tr. pp. 29-30, 34-36; App. Ex. No. 8A and 8B.
9. A letter from Mid Counties Development, Inc., addressed to the President and CEO of Lutheran Life, dated October 9, 2006, prior to the purchase of the subject property, states that a joint inspection of the subject property was organized with participation from Holmes Mechanical (plumbing and sewer), One Source Roofing, West Town Refrigeration (HVAC), Henkel Electric, Tinaglia Architects, and K and L Contractors (paving). Tr. pp. 29-31; App. Ex. No. 3.
10. A letter from Tinaglia Architects, addressed to the President and CEO of Lutheran Life, dated October 4, 2006, prior to the purchase of the subject property, describes a proposal for a Phase I and Phase II master plan development for the “build-out” space in the building and fee payment schedules. On November 16, 2006, prior to the purchase of the subject property, a \$5,000 retainer was sent to Tinaglia Architects in response to their proposal. Tr. pp. 31-32; App. Ex. No. 5 and 6.
11. Lutheran Life requested a building permit and “fire review” from the Village of Arlington Heights on February 14, 2007, a building permit, electrical permit and fire review on both March 19, 2007 and June 1, 2007, an electrical permit, fire review,

occupancy permit, plan exam and plumbing permit on April 10, 2007, and a building permit and fire review on October 31, 2007. Tr. pp. 33-35; App. Ex. No. 4.

12. A plan of what the final build-out would look like was drafted by Tinaglia Architects, dated March 28, 2007, and submitted to the Village of Arlington Heights. Tr. pp. 35-36; App. Ex. No. 2.

13. Lutheran Life paid Tinaglia in November, 2006, January, February, May, June and September, 2007 and June, 2008 totaling \$42,363. Mid Counties Consulting was paid \$98,448 in 2006 through 2008 and Mid Counties Development was paid \$238,665 in 2007 through 2008. Tr. pp. 37-40; App. Ex. No. 1 and 7.

14. On June 24, 2008, (after the year at issue in these proceedings), Lutheran Life began occupying an additional 16,000 square feet of the building. At that point, Lutheran Life occupied 24,800 square feet. The tenant leasing the space moved out in March, 2008, and that space has remained empty. Tr. pp. 40-41.

15. Community services for at home care are “managed, arranged and programmed” on the subject property. Training for home care employees is done on the subject property. “Community Companion Volunteers,” parish nursing programs and “At Home Matters” are “run” on the subject property. The subject property serves as a “centralized hub” for human resources and benefits management for caregivers and staff, regulatory reporting including financial reporting, Medicare, Medicaid and State of Illinois reporting requirements, bond reporting, information technology support, clinical care plans, administrative planning including strategic planning, public relations and communications, marketing, printing and publication, contract management including food service, pharmacy and medical supplies, insurance

management, planning and budgeting, future programming, “pricing adjustments,” and “charity care.” Tr. pp. 42-47, 66-67.

16. “At Home Matters” serves seniors on a home care basis with activities of daily living, medication reminders, helping with mobilization, ambulation around the home, clean up and housekeeping. These services are provided on a fee for service basis. Tr. p. 22.
17. Lutheran Life’s consolidated “Gross Resident Service Revenue” for June 30, 2007 was \$68.8 million. Subtracted from this amount is “Estimated Contractual Adjustments Arising under Third-party Reimbursement Programs,” of \$11.4 million and “Charity Care” of \$1.397 million to arrive at “Net Resident Service Revenue” of \$56 million. The “Charity Care” of \$1.397 million is 2% of “Gross Resident Service Revenue.” For year end June 30, 2008, “Charity Care” of \$1.380 million is 1.7% of “Gross Resident Service Revenue” of \$81.2 million. Tr. pp. 67-68; App. Ex. No. 10.
18. Lutheran Life’s consolidated “Total Operating Revenue” for June 30, 2007 was \$63.2 million, of which “Net Resident Service Revenue” was \$56 million and “Other Revenue” was \$7.2 million. “Total Operating Expenses” were \$69.7 million, resulting in a “Loss from Operations” of \$6.5 million. “Net Resident Service Revenue” is revenue generated by anyone who is a resident at one of Lutheran Life’s campuses. “Other Revenue” is primarily generated from Lutheran Community Services for the Aged, and includes nonresidents coming to the campus for service, services provided in a senior’s home off-campus, fees from “At Home Matters,” and adult daycare. “Other Revenue” also includes \$218,000 for seven months of rental income from the tenant on the subject property. Tr. pp. 48-54; App. Ex. No. 10.

19. Lutheran Life's "Notes to Consolidated Financial Statements," under "Charity Care" state that "[T]he Corporations provide charity care to residents who meet certain criteria under their benevolent care policies without charge or at amounts less than its established rates. Because the Corporations do not pursue collection of amounts determined to qualify as charity care, they are not reported as revenues." App. Ex. No. 10.

CONCLUSIONS OF LAW:

An examination of the record establishes that Lutheran Life has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption from 2007 real estate taxes for the subject property. In support thereof, I make the following conclusions.

The subject property was purchased on November 30, 2006 and is located at 3150 Salt Creek Lane in Arlington Heights. It is a one-story building set up for office purposes. Tr. pp. 26-27; App. Ex. No. 9. During the 2007 assessment year, Lutheran Life was in the process of converting the subject property for eventual use as an office building. Lutheran Life occupied 8,800 square feet of the subject property on March 31, 2007. During the 2007 assessment year, there was one non-affiliated, existing tenant in the subject property occupying approximately 11,567 square feet. Tr. pp. 28-29, 34-36; App. Ex. No. 8A and 8B.

Lutheran Life's actual use determines whether the property in question is used for an exempt purpose. "Intention to use is not the equivalent of use." Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the process of development and adaptation for exempt use. Illinois Institute of

Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual and exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987).

The evidence presented at the hearing shows that several activities occurred prior to the purchase of the property on November 30, 2006. A letter from Mid Counties Development, Inc., dated October 9, 2006, addressed to the President and CEO of Lutheran Life, states that a joint inspection of the subject property was organized with participation from Holmes Mechanical (plumbing and sewer), One Source Roofing, West Town Refrigeration (HVAC), Henkel Electric, Tinaglia Architects, and K and L Contractors (paving). Tr. pp. 29-31; App. Ex. No. 3. A letter from Tinaglia Architects, addressed to the President and CEO of Lutheran Life, dated October 4, 2006, describes a proposal for a Phase I and Phase II master plan development for the “build-out” space in the building and fee payment schedules. On November 16, 2006, a \$5,000 retainer was sent to Tinaglia Architects in response to their proposal. Tr. pp. 31-32; App. Ex. No. 5 and 6. These activities were obviously necessary for the development and adaptation of the subject property. However, because the activities were completed prior to Lutheran Life’s actual ownership of the property, they show an intention by Lutheran Life to use the property in an exempt manner, but not an actual exempt use.

Several activities occurred after Lutheran Life’s purchase of the property on November 30, 2006. The 8,800 square feet occupied by Lutheran Life on March 31, 2007, was in “move-in” status when purchased because it had previously been used as office space. Between the purchase and the move into the 8,800 square feet, Lutheran

Life did some repairing, repainting, carpeting and purchased furniture. Computer networks, technology, phone and security systems were installed. Tr. pp. 29-30, 34-36; App. Ex. No. 8A and 8B.

A plan of what the final build-out would look like was drafted by Tinaglia Architects, dated March 28, 2007, and submitted to the Village of Arlington Heights. Tr. pp. 35-36; App. Ex. No. 2. As work on the build-out area proceeded, Lutheran Life requested a building permit and “fire review” from the Village of Arlington Heights on February 14, 2007, a building permit, electrical permit and fire review on both March 19, 2007 and June 1, 2007, an electrical permit, fire review, occupancy permit, plan exam and plumbing permit on April 10, 2007, and a building permit and fire review on October 31, 2007. Tr. pp. 33-35; App. Ex. No. 4. Lutheran Life paid Tinaglia in November, 2006, January, February, May, June and September, 2007 and June, 2008 totaling \$42,363. Mid Counties Consulting was paid \$98,448 in various months in 2006 through 2008 and Mid Counties Development was paid \$238,665 in various months in 2007 through 2008. Tr. pp. 37-40; App. Ex. No. 1 and 7.

I have concluded that the actual development and adaptation of the 8,800 square feet of the subject property for possible exempt use began on January 1, 2007. Lutheran Life subsequently occupied this space on March 31, 2007.

Mr. Moellenkamp testified that after March 31, 2007, the workers moved on to the build-out of the inside space. “Even prior to that” “as permits allowed,” the workers were doing some work on the roof and various systems. Tr. p. 37. Lutheran Life first requested permits on February 14, 2007, and subsequently requested permits on March 19, 2007, April 10, 2007, June 1, 2007 and October 31, 2007. Tr. pp. 33-35; App. Ex.

No. 4 The requests for permits show that work was proceeding throughout the year on the build-out space. The issuance of the permits, the earliest dated February 14, 2007, shows that the project had gone beyond a mere intention to convert the property, and actually constituted development and adaptation of the property for possible exempt use. I have determined that this possible exempt use of the build-out area began on February 14, 2007.

Having determined that the subject property was in actual development and adaptation for possible exempt use as of January 1, 2007 for the 8,800 square feet occupied by Lutheran Life and as of February 14, 2007 for the build-out area, the next question becomes whether Lutheran Life qualifies for exemption from property taxes for charitable purposes.

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

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

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may

place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

35 ILCS 200/15-65(a) of the Property Tax Code exempts property owned by “institutions of public charity,” “when actually or exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65(a). Lutheran Life proved that it owned the subject property after its purchase on November 30, 2006. App. Ex. No. 9.

However, the record in this case does not allow me to conclude either that Lutheran Life is a charitable organization or that its use of the subject property constitutes charitable use. In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter Korzen) the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 157.

The Illinois Supreme Court articulated the criteria in Korzen “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213

Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965).

At the evidentiary hearing, the Department "acknowledged" that Lutheran Life is "an Illinois not-for-profit corporation that has no capital, no capital stock or shareholders." Tr. p. 71. This is the only characteristic of a charitable institution, articulated in Korzen, that I am able to conclude is possessed by Lutheran Life.

Lutheran Life's consolidated "Total Operating Revenue" for June 30, 2007 was \$63.2 million, of which "Net Resident Service Revenue" was \$56 million and "Other Revenue" was \$7.2 million. "Net Resident Service Revenue" is revenue generated by anyone who is a resident at one of Lutheran Life's campuses. "Other Revenue" is revenue primarily generated from Lutheran Community Services for the Aged, and includes nonresidents coming to the campus for service, services provided in a senior's home off-campus, and fees from "At Home Matters," and adult daycare. "Other Revenue" also includes \$218,000 for seven months of rental income from the tenant on the subject property. Tr. pp. 48-54; App. Ex. No. 10.

As the financial data indicates, Lutheran Life receives almost 100% of its funding from residents living on its campuses or from nonresidents paying for at home services. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (3rd Dist. 2003), the court noted that 97% of Riverside's net revenue of \$10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." *Id.* at 608. Similarly, the Illinois Supreme Court has noted that having an

operating income derived almost entirely from contractual charges goes against a charitable identity. Small v. Pangle, 60 Ill. 2d 510, 517 (1975).

In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution. As the above cases indicate, the exchange of services for payment, at the level enjoyed by Lutheran Life, is not a characteristic of a charitable organization. Charity is an act of kindness or benevolence. “There is nothing particularly kind or benevolent about selling somebody something.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), *cert granted* 229 Ill. 2d 694 (2008) (hereinafter “Provena Covenant”). The record in this matter shows conclusively that Lutheran Life does not possess the characteristic of a charitable organization that its funding is derived mainly from public and private charity.

There is insufficient evidence in the record for me to conclude that Lutheran Life possesses any of the other characteristics of a charitable institution. Lutheran Life’s “Notes to Consolidated Financial Statements,” under “Charity Care” state that “[T]he Corporations provide charity care to residents who meet certain criteria under their benevolent care policies without charge or at amounts less than its established rates. Because the Corporations do not pursue collection of amounts determined to qualify as charity care, they are not reported as revenues.” App. Ex. No. 10.

The Corporations’ “certain criteria” and “benevolent care policies” were not admitted into evidence. I am unable to conclude from the record whether charity is dispensed to all who need and apply for it. There is no testimony or evidence in the

record as to how many people applied for charity in 2007 or how many people received charity in 2007. There is no testimony or evidence in the record as to whether the charity dispensed by Lutheran Life was dispensed in Illinois or at the Wittenberg facilities in Indiana.

Mr. Moellenkamp testified that Lutheran Life's subsidiaries that operate independent living units charge entrance fees. At Luther Oaks, entrance fees for the independent living units range from \$129,000 to \$180,000. At Pleasant View, entrance fees for the independent living units range from \$110,000 to \$130,000. According to Mr. Moellenkamp, entrance fees are partially refundable when the resident moves out. Tr. pp. 69-70. No documentary evidence was admitted to support this testimony. No fee schedules, admission contracts or resident handbooks were admitted for either Luther Oaks or Pleasant View.

Illinois courts have consistently refused to grant charitable exemptions to retirement homes that charge entrance and upfront fees because these fees prevent "an indefinite number of persons" from benefitting from the home. In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 158 (1968), where prospective residents paid a "Founder's Fee" of \$6,250 to \$25,000 and a monthly charge from \$175 to \$375, the Supreme Court stated that the Founder's Fee and monthly charges, *inter alia*, were "certainly sufficiently restrictive to prevent our saying that the property is used for the benefit of an indefinite number of people..." In People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91, 101 (1968), where candidates for admission paid a mandatory \$4,000 entry fee, the Supreme Court stated that the defendant's insistence upon the payment of a sizeable admission fee, *inter alia*, constitutes a serious impediment to the tax exempt

status it was seeking. The Court could not “reconcile” the entrance fee “with our requirements of the application of benefits to an indefinite number of persons...” In Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273, 293 (2004) where Eden charged up-front entrance fees ranging from \$65,000 to \$76,900 for a duplex unit or a \$5,000 security deposit for a rental unit, the Supreme Court noted that “most certainly, the benefits derived are only for persons who can pay the substantial entrance fees.” Accordingly, I am unable to conclude from the record that the charity provided by Lutheran Life benefits an indefinite number of persons.

There is no testimony or evidence in the record as to whether Lutheran Life’s benevolent care policies are advertised. Accordingly, I am unable to conclude that Lutheran Life does not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Department of Revenue, 213 Ill. 2d 273 (2004). In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. It is unclear from the record how the “general public” would know that charitable care is available from Lutheran Life.

The Korzen criteria that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way are more than “guidelines.”

They are “essential criteria” that “goes to the heart of what it means to be a charitable institution.” Provena Covenant at 750. The record in this case does not allow me to conclude that Lutheran Life possesses these characteristics.

There is no testimony or evidence in the record as to salaries paid to officers and employees of Lutheran Life. “The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). Without evidence in the record as to the reasonableness of the salaries paid, I am unable to conclude that Lutheran Life does not provide profit and gain in a private sense to persons connected with it.

Lutheran Life’s consolidated “Gross Resident Service Revenue” for June 30, 2007 was \$68.8 million. Subtracted from this amount is “Estimated Contractual Adjustments Arising under Third-party Reimbursement Programs,” of \$11.4 million and “Charity Care” of \$1.397 million to arrive at “Net Resident Service Revenue” of \$56 million. It is unclear from the record whether Lutheran Life claims that the contractual adjustments constitute charity. If so, Illinois courts have consistently rejected the argument that contractual adjustments constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603 (3rd Dist. 2003), Riverside argued that the institution’s charity care also included “discounted care to patients through Medicare, Medicaid and private insurance.” Riverside claimed to provide this care at 50% of actual cost. The court stated that it was “unpersuaded” by Riverside’s arguments that the

unreimbursed amounts constituted charitable care. The court was “confident that these discounts are not charitable and do not warrant a finding in favor of Riverside.” *Id.* at 610.

Lutheran Life’s June 30, 2007, financial statements show “Charity Care” of \$1.397 million, which represents 2% of “Gross Resident Service Revenue” of \$68.8 million. For year end June 30, 2008, “Charity Care” of \$1.380 million is 1.7% of “Gross Resident Service Revenue” of \$81.2 million. Tr. pp. 67-68; App. Ex. No. 10. There is no evidence in the record as to whether “Charity Care” was measured by cost or foregone revenue. In Provena Covenant, the court recommended that charity be measured by cost. Measuring charity by foregone revenue is “the illusion of charity.” Provena Covenant at 760. Lutheran Life’s “Charity Care” decreased by approximately \$17,000 from June 30, 2007 to June 30, 2008 while “Gross Resident Service Revenue” increased by over \$12 million in the same period. There is no evidence in the record as to whether “Charity Care” is related to vacancy rates at the campuses during the assessment year, whether financial screening of residents is performed before admittance to the campuses, and how charity care is budgeted. “To be charitable, an institution must give liberally.” Provena Covenant at 750. I cannot conclude from the record that Lutheran Life has given “liberally.”

Mr. Moellenkamp testified that the subject property was purchased because Lutheran Life “believed that we could be more efficient and cost effective for our residents by moving into a new building, combining the care aspect, as well as the administrative aspects into a building that would be more efficient and practical to make better decisions for care and organization.” Tr. p. 21. He also testified as to the following

uses of the subject property, although it is unclear from the record which of the following activities specifically took place on the subject property in 2007. Community services for at home care are “managed, arranged and programmed” on the subject property. Training for home care employees is done on the subject property. “Community Companion Volunteers,” parish nursing programs and “At Home Matters” are “run” on the subject property. The subject property serves as a “centralized hub” for human resources and benefits management for caregivers and staff, regulatory reporting including financial reporting, Medicare, Medicaid and State of Illinois reporting requirements, bond reporting, information technology support, clinical care plans, administrative planning including strategic planning, public relations and communications, marketing, printing and publication, contract management including food service, pharmacy and medical supplies, insurance management, planning and budgeting, future programming, “pricing adjustments,” and “charity care.” Tr. pp. 42-47, 66-67.

Mr. Moellenkamp went on to testify that the purchase of the subject property allows Lutheran Life to “to take advantage of economies of scale.” “Our ability [is] to provide very good quality care with very good products at a lower cost to the individual who is going to be required to pay for them. This then allows us to provide more charity care due to reserves and other benevolent care donations that we put together for those services.” Tr. pp. 47-48. The record in this case, for the year at issue in this proceeding, shows the opposite. The economies of scale that Lutheran Life is “taking advantage of” through the purchase of the subject property have not resulted in increased charitable contributions to residents, even while gross revenue has increased over \$12 million. It is

not logical to conclude that the use of this property allows Lutheran Life to “provide more charity care” when actual charitable contributions have decreased by \$17,000, and from 2% to 1.7% of “Gross Resident Service Revenue” since its purchase.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). In order to prevail on this exemption, Lutheran Life was required to prove ownership by an institution of public charity and charitable use of the property. There was insufficient testimony and evidence in the record for me to conclude either that Lutheran Life is a charitable institution, as described in Korzen, or that the subject property was exclusively used for charitable purposes in 2007.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt

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

WHEREFORE, for the reasons stated above, I recommend that the Department's determination which denied exemption to Cook County Property, P.I.N. 02-25-100-031-0000, on the grounds that the property was not in exempt ownership or use, should be affirmed and this P.I.N. should not be exempt from property tax in the 2007 assessment year.

March 23, 2010

Kenneth J. Galvin
Administrative Law Judge