

**PT 12-02**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**LAKE COUNTY RESIDENTIAL  
DEVELOPMENT CORPORATION,  
APPLICANT**

v.

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

**No. 10-PT-0047**

**Real Estate Tax Exemption  
For 2009 Tax Year  
P.I.N.S See attached list**

**Lake County Parcels**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Robert Masini, Diver, Grach, Quade & Masini, LLP, on behalf of Lake County Residential Development Corporation; 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 Lake County parcels, identified by the 22 Property Index Numbers included on the attached list (hereinafter the “subject properties”), qualify for exemption from 2009 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by an institution of public charity and actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit.

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The controversy arises as follows: On October 3, 2009, Lake County Residential Development Corporation (hereinafter “LCRDC”) applied for property tax exemptions for the subject property with the Board of Review of Lake County (hereinafter the “Board”). The Board reviewed the Applicant’s complaints and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the subject properties be granted a full-year exemption for assessment year 2009.

On April 15, 2010, the Department rejected the Board’s recommendations finding that the subject property was not in exempt ownership and use in 2009. On June 4, 2010, LCRDC protested the Department’s decision and requested an evidentiary hearing. This hearing was held on August 26, 2011, with Ms. Mary Ellen Tamasy, Executive Director of LCRDC, testifying. Following a careful review of the testimony and the evidence admitted at the hearing, it is recommended that the Department’s determination be affirmed.

**STIPULATED FINDINGS OF FACT:**

1. LCRDC is an Illinois not-for-profit corporation which was incorporated in October, 1978. LCRDC is in good standing with the State of Illinois.
2. LCRDC is the fee simple owner of each of the parcels of real property that are the subject matter of this appeal.
3. LCRDC is recognized as an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 4.
4. LCDRC is exempt from Illinois sales and use taxes as an entity organized and operated exclusively for charitable purposes. App. Ex. No. 5.

5. Pursuant to paragraph 6.B.(4) of LCRDC's Articles of Incorporation, upon the dissolution or liquidation of LCRDC, all of its remaining assets shall vest in and be transferred to the Housing Authority of the County of Lake, an Illinois unit of local government. Tr. p. 28.

**OTHER FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the 22 subject properties were not in exempt ownership or use during 2009. Tr. p. 6; Dept. Ex. No. 1.
2. LCRDC owns, operates, develops and rehabilitates residential property within Lake County for rental to tenants or sale to buyers who are "income qualified" to receive various forms of governmental subsidies, including those from the U.S. Department of Housing and Urban Development ("HUD"), the Illinois Housing Development Authority ("IHDA") and county or local governmental agencies. App. Ex. No. 9.
3. One of LCRDC's purposes is "to serve the civic and social purpose of relieving the serious shortage of decent, safe and sanitary housing for persons of low income in Lake County." Tr. pp. 10-11; App. Ex. No. 1.
4. If LCRDC's renters have trouble paying rent, they are referred to the Circuit Breaker Program, Community Action Partnership or the "LIEHP Program," in which Commonwealth Edison provides assistance to low income households that are behind in their utility payments. Some townships in Lake County assist low income families if they get behind in their rent or utilities. Tr. p. 13.

5. The Center for Neighborhood Technology provided energy audits for all of LCRDC's buildings and also provided grants to retrofit some of the properties to make them more energy efficient. Tr. p. 14.
6. The 22 P.I.N.S at issue in this proceeding contain 26 rental units. Section 8 voucher holders rent 19 of these 26 units. Renters who do not have Section 8 vouchers may be on a waiting list for them. Tr. pp. 35-36.
7. The HOME Investment Partnerships Program was created in 1993 to provide assistance to local municipalities to develop and maintain affordable housing. HOME funds can only be used to assist households making less than 80% of the median income. Tr. pp. 17-18.
8. LCRDC's properties are inspected yearly by the Lake County Housing Authority because LCRDC rents to Section 8 voucher holders and by the Lake County Community Development Department because LCRDC utilized federal HOME funds. LCRDC has to certify the incomes of its households to ensure compliance with the HOME Program. Every two years, the County randomly audits LCRDC's files. Tr. pp. 15-16, 26-27.
9. The Lake County Housing Authority charges its renters "Fair Market Rent," with the renting household paying 30% of its income for rent and the Section 8 voucher accounting for the rest. LCRDC's participation in the HOME Program limits the rent that LCRDC can charge its tenants. If Fair Market Rent is \$915 for a one bedroom unit, LCRDC is permitted to charge \$893 (98%). If Fair Market Rent is \$1,754 for a five bedroom unit, LCRDC is permitted to charge \$1,486 (84%). The LCRDC household still pays 30% of its income for rent and

the Section 8 voucher accounts for the rest. LCRDC has some tenants that do not have Section 8 vouchers but their rent is also limited by LCRDC's participation in HOME. Tr. pp. 18-20, 37-40; App. Ex. No. 7.

10. Rent collected from the tenants is used to pay property taxes and for maintenance of the properties, including snow removal and landscaping. Most of LCRDC's properties are older and have high maintenance costs. Some properties have handicapped residents which also increases maintenance costs. Tr. pp. 21-22.
11. The subject properties are operated under LCRDC's "Scattered Site Program." In 2009, the Scattered Site Program had \$269,129 in "Total Income," 99% of which was "Rents." In 2009, the Scattered Site Program had "Expenses" of \$302,139, resulting in a "Net Loss" of \$33,010. Expenses include \$23,819 in "Management" costs, "Property Taxes" of \$85,412, "Mortgage Interest" of \$73,201 and "Property Maintenance" of \$69,545. App. Ex. No. 7.
12. LCRDC has entered into limited partnership agreements with for-profit entities, where land is donated to LCRDC and LCRDC receives state tax credits, which it can sell to for-profit entities. LCRDC sold tax credits to Kohl's Department Store for \$155,000 which LCRDC then used to invest in units of senior housing in Vernon Hills. LCRDC has not sought property tax exemption for properties owned by its limited partnerships. Tr. pp. 29-34; App. Ex. No. 13.
13. LCRDC's "Consolidated Financial Statements" for December 31, 2009, include the consolidation of "Zion Senior Cottages, LP" and "North Chicago, LP." Zion was formed in March, 2003, to develop 110 units of subsidized senior

rental housing. North Chicago was formed in October, 2006, to develop 224 units of subsidized multi-family rental housing. These entities are consolidated with LCRDC because they are “deemed to be controlled by LCRDC.” LCRDC is a co-general partner of Zion and North Chicago. App. Ex. No. 12.

14. LCRDC’s “Consolidated Financial Statements” for December 31, 2009, show “Revenues” of \$4,073,816, of which 83% is from “rentals and management fees,” 2% is from “grants” and 1% is “miscellaneous income.” LCRDC had “expenses” of \$4,830,229, of which 87% is “multifamily developments.” App. Ex. No. 12.
15. On August 4, 2010 (after the 2009 tax year at issue), LCRDC adopted a Resolution, entitled “Rent Forgiveness,” amending Article X of its Bylaws. This resolution states that “tenants living in its properties who are parties to a Section 8 Assistance Contract with a public housing authority will no longer be subject to eviction for failure to pay the tenant portion of the Monthly Rent (the amount between the permitted market rate and the subsidy provided by the public housing authority) while the Section 8 Assistance Contract is in force and effect.” This Resolution was adopted because the Board of Directors “determined that is in the best interest of LCRDC to modify its policy with respect to how it deals with unpaid rent from its tenants in its scattered site properties with the anticipation that it might secure real property tax exempt status for these properties which will allow LCRDC to use the money that would otherwise go to real property taxes to maintain the properties and to cover any tenant shortfalls that may occur.” Tr. pp. 23-24; App. Ex. No. 9.

16. Based on the “Rent Forgiveness” Resolution, leases were to be amended to state the following: “Management’s policy is to not evict a tenant solely for the failure of the Tenant to pay the Tenant’s share of the Market Rent. Management will not evict a Tenant in the event the only rental amount due is the Tenant’s share of the Monthly Rent. In the event Tenant’s failure to pay Tenant’s share of the Monthly Rent (the amount between the permitted market rent and the subsidy provided by the public housing authority) results in the termination of Tenant’s Section 8 Assistance Contract, Management shall provide the Tenant 30 days to cure the termination of the Tenant’s Section 8 Assistance Contract with the respective housing authority. If Tenant fails to secure the Section 8 Assistance Contract’s reinstatement and thereafter fails to pay the Monthly Rent, Management shall proceed to serve Tenant with a notice of termination of the lease for failure to pay the rent due and avail itself of the rights to recover possession of the premises.” App. Ex. No. 10.
17. The Rent Forgiveness Resolution does not appear in Article X of LCRDC’s Bylaws, admitted into evidence as App. Ex. No. 2, which were last updated December 11, 2009. “Residence Leases” for the 2011-2012 years for the scattered site properties do not contain the amendment based on the Rent Forgiveness Resolution. The Residence Leases state, under “Default By Lessee,” that if the renter defaults in the payment of rent, or any part thereof, Lessor may at any time at his election declare said term ended and reenter the premises, with or without notice of process of law, and remove Lessor or any persons occupying the property and Lessor shall have at all times the right to

distrain for rent due, and shall have a valid and first lien upon all personal property which Lessee now owns, or may hereafter acquire or have an interest in, which is by law subject to such distraint, as security for payment of the rent received. App. Ex. No. 14.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that LCRDC has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from real estate taxes for the 2009 tax year. In support thereof, I make the following conclusions.

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

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

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the 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 (1<sup>st</sup> Dist. 1983).

LCRDC seeks exemption of the subject properties under 35 ILCS 200/15-65. This section of the Property Tax Code states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

Two criteria are necessary in order to qualify for the exemption under subsection (a): (1) ownership by a charitable organization; and (2) exclusive use for charitable purposes.

Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 291 (1956).

In order to consider the constitutional question of exclusive charitable use of property, courts consider and apply the following criteria and guidelines, as articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"): (1) the organization's funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the organization has no capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the charity is dispensed to all who need and apply for it; (4) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. In addition to these factors which are used to assess whether an institution is charitable, an Applicant, in this case LCRDC, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157.

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

LCRDC is an Illinois not-for-profit corporation which was incorporated in October, 1978, and the organization is in good standing with the State of Illinois. LCRDC is the fee simple owner of each of the parcels of real property that are the subject matter of this appeal. LCRDC is recognized as an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. It is also exempt from Illinois sales and use taxes as an entity organized and operated exclusively for charitable purposes. App. Ex. Nos. 4 and 5.

LCRDC owns, operates, develops and rehabilitates residential property within Lake County for rental to tenants or sale to buyers who are "income qualified" to receive various forms of governmental subsidies, including those from HUD, IHDA and county or local governmental agencies. App. Ex. No. 9. One of LCRDC's purposes is "to serve the civic and social purpose of relieving the serious shortage of decent, safe and sanitary housing for persons of low income in Lake County." Tr. pp. 10-11; App. Ex. No. 1. Lake County requires that a land use agreement be recorded against LCRDC's properties so that the properties cannot be sold. If the properties were sold, the monies awarded to LCRDC would have to be repaid to HUD. Tr. pp. 27-28.

Applying the guidelines from Korzen, I find that LCRDC has not presented clear and convincing evidence that it is, in fact, a charitable organization or that the subject property is used for charitable purposes. One of the guidelines for determining if an organization qualifies as a charity is that its funds must be derived mainly from public and private charity. LCRDC's "Consolidated Financial Statements" for December 31, 2009, shows "Revenues" of \$4,073,816, of which 83% is from "rentals and management fees," 2% is from "grants" and 1% is "miscellaneous income." App. Ex. No. 12. There is no testimony or evidence in the record with regard to LCRDC's "management fees" and "miscellaneous income." The subject properties at issue in this proceeding are operated under LCRDC's "Scattered Site Program." In 2009, the Scattered Site Program had \$269,129 in "Total Income," 99% of which was "Rents." App. Ex. No. 7.

The Center for Neighborhood Technology provided energy audits for all of LCRDC's buildings and also provided grants to retrofit some of the properties to make them more energy efficient. Tr. p. 14. There was testimony that LCRDC has an annual fundraiser, including a dinner and silent auction. LCRDC receives grants and gets donations from banks and individuals. Tr. p. 23. However, even considering these fund-raising activities and grants, LCRDC has failed to prove that either the organization itself or the Scattered Site Program derived their funds "mainly" from private and public charity. With the vast majority of both LCRDC's and the Scattered Site Program's revenue coming from either "rentals and management fees," or "rents," respectively, one of the guidelines of Korzen is completely unmet.

There was testimony at the hearing that the amount of rent that LCRDC can charge to tenants in the Scattered Site Program is restricted by its participation in the

HOME Program. For example, LCRDC is permitted to charge 98% of the “fair market rent” which the Housing Authority of Lake County charges for a one-bedroom unit and is permitted to charge 85% of the “fair market rent” which the Housing Authority charges for a five-bedroom unit.<sup>1</sup> App. Ex. No. 7. LCRDC’s participation in the HOME Program is not mandatory, but serves the organization’s financial interests. According to the testimony, LCRDC “utilized the HOME Program to do renovation to the [subject properties].” Tr. p. 18. Apparently, in exchange for agreeing to accept less than fair market rent, LCRDC receives funds which it can use to renovate its properties.

So, at its option and in exchange for other monies, LCRDC collects less than fair market rent on the units in the Scattered Site Program. Similar to the households renting from the Housing Authority of Lake County, the LCRDC household still pays 30% of its income for rent to LCRDC with the Section 8 voucher accounting for the rest of the rent. Renting to Section 8 voucher holders assures the landlords, including LCRDC, a guaranteed level of income since 70% of the rent is paid by the government. LCRDC has some tenants that do not have Section 8 vouchers but their rent is also limited by LCRDC’s participation in the HOME Program. Tr. pp. 18-20, 37-40; App. Ex. No. 7.

There was no testimony at the hearing that LCRDC provided any social services to the tenants on the property. If a tenant is having trouble paying rent, LCRDC refers the tenant to agencies that may help. LCRDC refers tenants to the Circuit Breaker Program, Community Action Partnership or the “LIEHP Program,” in which Commonwealth Edison provides assistance to low income households that are behind in their utility payments. Also, some townships in Lake County assist low income families

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<sup>1</sup> LCRDC is permitted to charge 91% of Housing Authority rents for two and three bedroom units and 90% for four bedroom units.

if they get behind in their rent or utilities. Tr. p. 13. But LCRDC does not assist these tenants, other than making referrals. My research indicates no Illinois case where an organization that refers clients to other organizations for charitable assistance is itself considered a charity entitled to property tax exemption.

Moreover, it is unclear to me from the arguments at the evidentiary hearing exactly what the charity is that LCRDC is providing to the tenants on the subject properties. If leasing apartments at close to fair market rent constituted charitable use of property, every landlord leasing property at less than what they thought the rent should be would be entitled to a property tax exemption. 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 (4<sup>th</sup> Dist. 2008), affirmed, 236 Ill. 2d 368 (2010). I submit that there is also nothing particularly kind or benevolent about renting to someone.

Based on the testimony and evidence admitted at the hearing, I am also unable to conclude that the benefits derived from LCRDC are dispensed to an indefinite number of persons. Because of LCRDC’s involvement with the HOME Program, LCRDC is required to offer its properties to renters who have household income. App. Ex. No. 6. LCRDC has to certify the income of the household “to ensure that we are in compliance with the HOME Program.” Tr. p. 27. Ms. Tamasy testified that “[W]e know our tenants very well.” “We screen them before they move in.” Tr. p. 20. As discussed previously, the household pays 30% of its income to LCRDC for rent with the Section 8 voucher accounting for the rest.

There is no testimony or evidence in the record that LCRDC rents to any household that earns no income. Even if its rental properties were empty and available, there was no testimony that LCRDC would rent to a household with no income. Accordingly, LCRDC cannot be dispensing “charity” to an indefinite number of persons because it rents only to people with household income. Although charging fees and rendering benefits does not destroy the charitable nature of an organization, this is only true to the extent that the organization also admits persons who need and seek the benefits offered but who are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). Without some type of rent-waiver policy for those unable to pay any rent at all, it cannot be found that LCRDC dispenses charity to an indefinite number of persons, one of the characteristics of a charitable organization, according to Korzen.

LCRDC appears to be arguing that this situation is remedied by a Resolution, adopted on August 4, 2010, entitled “Rent Forgiveness,” amending Article X of its Bylaws. It must be noted, however, that this Resolution was not in effect in 2009, the year at issue in these proceedings. This Resolution states that “tenants living in its properties who are parties to a Section 8 Assistance Contract with a public housing authority will no longer be subject to eviction for failure to pay the tenant portion of the Monthly Rent (the amount between the permitted market rate and the subsidy provided by the public housing authority) while the Section 8 Assistance Contract is in force and effect.”

This Resolution was not adopted for any “charitable” reason. The resolution was adopted because the Board of Directors “determined that is in the best interest of LCRDC to modify its policy with respect to how it deals with unpaid rent from its tenants in its

scattered site properties with the anticipation that it might secure real property tax exempt status for these properties which will allow LCRDC to use the money that would otherwise go to real property taxes to maintain the properties and to cover any tenant shortfalls that may occur.” Tr. pp. 23-24; App. Ex. No. 9. If Article X of the Bylaws was, in fact, amended by this Resolution, the amended Bylaws were not offered into evidence. The Bylaws that were offered into evidence, which were last amended on December 11, 2009, do not contain the Resolution.

Based on the Rent Forgiveness Resolution, leases were to be amended to state the following: “Management’s policy is to not evict a tenant solely for the failure of the Tenant to pay the Tenant’s share of the Market Rent. Management will not evict a Tenant in the event the only rental amount due is the Tenant’s share of the Monthly Rent. In the event Tenant’s failure to pay Tenant’s share of the Monthly Rent (the amount between the permitted market rent and the subsidy provided by the public housing authority) results in the termination of Tenant’s Section 8 Assistance Contract, Management shall provide the Tenant 30 days to cure the termination of the Tenant’s Section 8 Assistance Contract with the respective housing authority. If Tenant fails to secure the Section 8 Assistance Contract’s reinstatement and thereafter fails to pay the Monthly Rent, Management shall proceed to serve Tenant with a notice of termination of the lease for failure to pay the rent due and avail itself of the rights to recover possession of the premises.” App. Ex. No. 10.

LCRDC offered into evidence 23 “Residence Leases” for the Scattered Site Program. One of these leases, for 420 Clifton, began on August 1, 2010, which is 4 days before the Rent Forgiveness Resolution was adopted. All other Residence Leases began

after August, 2010, and some Leases began in 2011. However, not one of the Leases contains the above amendment based on the Rent Forgiveness Resolution. The Leases state under “Default By Lessee” that if the renter defaults in the payment of rent, or any part thereof, Lessor may at any time at his election declare said term ended and reenter the premises, with or without notice of process of law, and remove Lessor or any persons occupying the property and Lessor shall have at all times the right to distrain for rent due, and shall have a valid and first lien upon all personal property which Lessee now owns, or may hereafter acquire or have an interest in, which is by law subject to such distraint, as security for payment of the rent received. App. Ex. No. 14.

It must be noted again that the Rent Forgiveness Resolution was adopted after the year at issue in this proceeding. However, if LCRDC’s Bylaws were amended by the Rent Forgiveness Resolution, and if management’s policy for eviction of tenants for nonpayment of rent changed based on this Resolution, it is unclear from this record how any tenant renting in the Scattered Site Program would know this. I am unable to conclude from this record that the Rent Forgiveness Resolution and the anticipated lease amendments remedy the situation of LCRDC not renting to households with no income, and that LCRDC did not evict tenants in default of their 30% rent obligation.<sup>2</sup>

Because there is no evidence in the record that LCRDC’s Resolution and amendment of the Leases was advertised to its tenants, I must conclude that LCRDC is not dispensing charity to all who need it and that the organization has placed obstacles in the way of those who need and would avail themselves of the “charitable” benefits it dispenses. These Korzen characteristics are more than guidelines. “They are “essential

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<sup>2</sup> Ms. Tamasy testified that no tenant has been evicted for non-payment of rent but no documentary evidence was offered to support this statement. Tr. p. 20.

criteria” that “goes to the heart of what it means to be a charitable institution.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4<sup>th</sup> Dist. 2008), affirmed, 236 Ill. 2d 368 (2010). A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004).

Additionally, there is not enough evidence in the record for me to determine if LCRDC possesses other Korzen characteristics. The management of LCRDC is vested in a Board of Directors, consisting of 9 members. Tr. pp. 17-18; App. Ex. No. 2. There is no testimony in the record as to whether members of the Board are paid. The Bylaws are also silent on this issue. App. Ex. No. 2. There is no testimony in the record as to salaries paid to any of LCRDC’s employees. LCRDC’s Financial Statements for December 31, 2009 contain no information on salaries. App. Ex. No. 12. Accordingly, I am unable to determine from this record whether LCRDC provides gain or profit in a private sense to persons connected with it.

35 ILCS 200/15-65 provides that property that is leased or otherwise used with a view to profit is not exempt. 35 ILCS 200/15-65. The question of whether the property is being used with a view to profit depends on the intent of the owner. Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill. App. 3d 351, 354 (4<sup>th</sup> Dist. 1996). If property, however owned, is let for a return, it is used for profit, and, so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a return or sustains a loss. Turnverein ‘Lincoln’ v. Board of Appeals of Cook County, 358 Ill. 135, 144 (1934).

LCRDC has entered into limited partnership agreements with for-profit entities, where land is donated to LCRDC and LCRDC receives tax credits, which it can sell to for-profit entities. LCRDC sold tax credits to Kohl's Department Store for \$155,000 which LCRDC then used to invest in units of senior housing in Vernon Hills.<sup>3</sup> Tr. pp. 29-34; App. Ex. No. 13. LCRDC's "Consolidated Financial Statements" for December 31, 2009, include the consolidation of "Zion Senior Cottages, LP" and "North Chicago, LP." Zion was formed in March, 2003, to develop 110 units of subsidized senior rental housing. North Chicago was formed in October, 2006, to develop 224 units of subsidized multi-family rental housing. These entities are consolidated with LCRDC because they are "deemed to be controlled by LCRDC." LCRDC is a co-general partner of Zion and North Chicago. App. Ex. No. 12. LCRDC has not presented enough evidence at the hearing to assess either the financial aspects of the tax credit transactions or its ownership interests in other organizations. This evidence is necessary in order to determine whether LCRDC is, in fact, an organization operating primarily as a charity and whether the limited partnership properties are operated with a view to profit.

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 (1<sup>st</sup> 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.

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<sup>3</sup> LCRDC has not sought property tax exemption for the properties owned by the limited partnerships.

Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). Based on the very limited amount of testimony and documentary evidence that was provided in this case, it cannot be found that the Applicant has met its burden of proof.

For these reasons, it is recommended that the Department's determination that denied the exemption on the grounds that the subject property was not in exempt ownership or use should be affirmed, and the 22 Lake County Parcels, identified by the Property Index Numbers on the attached list, should not be exempt from 2009 property taxes.

Kenneth J. Galvin  
Administrative Law Judge

February 29, 2012