

**PT 13-04**

**Tax Type: Property Tax**

**Tax Issue: Charitable Ownership/Use**

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

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	)	Docket Nos.	11-PT-0058
<b>In re 2010 Property Tax</b>	)		11-45-87
<b>Exemption Application of</b>	)	PIN	03-19-180-032
<b>LHC, LLC</b>	)	John E. White,	
	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Richard Sirus and Thomas Sykes, Greenburg Traurig, LLP, appeared for LHC LLC; Anthony Jacob, Hinshaw & Culbertson, appeared for Intervener, School District No. 300; and John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter arose after LHC, LLC (LHC) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for real property LHC owns, and which is situated in Kane County, Illinois. The property is improved with a large ice center complex and parking lot. The issue is whether LHC is entitled to a charitable tax exemption for that property for assessment year 2010, pursuant to § 15-65 of Illinois' Property Tax Code (PTC).

The hearing was held at the Department's offices in Chicago. LHC 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 the Director

finalize the Department's prior denial, and that the property remain on the tax rolls for 2010.

**Findings of Fact:**

1. LHC is the title-holder of the property at issue, and it owned the property throughout 2010. Applicant Ex. H (copy of special warranty deed to property). The property is improved with a large building and a large parking lot. Applicant Exs. F (copy of plat of survey of property), G (copies of photos of exterior of property).
2. The property, and LHC itself, is commonly referred to as the Leafs Ice Center (LIC). Applicant Ex. R (copy of Leafs Hockey Club, Inc. Audited Financial Statements for fiscal year ending June 30, 2010), p. 7; *see also e.g.*, Applicant Exs. G, AA (copy of Leafs Ice Center Fee Hardship Policy).
3. The LIC building has an area of approximately 104,186 square feet. Applicant Ex. S (copies of property tax bills and tax deed redemption notices for property); *see also* Hearing Transcript (Tr.) pp. 45 (property consists of approximately 108,000 square feet), 324 (property consists of approximately 106,000 square feet).
4. LHC planned, designed and constructed one of the ice rinks at the LIC to be accessible to and used by physically disabled hockey players. Tr. pp. 37-43, 45 (testimony of Michael Durkin (Durkin)), 163-64 (testimony of Jim Smith, describing sled hockey), 227-28 (testimony of J.J. O'Connor, describing sled hockey), 281-85 (testimony of Robert Carruth, who was involved in the construction of the LIC).
5. The interior of the LIC includes the following features: three sheets of NHL-sized ice rinks, one of which is accessible to disabled athletes; a smaller rink that is approximately 25% the size of an NHL rink; a large lobby; a pro shop; a concession

area; party and/or meeting rooms; administrative offices; and an off-ice training facility, including free weights and weight machines and other training equipment. Tr. pp. 45-48 (Durkin).

**Facts Re: LHC and Its Sole Member**

6. LHC is an Illinois limited liability company (LLC). Applicant Ex. D (copy of LHC's Articles of Organization); Applicant Ex. E (copy of LHC's Operating Agreement).
7. Section 1.3 of LHC's Operating Agreement provides:

**1.3 Purpose; Powers.** The purpose and business of the Company shall be any business which may lawfully be conducted by a limited liability company organized pursuant to the Illinois [Limited Liability] Act. The Company shall possess and may exercise all powers and privileges granted by the Illinois Act, any other law, or by this Agreement, including incidental powers thereto, to the extent that such powers and privileges are necessary, customary, convenient or incidental to the attainment of the Company's purposes.

Applicant Ex. E, p. 1.

8. LHC is a member managed LLC, and is managed by a Board of Managers (Board). Applicant Ex. E, pp. 4-9 (Art. 4). Each Board member is referred to as a Manager. *Id.*, p. 4, § 4.1(a). The initial Managers were divided into three groups, with three year staggered terms. *Id.*
9. LHC's original Managers were: Terrance Nolan (Nolan), a group I member; John Willet (Willet) and Donald Lapato (Lapato), group II members; and group III member Michael Durkin (Durkin). Applicant Ex. E, p. 4, § 4.1(a). Nolan's term ended on December 31, 2009, Willet and Lapato's on December 31, 2010, and Durkin's on December 31, 2011. *Id.* Thereafter, Managers were to be elected by the Member (Leafs), other than the appointment of the management company Manager. *Id.*

10. Under LHC's Operating Agreement, the Managers were entitled to compensation for services rendered for the Company, with the consent of other Managers. Applicant Ex. E, p. 4, § 4.1(d).
11. At the time of its organization, LHC's sole member was the Crystal Lake Hockey Club, Inc. Applicant Ex. E, pp. 1 (recitals), 2 (§ 2.1); Tr. p. 30 (Durkin).
12. The Crystal Lake Hockey Club, Inc. (Crystal Lake) was incorporated in Illinois in 1973 under Illinois' General Not For Profit Corporation Act. Applicant Ex. A (copy of Crystal Lake's Articles of Incorporation and Articles of Amendment).
13. Crystal Lake subsequently changed its corporate name to Leafs Hockey Club, Inc. (Leafs). Applicant Ex. A, pp. 9-11; Tr. p. 31 (Durkin).
14. When it applied for the instant exemption, Leafs' bylaws provided as follows:

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B. Purpose

The purpose or purposes for which the corporation is organized are:

- A. To promote, train, teach and develop the sport of organized youth hockey and to associate with other ice hockey associations, to organize and promote competitive team play;
- B. To promote, train, teach and develop the sport of figure skating to youths; to associate with other figure skating associations; to organize and promote competition among figure skaters; and to affiliate with other figure skating organizations;
- C. To develop the physical, mental and emotional well-being of the youth who participate in programs developed by the corporation including the development of personal character traits of aggressiveness, self-esteem, self-discipline, perseverance, respect for authority, cooperative relationships with others and sportsmanship;
- D. To teach the sports of hockey and figure skating to adults; and
- E. To do any and all acts desirable in the furtherance of the forgoing purposes.

Said corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

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Applicant Ex. B (copy of Leafs undated Bylaws), p. 1; *see also* Applicant Ex. C (Leafs Bylaws, updated in May 2012, and containing the substantially identical provision); Tr. pp. 136-37 (testimony of Danielle Gulli (Gulli), Leafs' president at time of hearing).

15. Leafs is a membership organization. Applicant Ex. B, pp. 1-3; Applicant Ex. L.3, p. 2 (Part III, line 1).

16. Prior to a 2012 update, Article II of Leafs' bylaws provided as follows:

Article II. Membership

A. Eligibility

- A. Any person shall be considered eligible for membership who has one or more children or legal dependents enrolled to participate in the Leafs Hockey Club, Mite through Midget Programs.
- B. Any qualified person without an enrolled dependent who volunteers and is appointed to carry out specific club functions shall be considered a member.
- C. Membership in the Leafs Hockey Club shall be offered to all natural persons who meet the requirements of Paragraph A above, under the same terms and conditions regardless of race, creed, color, religion, sex, age or national origin.

B. Term of Membership

- A. Membership in the Leafs Hockey Club shall be for a period of (1) year beginning 9/1 and ending 8/31 and renewed on an annual basis.

C. Termination of Membership

- A. Any member who fails to meet the financial requirements of the organization within the time specified shall be issued a written notice of such delinquency. If after fifteen (15) days said member is still in arrears, his/her membership shall automatically terminate. The member and his/her child or legal dependent shall not be permitted to participate in the activities of the organization after said time, and until such time as all financial obligations are paid in full.
- B. Any member who submits a written resignation to the organization shall be automatically terminated from membership effective upon receipt of said resignation. Any child or legal dependent of said member shall no longer be permitted to participate in the activities of the organization after the effective date.

- C. Any member may be suspended or expelled for actions not considered to be in the best interests of the organization, provided written charges are filed by a member of the Executive Board of Directors (a copy of which is mailed to person or persons so charged) and after a hearing is held as a later meeting of the Board for which due notice (of at least 30 days but no more than 60 days) is given to the member so charged. Such member will be afforded the opportunity to attend the meeting and will be given a reasonable amount of time to present evidence and answer the charges. The Executive Board of Directors will then vote on the member's continued status and may only suspend or expel such member with majority approval of the Executive Board of Directors.
- D. Any member who has resigned or been expelled may be eligible for reinstatement, provided that he/she meets all the requirements for membership and obtains the approval of a majority of the Board of Directors within a reasonable amount of time after reapplication.
- E. The Leafs Hockey Club is committed to providing memberships to all families who wish to participate in our programs. Our Hardship Program is intended to provide a reduced fee to families who otherwise would not be able to participate in our programs due to financial constraints. Eligibility is limited to members who submit a timely request for a waiver of fees and meet our Hardship Guidelines.

Hardship Guidelines:

- a. Proof of financial need must be demonstrated to qualify for a hardship (a copy of the most recent Federal income tax return and W-2/1099 form is required).
- b. Copies of three (3) of the most recent pay stubs from each parent which show your year-to-date income must be provided.
- c. A brief letter explaining your situation and any special circumstances for why financial assistance is sought along with the amount of assistance needed.
- d. A signed Hardship Application form must be completed and submitted to the Hardship Committee by the stated due date. All information on the application must be true and accurate. Hardships are legally recoverable if paid and awarded on the basis of false information.
- e. Payment plans of the reduced fee must be adhered to after accepting an award. Participants may be removed from the program if payments are not timely received under the agreed upon installment plan.
- f. Hardships are limited to one program per family member per season.

All hardships will be awarded on the basis of need and availability of hardship funds. All information submitted is confidential and is not a matter of public record.

Receipt of a hardship award does not guarantee placement on a program. Members must meet all eligibility requirements for participation and abide by all club rules.

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Applicant Ex. B, pp. 1-3.

**Facts Re: LHC's & Leafs' Federal Income Tax and Illinois Tax Status**

17. Crystal Lake was, and Leafs is, exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code (IRC), with the exemption's effective date commencing in 1973. Applicant Ex. J (copy of December 2006 letter from the Internal Revenue Service (IRS) to Crystal Lake's attorney); *see also* Applicant Ex. L (copies of Leafs' federal form 990, Return of Organization Exempt From Income Tax (hereafter, Form 990), for each of the last three tax years ending (TYE) June 30, 2008 through June 30, 2010) (hereafter, TYE 6/08, 6/09 and 6/10). For ease, I will refer to each of the Forms 990 that are included in Applicant Exhibit L as, respectively: Applicant Exs. L.1 (Form 990 for TYE 6/08); L.2 (Form 990 for TYE 6/09); and L.3 (Form 990 for TYE 6/10).

18. As a § 501(c)(3) organization, Crystal Lake was, and Leafs is, required to file a Form 990 with the IRS annually. Applicant Exs. J, L.1-L.3.

19. For federal income tax purposes, Leafs is a "Public Charity" and not a private foundation because it is:

An organization that normally receives: (1) more than 33 1/3 % of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions — subject to certain exceptions, and (2) no more than 33 1/3 % of its support from gross investment income and unrelated business taxable income (less Section 511 tax) from businesses acquired by the organization after

June 30, 1975 ....

Applicant Ex. L.2, p. 12 (Schedule A, Part I, Reason for Public Charity Status, line 9); Applicant Ex. L.3, p. 13 (Schedule A, Part I, Reason for Public Charity Status, line 9).

20. In December 2007, the Department issued an exemption identification number to Leafs, after determining that it was organized and operated exclusively for charitable purposes, and entitled to claim certain statutory exemptions authorized within the following Illinois tax acts: Retailers' Occupation, Service Occupation, Use, and Service Use Tax Acts. Applicant Ex. I (copy of December 7, 2007 letter from the Department to Leafs' attorney).

21. Leafs reports LHC as a disregarded entity on its Form 990. Applicant Ex. L.3, pp. 4 (Part IV, line 33), 27 (Schedule R, Related Organizations and Unrelated Partnerships, Part I).

**Facts Regarding LHC's Financial Operations, Including Its Revenues and Expenses**

22. A federal Form 990 requires a filer to report, among other things: the amounts and types of revenues it received during the year for which it is making the report; the amounts and types of its expenses incurred for that year; and a description of its organization, operations, and programs. *See* Applicant Exs. L.1, L.2, L.3, *passim*.

23. On its Form 990 for TYE 6/10, Leafs reported that its mission was:

Charitable and educational purposes, specifically to organize and operate a youth hockey program in the northwest suburbs of Chicago, Illinois and to operate a non-profit organization that seeks to exercise and safeguard the rights of its members.

Applicant Ex. L.3, p. 2 (Part III, line 1); *see also* Tr. pp. 144-47 (testimony of Michael Papa, who plays hockey at the LIC), 148-51 (testimony of Carli Revere, who

figure skates at the LIC).

24. On that same form, Leafs reported that it had the following exempt purpose achievements, and the following expenses and revenues associated with each:

Exempt Purpose Achievement	Expenses, including	Grants of	Revenue
To foster youth athletics, primarily in the form of ice hockey. The Organization benefits from over 5,000 hours of volunteer service[.] Volunteers include the board of directors as well as volunteers providing services such as team coaches and managers. Volunteers are primarily parents of the youth program participants.	229,025		918,926
To provide an ice arena for use by area youth to pursue ice hockey and figure skating opportunities.	1,649,553		1,642,308

Applicant Ex. L.3, p. 2 (Part III, lines 4a-4b).

25. Leafs made the same general distinction between its two programs ((1) to provide youth hockey opportunities and, (2) to provide an ice rink for use by area youth) on its prior Forms 990. Applicant L.1, p. 3 (Part III; lines a-b); Applicant L.2, p. 2 (Part III; lines 4a-4b).

26. For calendar years ending December 31, 2008, the IRS began to categorize the revenues that a filer reports on a Form 990 into three different types. Applicant Exs. L.2 (p. 9, Part VIII), L.3 (p. 9, Part VIII). All line 1 entries are categorized as “Contributions, gifts, grants and other similar amounts”; all line 2 entries as “Program Service Revenues”; and all entries reported on lines 3-11 are categorized as “Other Revenues.” Applicant Exs. L.2 (p. 9, Part VIII), L.3 (p. 9, Part VIII).

27. In its Form 990 for TYE 6/08, Leafs reported the following program service revenues:

Description	Bus	Unrelated	Excl	Excluded	Related or Exempt
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	Code	Business Income	Code	Amount	Function Income
Clinics					2,098
Goalie Fees					1,680
Membership Fees					716,991
Sponsor Donations					14,750
Try-out Fees					1,104
Miscellaneous					17,533
Ice Center Rink Revenues					1,004,885
Tournament Fees					800
Northern Illinois Hockey					
League Fees					6,896
To Form 990, Part VII, line 93					1,766,737

Applicant Ex. L.1, p. 21. Leafs reported no revenues in the form of contributions, gifts, grants, direct or indirect public support. *Id.*, p. 1 (Part I, lines 1a-1e).

28. On its Form 990 for TYE 6/09, Leafs reported the following revenues in Part VIII:

Part VIII, Statement of Revenue line no. / description	(A) Total Revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under §§ 512, 513, or 514
2a / Ice center revenues	1,481,720	1,481,720		
2b / Membership Fees	753,427	753,427		
2c / Goalie Fees	6,100	6,100		
2d / Miscellaneous	5,207	5,207		
2e / Try-Out Fees	3,357	3,357		
2f / All other ...	40	40		
2g / Total 2a-2f	2,249,851	2,249,851		
3 / Investment income ...	13,158	13,158		
8a / Gross Income from fundraising events ...				
8b/ Less: direct expenses				
8c / Net income (or loss) from fundraising events ...	* (5,164)	(5,164)		
12 / Total Revenue	2,257,845	2,257,845	0	0

Applicant Ex. L.2, p. 9 (\* the loss from fundraising events resulted from its expenses directly related to fundraising events, \$15,628, exceeding the funds raised, \$10,464).

Leafs reported no revenues from contributions, gifts, grants and other similar

amounts. *Id.*, pp. 1 (Part I, line 8), 9 (Part VIII, lines 1h).

29. On its Form 990 for TYE 6/10, Leafs reported the following revenues in Part VIII:

Part VIII, Statement of Revenue line no. / description	(A) Total Revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under §§ 512, 513, or 514
1f / All other contributions, gifts, grants & similar amounts ...	12,689			
2a / Club program revenues	918,926	918,926		
2b / Ice center revenues	1,642,308	1,642,308		
2g / Total 2a-2f	2,561,234			
3 / Investment income	3,759	3,759		3,759
11a / Misc revenue related to t/e purpose	1,360			1,360
12 / Total Revenue	2,579,042	2,561,234		5,119

Applicant Ex. L.3, p. 9.

30. For TYE 6/10, Leafs derived less than 0.5% of its total revenues from public contributions, gifts or government grants. Applicant Ex. L.3, p. 9 ( $12,689/2,579,042 \approx 0.004920$ ).

31. The majority of the revenues Leafs reported receiving during its TYE 6/06-6/10 are from gross receipts from admissions, merchandise sold or services performed, or facilities furnished in an activity that is related to Leafs' tax exempt purpose. Applicant L.3, p. 1 (Part I, lines 1-12).

32. In each of its Forms 990 admitted at hearing, Leafs separately reported its gross receipts from membership and other fees and its gross receipts from ice center revenues. Applicant Ex. L.1, p. 21; Applicant Ex. L.2, p. 9; Applicant Ex. L.3, p. 9 (using the general description of "Club program revenues" instead of its prior

descriptions of membership fees, goalie fees, miscellaneous, tournament fees, tryout fees, league fees, as reported in Forms 990 for TYE 6/08 and 6/09).

33. In addition to the entries Leafs made on its Forms 990 to report its ice center revenues, the record also includes copies of records made and kept by CSCG, the corporation that LHC contracted with to manage the LIC. Applicant Ex. DD (pp. 3-15), Y (copy of 2010 Contract between LHC and CSCG).
34. Neither the Forms 990 nor CSCG's records showing LIC's total revenues break down such revenues by month, so it is not possible to specifically identify the amount of revenues LHC realized just during 2010. Applicant Exs. DD (pp. 3-15), L.1 (p. 21), L.2 (p. 9), L.3 (p. 9).
35. When making and keeping records of revenues realized from all accounts and all sources at the LIC, CSCG uses a different accounting period than Leafs uses on its Forms 990. *Compare* Applicant Exs. L.1-L.3 (p. 1 of each Form) *and* Applicant Ex. R *with* Applicant Ex. DD, pp. 3-11. CSCG's accounting period for the LIC ends on August 31 of each year. Applicant Ex. DD, pp. 3-11.
36. For the period from September 1, 2008 through August 31, 2009, CSCG's records reflect that the LIC had total sales of \$1,454,276.12, and total revenues of \$1,445,163.52. Applicant Ex. DD, p. 6.
37. For the period from September 1, 2009 through August 31, 2010, CSCG's records reflect that the LIC had total sales of \$2,354,089.57, and total revenues 2,339,424.77. Applicant Ex. DD, p. 11.
38. For the period from September 1, 2010 through March 31, 2011, CSCG's records reflect that the LIC had total sales of \$1,776,113.53, and total revenues of

\$1,762,477.03. Applicant Ex. DD, p. 15.

39. The LIC is open approximately 17,520 hours each year. Tr. pp. 346-47 (Lapato). Approximately 9,800 of those hours are considered to be prime time for renting ice to interested persons for fair market value. Tr. pp. 346-48, 378-79 (Lapato). The prime time for renting ice consists of 4 p.m. to midnight on weekdays, and 6 a.m. to midnight on weekends, during an approximately nine month season that runs from late August through May. *Id.* The LIC has a difficult time renting ice during hours that are not considered prime time. Tr. p. 347 (Lapato).
40. Leaf's purchased the property and built the LIC using financing backed by Illinois Finance Authority Sports Facility Revenue Bonds, which were issued on February 22, 2007, in an aggregate amount of \$20,000,000. Applicant Ex. R, p. 11 (Note 6 – Long Term Debt); Applicant Ex. T (copies of 2 schedules titled, respectively: Illinois Finance Authority Sports Facility Revenue Bonds (Leaf's Hockey Club Project) Series 2007A (Tax Exempt); and Illinois Finance Authority Sports Facility Revenue Bonds (Leaf's Hockey Club Project) Series 2007B (Taxable)).
41. In Leaf's Audited Financial Statements for TYE 6/10, its independent auditor described Leaf's bond obligations in the following notes:

Note 6 – Long Term Debt

On February 22, 2007, the Organization [i.e., Leaf's] issued Sports Facility Revenue Bonds, Tax Exempt Series 2007A, in the amount of \$18,880,000. The bond issue provides for serial retirements of principal on March 1 of each year beginning March 1, 2015. Interest on the bonds is payable semi-annually, on March 1 and September 1 of each year, at annual rates ranging from 5.625% to 6.000%.

On February 22, 2007, the Organization issued Sports Facility Revenue Bonds, Tax Exempt Series 2007B, in the amount of \$1,120,000. The issue provides for serial retirement of principal on March 1 of each year beginning March 1, 2010. Interest on the bonds is payable semi-annually, on March 1 and September 1 of each year, at

annual 9% rate.

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#### Note 7 — Bond Discount and Issuance Cost

The Organization incurred the following costs in connection with the issuance of Sports Facility Revenue Bonds as described in Note 6 of these statements:

Discount on Bonds	\$ 386,988
Underwriters' Discount	550,000
Bond Issuance Costs	708,538
Accumulated Amortization	<u>(164,553)</u>
Total	\$ 1,480,973

These costs are amortized on a straight-line method over the 30 year life of the bond issue. Amortization expense of \$58,851 is included on the statement of functional expenses for the year ended June 30, 2010.

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#### Note 10 — Contingency for Debt Service

The Organization is currently unable to completely service indebtedness incurred due to the issuance of bonds described in Note 6 of these financial statements. Principal amount of \$165,000 and interest in the amount of \$611,144 are currently due and payable as of the report date.

Additionally, the bond indenture requires a minimum balance in the bond trustee accounts of \$1,643,300. The balance in the accounts at June 30, 2010 is \$271,176, creating a deficiency of \$1,372,124. Management represents to be working in good faith with the bond holders on a letter of direction regarding continued servicing of debt and a plan to restore the debt service reserve fund to the required balance.

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Applicant Ex. R, pp. 11-12, 14.

42. Note 11 to Leafs' Audited Financial Statements for TYE 6/10 provides:

#### Note 11 — Contingency for Property Taxes

The Organization is currently in arrears with respect to property taxes payable on the land and building that it owns. Property taxes past due at June 30, 2010 include the following:

<u>Year</u>	<u>Installment Due Date</u>	<u>Amount Due</u>
2008	June 1, 2009	\$ 64,677
2008	September 1, 2009	64,677
2009	June 1, 2010	<u>67,302</u>

Delinquent Property Taxes at June 30, 2010           \$ 196,656

Additional delinquent property taxes at the date of this report include an installment due September 1, 2010, in the amount of \$67,6302, and penalties of \$7,067 for a total contingency of \$271,025. The 2008 and 2009 taxes were paid by undisclosed investors at tax sale on October 13, 2009, and October 26, 2010, respectively. The Organization is required to pay the total amounts due plus all additional interest and penalties within two years of the respective tax sale dates, or risk foreclosure and loss of the property.

Management represents they are escrowing funds to cover delinquent taxes and will be able to pay the property tax liabilities within the respective two year periods. Management further represents that the Organization is currently in the process of applying for tax-exempt status as it relates to property taxes, and that they have retained an attorney specializing in such matters to assist them with the application process.

Applicant Ex. R, pp. 14-15.

**Facts Regarding LHC's Activities With Club Sports Consulting Group, Inc. (CSCG)**

43. Lapato owns CSCG. Applicant Ex. R, pp. 13-14 (Note 9 - Related Party Transactions); Tr. pp. 299-300 (Lapato).
44. In 2006, Lapato, representing CSCG, contacted Durkin, who was then Leafs' president. Tr. pp. 25-27 (Durkin). During that contact, Lapato asked whether Leafs had any interest in building its own ice facility, instead of renting ice time from others. *Id.*
45. Although Durkin initially indicated that he had no interest in doing so, he notified Leafs' board of Lapato's approach, and had a meeting with Lapato. Tr. pp. 27-28 (Durkin).
46. During a meeting, Lapato explained to Durkin about the possibility of obtaining tax exempt bond financing for an ice facility. Tr. p. 28 (Durkin).
47. Durkin arranged to have Leafs' executive board meet with Lapato and with attorneys

working with the Illinois Finance Authority. Tr. pp. 28-30 (Durkin). Eventually, Leafs board passed a motion to proceed with plans for a proposed ice center, including the creation of a limited liability company that would hold title to the facility. *Id.*

48. Leafs used a consultant hired by CSCG during construction of the LIC. Tr. pp. 37-38 (Durkin).

49. One of the requirements for obtaining bond financing was that the LIC had to be managed by a professional manager. Tr. pp. 36-37 (Durkin).

50. Shortly before the LIC opened, LHC entered into a professional management services agreement (Contract) with CSCG. Tr. pp. 35-37 (Durkin), 324-25 (Lapato). That Contract was renewed in 2010. Applicant Ex. Y.

51. The Recitals section and Articles 1 and 4 of the 2010 Contract provide:

#### **Recitals**

**Owner** is the owner of the Ice Arena described in the attached Schedule A, hereinafter referred to as the Facility.

**Owner** desires to retain a management company to operate and manage the Facility in order to benefit its members, provide the public with recreational opportunities, to minimize **Owner's** operating costs and to maximize the Facility's profit potential.

**CSCG** operates and manages public ice arena facilities throughout the United States and desires to manage the Facility according to the terms and conditions set forth herein.

**Now therefore, in consideration of the mutual premises, terms and conditions contained herein, the parties here by contract and agree as follows:**

#### **Article 1**

##### **Scope of Services**

1.1 Subject to all policies and guidelines that **Owner** may establish from time to time and consistent with the operation of other similar facilities, **CSCG** shall provide the following management services in compliance with all applicable Federal, State and Municipal laws and regulations:

A. Operation and maintenance of the Facility, its equipment, material and supplies.

- B. Fully staff the Facility with its own employees including a full time manager acceptable to **Owner** and supervise their conduct and performance in the operation of the Facility.
- C. Collect all gross revenues generated by the Facility, pay all operating expenses of the Facility and maintain all financial records pertaining to the operation of the Facility.

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#### **Article 4**

##### **Operation of the Facility**

- 4.1 Subject to the policies and guidelines established by **Owner**, **CSCG** shall be responsible for and have complete authority over the day to day operation of the Facility.
- 4.2 **CSCG's** operational duties and responsibilities shall include, but not be limited to, opening and closing the Facility, collecting and depositing all gross revenues generated by the Facility, hiring, firing and supervising all employees and contractors, payroll and accounting services, maintenance and repairs, program development and operation, ticketing, marketing and promotions, and janitorial services.
- 4.3 **CSCG** shall in compliance with **Owner's** policies and guidelines, establish and adjust the days and hours of operation and all rates and charges for the use and rental of the Facility.
- 4.4 **Owner** shall provide **CSCG** with all office space (in the Facility) and Facility access reasonably necessary for the performance of **CSCG's** operational duties and based upon the prior year performance responsibilities.

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Applicant Ex. Y, p. 1.

- 52. Lapato was a member of Leaf's Board of Managers for LHC when LHC entered into its Contract with CSCG in 2007, and when LHC and CSCG entered into the 2010 Contract. Applicant Ex. E, p. 4 (§ 4.1(a)); Applicant Ex. Y. Leafs reported that Lapato was a Leafs' officer on its Form 990 for TYE 6/10. Applicant Ex. L.3, pp. 7-8 (Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors, Section A, lines 1a-1b).
- 53. On its Form 990 for TYE 6/10, Leafs reported that it paid compensation to CSCG, as an independent contractor, in the amount of \$673,675. Applicant Ex. L.3, p. 8 (Part VII, Section B, line 1); *see also* Applicant Ex. R, pp. 13-14 (Note 9).

54. That amount, \$673,675, is the sum of what Leaf's reported as having paid Lapato as compensation, plus its itemized expense for contracted services. Applicant Ex. L.3, pp. 7-8 (Part VII, Section A, lines 1a-1b) (reporting \$78,000 in compensation paid to Lapato),<sup>1</sup> 10 (Part IX, Statement of Functional Expenses, line 24(e) (expense of \$595,675 for Contracted services)) (78,000 + 595,675 = 673,675).
55. Leaf's also reported its payments to CSCG on its Forms 990 for prior fiscal years. Specifically, on its Form 990 for TYE 6/09, Leaf's reported an expense for Contract Services in the amount of \$563,272. Applicant Ex. L.2, p. 10 (Part IX, Statement of Functional Expenses, line 24(a)). It also reported an expense for Management Fees in the amount of \$78,000. *Id.* (line 24c).
56. On its Form 990 for TYE 6/08, Leaf's reported an expense for Contract Services in the amount of \$477,095, and an expense for Management Fees in the amount of \$66,250. Applicant Ex. L.1, pp. 2 (Part II, Statement of Functional Expenses, line 43g (referring to Statement 2), 19 (Statement 2, showing list of Other Expenses).
57. The table below compares the amounts of Leaf's' total ice center revenues with its total payments to CSCG during the most recent years for which its filed Forms 990 were available:

	TYE 6/08	TYE 6/09	TYE 6/10
Total Ice Center Revenues	1,004,885	1,481,720	1,642,308
Payments to CSCG	543,345	641,272	673,675
% of Revenues Paid to CSCG	54%	43%	41%

Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9).

<sup>1</sup> Although Leaf's' Form 990 for TYE 6/10 reported a payment of \$78,000 in compensation to Lapato (Applicant Ex. L.3, p. 7), the written agreement between LHC and CSCG provides that LHC was to pay that amount to CSCG. Applicant Ex. Y, p. 2 (§ 3.1 ("Owner shall pay CSCG, as full compensation for the services provided hereunder, the annual fee listed on the attached Schedule A ....")).

58. Scores of individuals volunteer to provide services at the LIC on any given day, and/or at events held there. Tr. pp. 61, 64-65, 67-69, 82-84 (Durkin), 121-22 (Gulli), 227-28 (testimony of JJ O'Connor (O'Connor)), 301-02 (Lapato).

**Facts Re: Discounts of Program Fees & Ice Rental Rates**

59. Leafs has a program in place that allows members to ask for discounts to the costs of Leafs' hockey and figure skating programs. Applicant Ex. B, pp. 2-3.

60. As part of its application for exemption, Leafs submitted (and at hearing, offered into evidence) a document that provides as follows:

LEAFS HOCKEY CLUB, INC.

PTAX-300 APPLICATION – HARDSHIP INFORMATION

For the 2009 fiscal year, the Leafs Hockey Club, Inc. (“the Leafs”) provided financial/hardship assistance to 30 persons with a gross value of fee waivers equal to \$32,672.

For the 2010 fiscal year, the Leafs provided financial/hardship assistance to 29 persons with a gross value of fee waivers equal to \$46,550.

This assistance primarily consisted of reduced program fees. Because of the nature of the Leafs programs and the significant cost for equipment to participate, and the limited funds available, providing equipment to persons to participate is not practical.

Applicant Ex. Z.

61. LIC also has its own hardship program, regarding programs offered at the LIC that are not part of Leafs' programs. Applicant Exs. AA-CC; Applicant Exs. DD (copies of emails dated May 18, 2011, and attached document titled, Leafs Ice Center Hardship/Donation Summary), EE (copy of updated Leafs Ice Center Hardship/Donation Summary, showing discounts/waivers through May 2012); Tr. pp. 325-28 (Lapato).

62. To obtain a discount under either the Leafs or the LIC hardship programs, a person seeking a discount must timely complete an application, and supply supporting

documentation to substantiate his/her need. Applicant Ex. B, pp. 1-3; Applicant Ex. BB (copy of Leafs Ice Center Fee Hardship Policy).

63. LIC discounts or waives the hourly rate charged to certain organizations to rent ice time. Applicant Exs. DD-EE.

64. LIC waived fees for ice rental time to the following persons or for the following activities: Dundee Middle School (DMS); for a sled hockey tournament (hockey program for disabled players/teams); Northern Illinois Special Recreation Association (NISRA); the Enforcers (a charity hockey program comprised of police and fire department employees); and to the Girl Scouts. Applicant Exs. DD-EE; Tr. pp. 163-64 (testimony of Jim Smith, describing sled hockey), 227-28 (O'Connor, describing sled hockey), 244-53 (testimony of Lino DeCristofaro, describing the Enforcers), 261-76 (testimony of Deborah Cavanaugh, retired former physical education teacher at DMS, describing school's access to LIC).

65. Applicant Exhibits DD and EE constitute LHC's written descriptions of the types and amounts of charity that it provided to persons using the LIC. Applicant Exs. DD-EE.

66. Applicant Exhibit DD provides, in pertinent part:

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Leafs Ice Center Hardship/Donation Summary

Program Discounts September 2008 — August 2009	\$9,112.60
Program Discounts September 2009 — August 2010	\$14,664.80
Program Discounts September 2010 — Current	\$13,663.50
Sled Hockey Ice Donations September 2010-Current	\$43,676.25
Sled Hockey Donations	\$6,446.80
Dundee Middle School Ice Donations September 2010-Current	\$110,104.05
Dundee Middle School Salary Donations	\$22,451.98

**Total** **\$220,119.98**

Applicant Ex. DD, p. 2.

67. Applicant Ex. DD also includes copies of printouts of CSCG's records, which records

provide support for the numbers reported on the exhibit's summary page. Applicant Ex. DD, pp. 3-21. Those records reflect as follows:

- From September 1, 2008 through August 31, 2009, when taking into account LIC's revenues from all accounts and all sources, the LIC granted total discounts in the amount of \$9,112.60, out of total sales of \$1,454,276.12. Applicant Ex. DD, pp. 2, 3-6.
- From September 1, 2009 through August 31, 2010, when taking into account LIC's revenues from all accounts and all sources, the LIC granted total discounts in the amount of \$14,664.80, out of total sales of \$2,354,089.57. Applicant Ex. DD, pp. 2, 7-11.
- From September 1, 2010 through March 31, 2011, when taking into account LIC's revenues from all accounts and all sources, the LIC granted total discounts in the amount of \$13,636.50, out of total sales of \$1,776,113.53. Applicant Ex. DD, pp. 2, 12-15.
- On 13 days in the period beginning January 11, 2010 through March 20, 2011, the LIC allowed free access to one or more of its ice rinks, and to its party rooms, to the RIC Blackhawks, a team of physically disabled hockey players associated with the Rehabilitation Institution of Chicago. Applicant Ex. DD, pp. 2, 16-17. That access was for 153.25 hours. *Id.*, p. 17. All but 8.75 of those were hours that the LIC considered prime time rental hours. *Compare id.* pp. 16-17 with Tr. pp. 347, 378-79 (Lapato). The ordinary rental rate for such access was \$285 per hour. Applicant Ex. DD, p. 17.
- On 58 days in the period beginning June 13, 2008 through March 10, 2011, the

LIC allowed free access to one or more ice rinks to DMS. Applicant Ex. DD, pp. 18-21. That access was for 386.33 hours. *Id.*, p. 17. Although the rental rate for such access was \$285 per hour (*id.*), none of the days and hours for which access was granted to DMS was within what the LIC considered to be prime time.

*Compare Applicant Ex. DD, pp. 18-21 with Tr. pp. 347, 378-79 (Lapato).*

68. Applicant Exhibit EE provides, in pertinent part:

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Leafs Ice Center Hardship/Donation Summary

Program Discounts September 2008 — August 2009	\$9,112.60
Program Discounts September 2009 — August 2010	\$14,664.80
Program Discounts September 2010 — Current	\$13,663.50
Program Discounts September 2011 — January 31, 2012	\$4,485.40
Sled Hockey Ice Donations September 2010-2011	\$43,676.25
Sled Hockey Salary donations Sept. 2010-2011	\$6,446.80
Sled Hockey 2012	\$6,450.00
Sled Hockey Salary donations	\$3,200.00
Dundee Middle School Ice Donations June 2008-March 2011	\$110,104.05
Dundee Middle School Salary donations	\$22,451.98
Dundee Middle School September 2011-May 2012	\$17,385.00
Dundee Middle School Salary Donations	\$1,525.00
NISRA (Northern Illinois Special Recreation Association) October 2010-May 2012	\$3,875.00
NISRA Salary Donations	\$775.00
Enforcers Charity Hockey Team (Fire Dept./Police Dept.) June 2009-April 2012	\$7,980.00
Girl Scouts Ice Donation	\$1,710.00
Instructor Salary	\$350.00
<b>Total</b>	<b>\$267,855.38</b>

Applicant Ex. EE, pp. 1-2.

69. Applicant Ex. EE also includes copies of printouts of CSCG's records, which records provide support for the numbers reported on the exhibit's summary pages. Applicant Ex. EE, pp. 3-21. Those records reflect as follows:

- From some unspecified date in 2011 through some unspecified date in 2012, the

- LIC granted discounts to persons enrolled in six of its programs in the amount of \$4,485.40. Applicant Ex. EE, pp. 1, 3-4.
- On 3 days in March 2012, the LIC allowed free access to one of its ice rinks to hold games that comprised the Wirtz Cup, a tournament for teams of physically disabled hockey players from across the United States. Applicant Ex. EE, pp. 2, 5. That access was for 17.5 hours. *Id.*, p. 5. All such hours were within what LIC considered to be prime time. *Compare id. with* Tr. pp. 347, 378-79 (Lapato). The ordinary rental rate for the rink was \$300 per hour. Applicant Ex. EE, p. 5.
  - On 4 consecutive days in May 2012, the LIC discounted the cost of ice rental to a team of physically disabled hockey players associated with the Rehabilitation Institution of Chicago. Applicant Ex. EE, pp. 2, 6. That discount was for half of the ordinary rental rate (\$300) for 8 hours of ice time on those days. *Id.*
  - On 9 days in the period beginning October 20, 2011 through April 16, 2012, the LIC allowed free access to one of its ice rinks to DMS. Applicant Ex. EE, pp. 1, 8. That access was for 61 hours. *Id.*, p. 8. Although the rental rate for such access was \$300 per hour (*id.*), none of the days and hours for which access was granted to DMS was within what the LIC considered to be prime time. *Compare id. with* Tr. pp. 347, 378-79 (Lapato).
  - On 46 days in the period beginning October 20, 2011 through April 16, 2012, the LIC allowed free access to its studio rink to the Northern Illinois Special Recreation Association (NISRA). Applicant Ex. EE, pp. 1, 9-10. That access was for 31 hours. *Id.*, p. 10. All such hours were within what the LIC considered to be prime time. *Compare id. with* Tr. pp. 347, 378-79 (Lapato). The ordinary rental

- rate for that rink was \$125 per hour. Applicant Ex. EE, pp. 1, 9-10.
- On 16 days in the period beginning June 6, 2009 through April 1, 2012, the LIC allowed access to one of its rinks to the Enforcers, a charitable organization made up of members of area police and/or fire department personnel. Applicant Ex. EE, pp. 2, 11; Tr. pp. 244-53 (DeCristofaro). That access was for 28 hours. Applicant Ex. EE, p. 11. All such hours were within what the LIC considered to be prime time. *Compare id. with* Tr. pp. 347, 378-79 (Lapato). The record is not clear that all of the access the LIC provided was without cost to the Enforcers. Applicant Ex. EE, p. 11 (two notes for such entries show, for example, private rate of \$10 per player).
  - On 5 days in the period from December 5, 2011 through February 25, 2012, the LIC allowed access to one of its rinks to the Girl Scouts. Applicant Ex. EE, pp. 2, 12. That access was for 7 hours. *Id.*, p. 12. All such hours were within what the LIC considered to be prime time. *Compare id. with* Tr. pp. 347, 378-79 (Lapato). The ordinary rental rate for the rink was \$300 per hour. Applicant Ex. EE, p. 12.

70. The records made part of Applicant Exhibits DD and EE reflect that, for the period beginning in June 2008 through the period ending May 2012:

- LIC granted approximately 228 hours of free prime time access to its rinks and other facilities to five separate groups of persons. Applicant Exs. DD-EE; Tr. pp. 347, 378-79 (Lapato).
- LIC granted approximately 447.33 hours of free access to one or more of its ice rinks to DMS during non prime-time hours. Applicant Exs. DD-EE; Tr. pp. 347, 378-79 (Lapato).

71. LIC provided passes for free sessions of ice skating to organizations soliciting fundraising donations. Applicant Exs. KK-MM (copies of respectively, fundraising letters addressed to LIC, dated in years beginning in 2008 through 2012, on which handwriting appears reflecting items given by Leafs to such organizations).

**Facts Re: LHC's Lease of Parts of the LIC**

72. Since it opened, LHC has leased two different parts of the LIC building to two separate businesses. Applicant Exs. W (copy of lease naming Gunzo's Sports Center, Inc. as lessee), X (copy of lease naming Brandino Corporation as lessee). Each of the leases granted possession of the leased property to the respective lessees. Applicant Exs. W-X.

73. LHC, using the name Leaf Gardens Ice Centre, LLC, leases approximately 1300 square feet of the LIC to Gunzo's Sports Center, Inc. (Gunzo's), to operate a hockey pro shop. Applicant Ex. W, p. 1. The term of that lease is for five years, starting on September 1, 2007. *Id.*

74. The monthly rent due under the Gunzo's lease started at \$4,000 for the first year, \$4,100 for the second, \$4,200 for the third, \$4,300 for the fourth, and \$4,400 for the fifth year. Applicant Ex. W, p. 1. Gunzo also agreed to make other payments to LHC, pursuant to a rider that was made part of the lease. *Id.*, p. 5.

75. LHC leases approximately 750 square feet of the LIC to Brandino Corporation (Brandino), to operate a concession area. Applicant Ex. X, p. 1. The term of that lease is for five years, starting on approximately October 26, 2007. *Id.*

76. The monthly rent due under the Brandino lease started at \$1,250, plus 9% of all sales from all vending and arcade machines, plus 10% of all concession sales that exceed

\$15,000 per month. Applicant Ex. X, p. 1.

**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:

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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. ...

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

Further,

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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. ....

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

The Department denied LHC’s 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.

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(f) \*\*\*

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)), and the subsections of the final one, on separate lines to make the text easier to understand.

I understand the text in the final paragraph of PTC § 15-65(f) as the Illinois General Assembly's careful expansion of the statutory exemption's requirement that property be actually owned by, for example, an institution of public charity, or one of the other entities expressly described in the other subsections of § 15-65. Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145. Under the 2009 amendment to § 15-65(f), the exemption may be granted not only to property that is actually owned, for example, by an institution of public charity (35 ILCS 200/15-65(a)), but also to property whose title is held by an entity that satisfies one of the three sets of conditions expressed in § 15-65(f)(i)-(iii) —

again, so long as the property is also used primarily for charitable purposes. 35 ILCS 200/15-65(f)(i)-(iii).

However, since the legislature expressly identified three types of entities that could hold title to property — other than an exempt owner/user — I read that text to include *only* those three types, and no others. North Shore MRI Centre v. Illinois Department of Revenue, 309 Ill. App. 3d 895, 900, 723 N.E.2d 726, 730 (1<sup>st</sup> Dist. 1999) (“*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 only three types of entities, I understand those words to mean that if legal title to property is held by an entity that is *not* described in § 15-65(i), (ii) or (iii), such property *shall lose* the exemption. 35 ILCS 200/15-65(f); North Shore MRI Centre, 309 Ill. App. 3d at 900, 723 N.E.2d at 730. The General Assembly’s identification of only three types of entities in § 15-65(i)-(iii) is one 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.

Here, Leaf’s does not hold title to the property at issue; LHC does. Applicant Ex. H. Thus, the evidence must show that LHC is one of the three types of entities described in PTC § 15-65(f)(i)-(iii), or, under the plain text of the statute, LHC’s property cannot be exempt. 35 ILCS 200/15-65(f); 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 entities described in § 15-65(f)(i)-(iii) are joined by the word “or.” That means that if LHC meets one of any of the three sets of conditions, the LIC shall not lose its exemption because the legal title is held by LHC — so long as the property otherwise qualifies for an exemption under PTC § 15-65(a). 35 ILCS 200/15-65(f)(i)-(iii). Thus, the following section of this recommendation will examine whether LHC is one of the entities described in PTC § 15-65(f)(i)-(iii).

### **Is LHC One of the Entities Described in PTC § 15-65(f)(i)-(iii)?**

#### **PTC § 15-65(ii)**

This subpart is the most obvious of the three. LHC clearly is not an entity described in § 15-65(f)(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 ....” Applicant Ex. E, *passim*.

#### **PTC § 15-65(i)**

Nor is LHC an entity described in § 15-65(f)(i). Under LHC’s Operating Agreement, its purpose is:

The purpose and business of the Company shall be any business which may lawfully be conducted by a limited liability company organized pursuant to the Illinois [Limited Liability] Act. The Company shall possess and may exercise all powers and privileges granted by the Illinois Act, any other law, or by this Agreement, including incidental powers thereto, to the extent that such powers and privileges are necessary, customary, convenient or incidental to the attainment of the Company’s purposes.

Applicant Ex. E, p. 1. Its Manager’s powers, moreover, include, among other things, to:

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(iv) adopt and amend an equity option or incentive plan, equity association plan, phantom equity plan or other long-term incentive plan for officers, employees, consultants and advisors of the Company and make grants thereunder and otherwise administer such plan;

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(xiii) invest and reinvest Company reserves in short-term instruments or money market funds;

(xiv) authorize and/or issue any equity securities of the Company;

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(xix) change the purpose of the Company;

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(xxii) obligate the Company to acquire any business whether by merger or by acquisition of assets, stock or other equity interests;

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Applicant Ex. E, pp. 4-6. In short, the express terms of LHC's Operating Agreement identify a purpose and powers that are much broader than being "organized solely to hold ... title" to the LIC property. Applicant Ex. E, pp. 1, 4-9; 35 ILCS 200/15-65(f)(i).

I also note that the IRS has long notified the public that:

Section 501(c)(2) of the Code provides exemption to corporations organized for the *exclusive* purposes of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization exempt under section 501(a).

Rev. Rul. 58-566, 1958-2 C.B. 261, holds that a corporation will not be considered organized as a holding company within the meaning of section 501(c)(2) of the Code where it has broad powers and business purposes far beyond the scope necessary to a holding company.

PLR 200449034, 2004 WL 2758585 (IRS PLR) (December 3, 2004) (emphasis added).

Additionally, there is no evidence in the record to show that LHC "qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor ..." 35 ILCS 200/15-65(f)(i). Whether LHC qualified as a § 501(c)(2) organization is a question that is similar to whether Leafs qualified as a § 501(c)(3) organization. That is, it was an issue on which documentary evidence would be probative. If LHC did qualify, it was in

the best position to have documentary evidence in its possession to offer at hearing, just as Leafs had documentary evidence to show that it qualified as a § 501(c)(3) organization. Applicant Ex. J. But LHC did not offer any such evidence.

Notwithstanding the lack of direct, probative evidence on this point, in its brief, LHC claims that “[p]ursuant to federal law, LHC, as a single-member LLC, is considered to have the same exemption status as its sole member, the Club. See 26 CFR 301.7701-2(a), (c)(2)(i).” LHC’s Brief, p. 2. But that is not precisely correct. What Treasury Regulation 301.7701-2(a) provides is that, “a *business entity* is any entity recognized for federal tax purposes ... that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. ... A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. 26 CFR 301.7701-2(a) (emphasis original). Subsection § 2(c) of the same Treasury Regulation provides:

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(c) Other business entities. For federal tax purposes—

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(2) Wholly owned entities— (i) In general. Except as otherwise provided in this paragraph (c), a business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

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26 CFR 301.7701-2(c)(i). Thus, it is more correct to say that, for federal tax reporting purposes, Leafs treats LHC as a disregarded entity on its — Leafs’ — Forms 990. 26 CFR 301.7701-2(c)(i); Applicant Ex. L.3, pp. 27-30 (Schedule R). LHC’s Operating Agreement provides evidence that is much more probative of its purpose than Leaf’s ability to treat LHC as a disregarded entity for federal filing purposes.

As a final note on LHC's argument that it had the same exempt status as Leafs, at hearing, LHC's counsel corrected its witness, on the record, when Durkin answered, during cross-examination, that LHC was a § 501(c)(3) organization. Tr. p. 104. Specifically, the transcript reflects the following question, answer and colloquy:

Q: I just wanted to lock down one point and that — a couple of points, and the first one is the question of the LHC, LLC, is that a 501(c)(3) organization itself?

A: It is a 501(c)(3) organization.

Mr. Sirius: No it's not.

Q: That's what I thought.

Tr. p. 104. The record is clear that LHC does not have the same exempt status as Leafs, and LHC failed to offer any documentary evidence that it qualified under IRC § 501(c)(2).

### **PTC § 15-65(iii)**

The last type of entity whose ownership of property does not preclude an exemption is described in § 15-65(f)(iii). 35 ILCS 200/15-65(f)(iii). There are three conditions set forth in that subpart, and those conditions are joined by the word "and." *Id.* That means the entity must satisfy all of the stated conditions in the subpart. Here, the evidence shows that LHC satisfies the first two conditions, but not the third. 35 ILCS 200/15-65(f)(iii)(C). That is because LHC leases part of the property to other businesses, for valuable consideration. Applicant Exs. W-X.

It is possible that someone might read PTC § 15-65(f)(iii) to mean that any LLC that holds title to property is to be treated no differently than any owner that is, itself, organized and operated primarily for charitable purposes. Under this reading, if a charitable owner of property, for example, could lease a defined part of the property and not lose the exemption for a separate part of the property that it actually used primarily

for charitable purposes (*see e.g.*, Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 65-66, 273 N.E.2d 371, 375-76 (1971)), then an LLC that held title to property used for similarly distinct purposes could, too.

While such a reading may be possible, it ignores the related parts of the statutory text, as well as the Illinois Supreme Court’s admonition to strictly construe property tax exemption statutes. Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144 (“[s]tatutes granting tax exemptions must be strictly construed in favor of taxation ....”). The better way to read § 15-65(f)(iii)(C), I submit, is to understand that not leasing the property is an express condition precedent for any LLC to be included within the class of entities allowed to hold title to property — other than the charitable user — without losing the exemption. That, at least, would be a strict construction of PTC § 15-65(f)(iii)(C). Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144.

This strict construction is also more consistent with the legislature’s careful specification of only three, distinct types of entities that it permitted to hold title to property — other than an exclusively charitable owner — without losing the exemption. Subparts (f)(i), (ii) and (iii) each describe different types of entities. Section 15-65(f)(i) expressly allows for a title-holder to rent the property to the 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) describes the third type of title-holder as being expressly prohibited from leasing the property, or otherwise using it with a view to profit. 35 ILCS 200/15-65(f)(iii); Carver v. Bond/Fayette/Effingham Reg. Bd.

of School Trustees, 146 Ill. 2d 347, 353, 586 N.E.2d 1273, 1276 (1992) (“When the legislature uses certain language in one part of a statute and different language in another, we may assume different meanings were intended.”). It would be error to ignore the plain text of § 15-65(i)-(iii), and the obvious differences between the distinct types of entities described in these three, separate, subparts. In re County Collector of Kane Co., 132 Ill. 2d 64, 72, 547 N.E.2d 107, 110 (1989) (“a court should not adopt a construction which renders words or phrases in a statute superfluous.”).

The evidence here is undisputed that LHC leases part of the LIC property to two commercial businesses, for valuable consideration. Applicant Exs. W-X. Based on a strict reading of PTC § 15-65(f)(iii)(C), I conclude that LHC does not satisfy all of the three conditions set by PTC § 15-65(f)(iii). 35 ILCS 200/15-65(f)(iii); Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144. Since LHC is not one of the three types of entities described in PTC § 15-65(f)(i)-(iii), the LIC property is not entitled to the exemption authorized by § 15-65. 35 ILCS 200/15-65(f)(i)-(iii).

Notwithstanding the clear text of § 15-65(f)(i)-(iii), I also recognize that the conclusion just expressed is one of law, and not one of fact. Further, and to my knowledge, this matter presents the first time a Department administrative law judge has recommended that the Director adopt this strict reading of PTC § 15-65(f)(iii)(C). To avoid the possibility of remand, therefore, this recommendation will proceed to review the evidence to determine whether the property otherwise qualifies for a charitable exemption under § 15-65(a).

**Does The LIC Property Qualify For The Exemption Authorized By PTC § 15-65(a)**

To qualify for the statutory exemption authorized by PTC § 15-65(a), the property must be owned by an institution of public charity. 35 ILCS 200/15-65(a); Provena, 236 Ill. 2d at 390, 925 N.E.2d at 1145. Here again, Leaf is the entity that has the traditional trappings of an institution of public charity, but it does not own the LIC. Applicant Ex. H. LHC owns the property. *Id.* LHC is an Illinois LLC. Applicant Ex. E. Under Illinois law, “[a] limited liability company is a legal entity distinct from its members. 805 ILCS 180/5-1. The same is true under PTC § 15-65(a)-(f)(i)-(iii). The only way the property will be eligible for the exemption is if the evidence shows that LHC is an institution of public charity.

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), to determine whether the entity is organized and operated exclusively for charitable purposes. Provena, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145.<sup>2</sup> 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 (1<sup>st</sup> Dist. 1987).

LHC asserts that the property satisfies all of the Methodist Old Peoples Home guidelines. Taxpayer’s Post-Hearing Brief (LHC’s Brief), *passim*. The Department responds that LHC is not actually operated as an institution of public charity

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<sup>2</sup> Different courts have placed the Methodist Old Peoples Home guidelines in different order. *Compare e.g., Provena*, 236 Ill. 2d at 390-91, 925 N.E.2d at 1145 *with Provena Covenant Medical Center v. Department of Revenue*, 384 Ill. App. 3d 734, 742, 894 N.E.2d 452, 460 (4<sup>th</sup> Dist. 2008). This recommendation will use the Illinois Supreme Court’s most recent order.

(Department's Response Brief, p. 6), and that it does not use the property primarily for charitable purposes. *Id.*, pp. 7-10.

### **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. Technically, LHC's sole member, Leaf, owns a membership interest in the company. Applicant Ex. E, p. 2. LHC's operating agreement expressly provides that that membership interest constitutes a security as defined in Article 8 of Illinois' Uniform Commercial Code. Applicant Ex. E, p. 2; 810 ILCS 5/8-102(a)(15) (definition of security). In other words, the documentary evidence shows that LHC has a shareholder.

But beyond this technical point, what the first guideline actually seeks to discern is whether the owner of the property is organized primarily for charitable purposes. Here, the record is clear that, unlike Leaf, LHC is not exempt under Code § 501(c)(3). Tr. p. 104. Further, the Illinois Limited Liability Company Act allows a company to conduct a not-for-profit business. *See* 810 ILCS 180/1-5. But LHC's Operating Agreement does not provide that LHC is organized to conduct a not-for-profit business. *See* Applicant Ex. E.

Rather, LHC's organizing document reflects a much broader purpose, to conduct "any business which may lawfully be conducted by a limited liability company organized pursuant to the Illinois [Limited Liability] Act." Applicant Ex. E, p. 1. While it might be possible that LHC intended that each and every one of the businesses included within its broad purpose statement were to be operated on a not-for-profit basis, it did not say that in its Operating Agreement. Moreover, LHC's Operating Agreement granted its Managers the powers to, for example, "adopt and amend an equity option or incentive

plan, equity association plan, phantom equity plan or other long-term incentive plan for officers, employees, consultants and advisors of the Company ...; ... authorize and/or issue any equity securities of the Company; ... [and] obligate the Company to acquire any business whether by merger or by acquisition of assets, stock or other equity interests ...” Applicant Ex. E, pp. 4-6. These are not the types of powers one associates only with not-for-profit businesses.

It was LHC’s burden to show that it was organized primarily for charitable purposes. Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1144. It did not do so. Because the evidence does not clearly and convincingly show that LHC was organized primarily for charitable purposes, it cannot have been both organized *and* operated primarily for charitable purposes. At a minimum, LHC’s organizing documents show that it does not satisfy the first Methodist Old Peoples Home guideline.

### **Second Guideline**

The second guideline asks whether LHC 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. When considering the 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. When addressing the remaining Methodist Old Peoples Home guidelines, which are designed to examine the property owner’s operations, this recommendation

will, whenever possible, distinguish between LHC and Leaf's, as, again, they are different persons under Illinois law. 805 ILCS 180/5-1; 35 ILCS 200/15-65(a)-(f)(i)-(iii).

The documentary evidence admitted at hearing includes CSCG's detailed financial records of the revenues realized by the LIC for the annual periods ending August 31, 2009 (Applicant Ex. DD, pp. 3-6), August 31, 2010 (*id.*, pp. 7-11), and for the quarter ending on March 31, 2011. *Id.*, pp. 12-15. The documentary evidence also includes Leaf's Form 990s for its TYE 6/08 through 6/10, and a copy of Leaf's audited financial statements for TYE 6/10. Applicant Exs. L.1-L.3, R.

The Forms 990 reflect that Leaf's earned no profits, in the accounting sense, during any of the years for which the records relate. Put another way, for each of the last three fiscal years for which records were admitted at hearing, Leaf's reported expenses were greater than its reported revenues. Applicant Exs. L.1-L.3 (p. 1 of each Form 990). And to be specific, this documentary evidence reflects Leaf's revenues and expenses and financial condition for the period ending in its TYE 6/10. Applicant Exs. L1-L.3; R. There were exhibits offered to show CSCG's budget proposals for the LIC for years thereafter (Applicant Exs. U-V), but those records do not, to the best of my knowledge, reflect actual revenues and expenses for such later years.

Exhibits L.1 through L.3 show that Leaf's reported that the vast majority of its revenues were derived from the gross receipts it received from selling hockey and figure skating programs to members, and from making its ice skating facilities available to members, and to others, for hire. Applicant Exs. L.1-L.3. Recall that, under Leaf's bylaws, anyone who enrolls in a Leaf's program is, by definition, a Leaf's member, so long as he also satisfies the financial requirements. Applicant Ex. B, p. 1. If a member fails to

meet the financial requirements within the time specified, Leafs' bylaws provide that the member "shall be issued a written notice of such delinquency." *Id.* If, after fifteen days, the member is still in arrears, his/her membership shall automatically terminate, and the member and his child or legal dependent shall not be permitted to participate in Leafs activities, until all financial obligations are paid in full. *Id.*

Additionally, during each of the fiscal years for which it had Forms 990 available, the greatest percentage of Leafs' revenues were derived from its gross receipts from ice center revenues. Applicant Ex. L.1, p. 21; Applicant Ex. L.2, p. 9; Applicant Ex. L.3, p. 9. For purposes of this, and the other operational guidelines (numbers two through five), I will treat the revenues Leafs reported as ice center revenues as LHC's revenues. So, the majority of Leafs' gross receipts were the amounts that LHC received as gross receipts from selling ice time and other services to others at the LIC. Applicant Ex. L.1, p. 21; Applicant Ex. L.2, p. 9; Applicant Ex. L.3, p. 9; Applicant Ex. DD, pp. 3-15.

In TYE 6/08, Leafs' total revenues were \$1,766,737. Applicant Ex. L.1, p. 21. Of those, \$716,991 was gross receipts from membership fees, and \$1,004,885 were gross receipts from ice center rink revenues. *Id.* In TYE 6/09, its total revenues were \$2,257,845, of which \$753,427 was from membership fees, and \$1,481,720 was from ice center revenues. Applicant Ex. L.2, p. 9. During that year, Leafs raised \$10,464, or less than 0.5% of its total revenues, from fundraising. *Id.* ( $10,464/2,257,845 \approx 0.004634$ ). Finally, in TYE 6/10, Leafs had total revenues of \$2,579,042, of which \$918,926 was from club program revenues, and \$1,642,308 was from ice center revenues. Applicant Ex. L.3, p. 9. During that year, Leafs realized \$12,689 — again, less than 0.5% of its total revenues — from fundraising. *Id.* ( $12,689/2,579,042 \approx 0.004942$ ). Since the

overwhelming majority of Leafs' revenues were in the form of gross receipts from membership and other program fees, and from selling ice time at the LIC to members and to others, neither Leafs nor LHC derived its funds mainly from private and public charity. Applicant Ex. L.1, p. 21. Applicant Ex. L.2, p. 9; Applicant Ex. L.3, p. 9; *see also 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.”).

The revenues that Leafs received from its members and others using the LIC, not surprisingly, were then primarily spent to provide services for such persons. *See* Applicant Ex. L.1, p. 21. Applicant Ex. L.2, p. 9; Applicant Ex. L.3, p. 9; Applicant Ex. U (copy of LIC's budget proposal for 2011-2012, showing revenues from and expenses related to programs conducted at the LIC), *passim*. Consistent with the plan underlying Leafs' decision to build the LIC, Leafs itself was the biggest single purchaser of ice time at the LIC, although it never bought or used a majority of the total hours available for rental. Applicant Ex. U, pp. 1-4; Tr. pp. 378-79 (Lapato). Finally, and regarding LHC, the evidence shows that LHC used a significant percentage of its ice center revenues to pay a corporation owned by Lapato, one of the Managers of Leafs' Board of Managers of LHC, to manage the LIC. Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9), R (pp. 13-14), Y.

In sum, the evidence shows that while LHC did not earn any profits or dividends, its revenues were overwhelmingly derived from persons who paid to use the LIC. Applicant Exs. L.1-L.3, R, Y. Its revenues were then primarily spent to provide services

to such persons, with a significant amount of such revenues paid to a corporation owned by one of LHC's Managers. Based on the evidence, I conclude that LHC does not satisfy the second Methodist Old Peoples Home guideline. 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.

### **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 it 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.*

A discussion of these two guidelines should first focus on the nature of the benefits offered at the LIC. Logic and experience almost compel a conclusion that most if not all physical and/or athletic activities provide a variety of benefits to individuals who take part in them. When the participants are children, the benefits accrue also to parents, and include the emotional comfort that comes from believing that when children are engaged in athletic or physical activities, they will have less time available to engage in other, potentially harmful, activities. The benefits associated with athletics and physical activities are so universally recognized as valuable that many persons seek to make a profit from offering a place where others can engage in such activities, like a gym, or a health or country club, or by offering services associated with such activities, for example, trainers and coaches. Still other persons provide similar facilities and services as not-for-profit entities. The benefits offered by both types of organizations are similar, even if the costs of obtaining the benefits may differ. Because the benefits received from

attending a for-profit gym for a fee are no different than those received from attending a non-profit gym for a fee, it would be a mistake to consider the former to be providing services for hire, but the latter to be providing charity.

Further, when a person pays an organization that is exempt under § 501(c)(3) to use facilities where physical and/or athletic activities are provided, federal law prohibits the payor from treating the amounts paid as a charitable contribution. 26 U.S.C. § 170(a), (c)(2)(B). That, no doubt, is why Leaf's reports its revenues from membership programs fees, as well as its ice center revenues, as being from gross receipts, and not from public or private charity. Applicant Exs. L1-L3, *passim*. In short, the benefits that Leaf's provides by offering hockey and skating programs, and the programs that LHC provides at the LIC, are manifestly good things, but they are not charity when offered for a fee. 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). To the extent that the benefits that LHC’s programs at the LIC facility might constitute charity, it would be because LHC has made a gift of such programs, or because such programs reduce 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 their governmental functions.”); *id.* 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.””).

LHC argues that its ‘[f]acility helps to alleviate the financial burden incurred by

various taxing bodies in performing their governmental functions.” Taxpayer’s Brief, p. 11. When making this argument, it concedes that West Dundee, the municipality in which the LIC is situated, has not historically operated an ice rink. *Id.*, p. 12. But it did offer testimony that local governments and park districts in neighboring areas own and operate ice rinks. *Id.*, p. 12. It cites further testimony that those other rinks charge more for ice time than the LIC does. *Id.* LHC argues that such testimony “further demonstrate[s] not only the governmental burden alleviated by the Facility but also the benefits to the West Dundee community by the comparatively low rates offered by the Facility for the enjoyment of an ice rink.” *Id.*, p. 13.

Contrary to LHC’s argument, however, the State of Illinois has no burden to provide ice skating facilities and programs to its residents or visitors. *See* Ill. Const. of 1970, *passim*. And while LHC, in its brief, cites to cases in which Illinois courts have found property used as athletic facilities to be exempt, each application for exemption must be decided by the facts relevant to show the applicant’s actual organization and operations, and the actual use of the property. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462-63, 264 N.E.2d 4, 10 (1970). Here, for example, LHC argues that, since the fees it charges for ice time are less than those charged by municipally-owned ice rinks, LHC is reducing the government’s burden. I consider just the opposite to be true. By directly competing with such facilities, LHC is likely reducing the amounts received by such municipalities. And it should go without saying that every exemption from property tax increases the government’s burden to provide the services it *does* have a duty to provide.

LHC also argues that it satisfies the third and fifth Methodist Old Peoples Home

Guidelines because it provided charity in the form of discounted fees for its skating programs, and by offering free or reduced fees for access to the LIC. LHC's claim of providing discounts is supported by documentary evidence, which evidence is discussed below. Applicant Exs. AA-EE, KK-MM.

Exhibits AA through CC all bear a letterhead or heading that includes the words "Leafs Ice Center," and each is a different version of LIC's fee hardship policy and/or guidelines. Applicant Exs. AA-CC. Exhibit AA, for example, provides that, "[t]he facility General Manager, and at times members of the Board of Directors of the Leafs Hockey Club (the "Board") shall have the authority and responsibility to consider requests relating to financial hardship." Applicant Ex. AA, p. 1. That exhibit describes the following types of requests: requests for consideration of fees in connection with open skating; requests for learn-to-skate programs; requests for off-ice use, including fitness training and weight training; requests on behalf of a school concerning a group or class of students; and requests on behalf of local community groups such as a senior citizen group or park district. *Id.*, pp. 1-2. All such requests, except for those to request a reduction or waiver of the fee for open skating, were to be made in writing, for consideration by the facility General Manager, or by Leafs' Board. *Id.*

Exhibits DD and EE include statements summarizing information contained in CSCG's business records, under the heading "Leafs Ice Center Hardship/Donation Summary." Applicant Exs. DD-EE; Tr. pp. 325-28 (Lapato). Exhibit EE is an update to the information contained in Exhibit DD, and includes information regarding discounts offered for periods up to May 2012. Applicant Ex. EE.

While testifying about the difference between discounts Leafs offered for its

programs and the discounts that the LIC offered for its programs, Lapato was asked the following questions and gave the following answers:

Q: I'm handing you Exhibit EE, What is that document?

A: This shows all our donations, our discounts and our hardship that we have offered from the opening — or actually, no. It doesn't include the first year. It starts September of '08 through, I believe, the current.

Q: Who prepared that document?

A: We have a system called Maximum Solutions, and it tracks everything that we do. So it's very very simple to see. It tracks — it's kind of a rudimentary accounting, you know, it's not really that —

Q: Keyed through to this industry?

A: The system itself is keyed. It's a widely used application in our business.

Q: Okay. And so you drew your data from data that had been input into that application —

A: Correct.

Q: — previously?

A: It tracks — you know, you can print out class lists. It tracks how much money goes in. It tracks what the person's name is. It tracks what hour they used for that ice. And we can go all the way back to — well, this goes back to '08 — or September of '08.

Q: And now looking at the numbers on there, just if you would be kind enough to explain to me what the entries mean. And I'm talking about the first page. Maybe start at the top. What does that line item mean?

A: Well, it should show our — the discounts or the hardship that we offered and in all of our programs from September 1 of '08 through August 31<sup>st</sup> of '09.

Q: And when you say our programs, you're talking about the management company's programs —

A: Correct.

Q: — as opposed to the club—

A: Yes. It has nothing to do with the hockey club.

Q: It is not club discounts —

A: Not at all.

Q: This is management company hardship discounts?

A: Correct.

Q: Okay. And how about the second line? What does — maybe just go down quickly —

A: Okay. These go from — some repeated every time. They go from September 1 of the year through August 31<sup>st</sup> of the following year. So '09/'10, the number was \$14,664. You want to say the prices or no?

Q: I would just go down line by line without stating the numbers, without repeating them. Or if you want to round them, you know, say

approximately 85,000 or something like that.

A: The first four lines from '08 through current is program discounts. The next — actually, the rest of it's going to be what we've donated in ice or in salaries, what we've donated for these — the sled hockey program, you know, a lot of donations in both salary and ice. What we've done with Dundee Middle School. We provide our full-time instruction for that, and they were running 600 kids a week — or a day through the facility. It was quite an undertaking, But that follows Dundee Middle School all the way through the Northern Illinois Special Recreation Association, NISRA.

Q: Okay. This does not include a — you've already said it doesn't include hardship discounts provided by the club?

A: Correct.

Q: It does not include volunteerism or the value of volunteerism —

A: No, it does not.

Q: — that takes place?

A: No.

Q: These are just express hardship discounts given by the management company?

A: Correct. The actual cost to the building.

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Tr. pp. 325-28 (Lapato).

Finally, Exhibits KK through MM include copies of written requests for donations from area charities addressed to or received by the LIC. Applicant Exs. KK-MM. On the letters that make up each exhibit, someone, in hand written letters, wrote words to the effect that a certain number of open skate passes for the LIC were thereafter given to the letter writer. Applicant Exs. KK-MM.

I consider Exhibits AA-CC to be reliable, documentary evidence which shows that the LIC had a written policy of offering discounts to programs that it — as opposed to Leafs — offered to others at the LIC. I also give Exhibits DD-EE weight as reliable, documentary evidence of the identity of the entities to which the LIC waived or reduced its regular ice rental fees. However, when considering that documentary evidence together with Lapato's testimony, I do not conclude that such evidence clearly and convincingly shows that LHC satisfies the third and fifth Methodist Old Peoples Home

guidelines.

The oddest aspect of Lapato's testimony lies in his answers that the discounts reported as having been given by the LIC (Applicant Exs. DD-EE) were, in reality, discounts given by the management company, CSCG. Tr. pp. 326, 328 (Lapato). This is particularly true of LHC's claims, and Lapato's testimony, that the LIC had made donations of salaries for employees who worked at the LIC when providing instruction for groups for whom the LIC waived ice rental fees — most notably, for DMS. Applicant Exs. DD (p. 1), EE (pp. 1-2). The evidence is clear that the employees who work at the LIC are CSCG's employees. Applicant Ex. Y (p. 5 (Art. 10 ("All personnel employed at the Facility shall be employee of CSCG, and not of Owner."))), R. But if CSCG paid its employees for providing instruction during periods when the LIC waived its ice rental fees to certain persons, and did not give LHC a bill for such staffing, I would not consider that amount to have been a charitable gift from LHC. For the same reason, if CSCG's employees agreed to work at an event held at the LIC without pay, which is what Lapato said occasionally happened (Tr. pp. 341-42), I would not consider that to be a gift from LHC. The suggestion that such acts, by others, should be considered acts of charity by LHC, is not well taken.

Next, the items on Exhibits DD and EE for which LHC attributes the greatest amount of charity are the amounts that LHC claims it donated to DMC, a middle school that is situated across the street from the LIC, in the form of free access to the LIC during school hours. Applicant Exs. DD-EE. A former teacher and administration of DMS testified that the school was able to create units of physical instruction for its students for ice skating at the LIC. Tr. pp. 261-62, 264-65 (Cavanaugh). On Exhibits DD and EE,

LHC wrote that the value of the access provided to DMS constituted a donation in the amount of \$110,104.25 for the period from June 2008 through March of 2011 (Applicant Exs. DD, pp. 18-21), and in the amount of \$17,385 for the period from October 20, 2011 through April 16, 2012. Applicant Ex. EE, p. 8. LHC calculated that value by multiplying the number of hours that it granted DMS access to the LIC by the rate normally charged to rent ice during such hours. Applicant Exs. DD (pp. 2, 18-21), EE (pp. 1, 8).

In contrast with LHC's claim that such access should be treated as a donation of more than \$100,000, however, on Leafs' Forms 990 for TYE 6/08 through 6/10, Leafs reported that it made total contributions in the amount of \$320. Applicant Exs. L.1 (p. 19) (reporting a contribution of \$220), L.3, p. 10 (Part IX, line 24c) (contribution of \$100). If Leafs reported its contribution of \$320 over the course of three years on its Forms 990, I would expect it to also report — to someone other than the Department — its contribution of services with a value of over \$100,000 to a government school, if it could.

On the question of the value of the access granted to DMS, moreover, none of the access that LHC granted to DMS was during what LHC considered to be prime time for ice rental. *Compare* Applicant Exs. DD (pp. 1, 18-21) *and* EE (pp. 1-2, 8) *with* Tr. pp. 346-48, 378-79 (Lapato). Lapato said the LIC had a very difficult time renting ice during non prime time hours. Tr. p. 347. Given this evidence, I reject LHC's argument that the access granted to DMS had the dollar value suggested by LHC.

The evidence also calls into question LHC's claim that granting access to the LIC to DMS was an act of charity by LHC to a person who asked for it. On this point, the evidence shows that LHC approached DMS with the proposal to allow the school to use the LIC for physical education. Tr. pp. 261-63 (Cavanaugh). Further, and when taking

into account that CSCG agreed “to maximize the [LIC’s] profit potential” (Applicant Ex. Y, p. 1), it is not unreasonable to conclude that offering access to the LIC to DMS was a way for CSCG to use a certain amount of time, when the LIC’s rinks would not likely be rented (Tr. P. 347 (Lapato)), to develop a market for the youth ice skating programs to be offered there. That is, by offering a relatively captive audience of school-age youth the opportunity to skate at the LIC, for free, CSCG increased the possibility that such participants (or their parents) might be willing to pay for similar experiences, later.

On the whole, the documentary evidence shows that LHC offered free access to the LIC’s ice facilities to one public school and to some groups. It also shows that LHC gave discounts to some of its skating programs to persons who requested such discounts, most often, by reducing the cost of those programs. I am not persuaded, however, that this evidence clearly and convincingly shows that LHC provided charity to all to asked for it. Thus, I do not conclude that LHC has satisfied the third and 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. 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.

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\*\*\* 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 (7<sup>th</sup> Cir. 1999).

Illinois courts have also recognized that the determining feature of profit with respect to a charitable institution is whether there is inurement of benefit to a private individual. 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). 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). Here, there is a much more direct benefit being given by LHC to one of its insiders.

At the outset, I note that the Department has waived the issue of inurement. *See* Department's Response Brief, p. 6. The Department cites a different reason — the sources and nature of its funding — already discussed, to support its determination that Leaf's is not organized and operated as a public charity. *Id.* Notwithstanding the Department's concession, Illinois law is clear that waiver binds parties, not the fact-finder. American Pharmaseal v. TEC Systems, 162 Ill. App. 3d 351, 515 N.E.2d 432 (2d Dist. 1987). Further, the Department's waiver here is one involving the legal effect of facts. *Id.* at 356, 515 N.E.2d at 434-35. Here, there is no dispute over the evidence regarding Lapato's status as a Manager of LHC (Applicant Ex. E), a Leaf's officer (Applicant Ex. L.3, p. 7-8), and as the owner of CSCG. Applicant Ex. R-S; Tr. pp. 299-300 (Lapato). Nor is there any dispute regarding the amounts LHC paid to CSCG, and the amounts of Leaf's ice center revenues (that is, LHC's revenues), during Leaf's TYE 6/08 through 6/10. Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9). What was not addressed

is the legal effect of that evidence; that is, whether LHC's payments to CSCG provided a prohibited private inurement to Lapato.

The Illinois Supreme Court discussed the question of inurement in Provena, when addressing the Department's argument that the 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:

\*\*\* Provena Hospitals also meets the fourth *Korzen* factor. It does not provide gain or profit in a private sense to any person connected with it. While the record focused on PCMC rather than Provena Hospitals, it was assumed by all parties during the administrative proceedings that Provena Hospitals' policies in this regard were the same as those of PCMC, and it was stipulated that PCMC diverted no profits or funds to individuals or entities for their own interests or private benefit.

The Director correctly points out that PCMC subcontracted many of its operations to third-party providers, including pharmacy, laboratory, laundry and MRI/CT services; the entire emergency department; and the management, administration, and staffing of rehabilitation and cardiovascular surgery programs. One of those third-party providers, the one which furnished lab services to PCMC, was actually owned by Provena Health, Provena Hospitals' parent, and was operated on a for-profit basis. While all of the third-party providers were subject to a conflict of interest policy designed "to prevent private inurement and other conduct that may be inimical to [the organization's] mission," no evidence was presented that any of them were themselves charities or operated on anything other than a for-profit basis. This, however, is not dispositive.

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).

Here, however, the evidence is clear that Lapato *was* an insider of LHC, and of Leafs, who was, to use the Court's words, "engaged in managing the organization." *Id.* at 392, 925 N.E.2d at 1146. Specifically, Lapato was one of the original members of Leafs' Board of Managers, and Leafs was the sole member of LHC, a member managed LLC. Applicant Ex. E, p. 4. Lapato was a Manager of LHC when his for-profit corporation was first hired by LHC to manage the LIC. Tr. pp. 25-28, 36-38 (Durkin). Lapato was also a LHC Manager and Leafs' officer during 2010, the year at issue, when his corporation's Contract with LHC was renewed or updated, and its compensation increased. Applicant Exs. E (p. 4), L.3 (p. 7-8), R (pp. 13-14), Y. The documentary evidence clearly shows that Lapato was a private individual who was actively engaged in managing LHC.

The documentary evidence also shows that CSCG annually received a substantial portion of Leafs' total revenues from ice center operations, which is another way of saying that CSCG received a significant amount of the revenues derived from LHC's operation of the LIC. During TYE 6/08, LHC paid CSCG \$543,345, or 53% of Leafs' \$1,004,885 in ice center revenues. Applicant Ex. L.1, pp. 2, 19, 21. During TYE 6/09, LHC paid CSCG \$641,272, or 43% of Leafs' \$1,481,720 ice center revenues. Applicant Ex. L.2, pp. 9-10. Finally, in TYE 6/10, LHC paid CSCG \$673,675, or 41% of Leafs' \$1,642,308 ice center revenues. Applicant Ex. L.3, pp. 7-9.

To be clear, these are the actual amounts that LHC paid to CSCG, as fees and/or expenses, to manage the LIC, as well as the comparative amounts of Leafs' total ice center revenues that such payments represent. The reader should not understand this recommendation as concluding that the gross amounts Leafs paid to CSCG were profit to

CSCG, or somehow went directly into Lapato's pocket. I assume CSCG had its own expenses that were directly associated with its billings to LHC, for example, to pay the wages it owed to its employees who worked at the LIC. *See* Applicant Ex. R, p. 13 (“Compensation to CSCG includes a management fee of \$78,000 annually, paid in monthly installments, and staffing expense for year ended June 30, 2010 of \$594,026. Staffing expense is invoiced by CSCG to the Leafs Ice Center semi-monthly and covers the payroll of all CSCG employees who work at the Leafs Ice Center, including CSCG management.”). But, just as I would not assume a law firm pays its associates or staff the amounts charged to a client for their work, I do not assume that CSCG's billings to LHC were equal to the amounts CSCG paid its employees for work performed at the LIC. At the very least, there is no provision in the Contract requiring CSCG to pay its employees the same rate at which CSCG billed LHC for such staffing. Applicant Ex. Y, *passim*.

Because it may, at first blush, be considered mitigating evidence on this issue, I will address certain statements made in Leafs' Form 990 for TYE 6/10. Applicant Ex. L.3, p. 25. In Schedule O of that Form, Leafs made the following statements:

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Form 990 Part VI Section B Line 12c[:] The Organization has a two part conflict of interest policy, the second part of which is a disclosure form. Each Board member must complete the conflict of interest disclosure form annually.

Form 990 Part VI Section B Line 15 a and b[:] The Organization hires a management company to operate its facilities. The Organization Board has appointed a committee responsible for the operations of its facility. This committee reviews annually the reasonableness of the management fees paid for this service, based on services accomplished and competitive rates. The Organization also evaluates the performance of the management company based on financial outcomes and the program services provided to the community[.] The committee then reports its fin[d]ings to the board of directors and the board determines renewal of the management company services. The

management company invoices the Organization bimonthly for staffing expense. The chairman of the audit committee reviews the staffing request and invoice for reasonableness and approves the invoice for payment. The chairman of the audit committee reports to the full board.

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Applicant L.3, p. 25.

When an organization required to file a Form 990 makes statements like those quoted above, it does so to document that it has acted reasonably regarding its payment of executive and other compensation. *See* 26 CFR § 53.4958-6 (Rebuttable presumption that a transaction is not an excess benefit transaction); William A. Bailey, Navigating Form 990's Governance Section To Reduce A Nonprofit's Risk Exposure, 88 Practical Tax Strategies (RIA Jan. 2012) (“A major goal of the relatively new IRS compensation requirements is to keep nonprofit organization insiders from getting paid too much (i.e., above fair market value).”) (hereafter, Bailey, Reducing Exposure). In his article, Professor Bailey more fully explains the purpose of such statements:

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Excess benefits transactions are a form of private inurement—and private inurement historically put the tax exemption status of the entire organization at risk. Congress, however, decided that instead of a draconian revocation of an entity's tax-exempt status in these cases of private inurement, excess benefit transactions should invoke *intermediate* sanctions that impose excise taxes on the individual improperly benefiting from the transaction. These sanctions were designed to spare the entire organization from loss of exemption status and to punish the few that improperly benefitted. The reasoning behind the rules was that tax-exempt entities engaging in isolated non-exempt activities covered by the rules should not have to lose their tax-exempt status: i.e., charities do not do bad things—people do. Therefore, the sanctions punish the individuals profiting from their private benefit, instead of punishing the tax-exempt entity as a whole. Excise taxes additionally apply to individuals holding management positions within the organization who willfully participated in the excess benefit transaction.

The intermediate sanction rules assess a 25% excise tax on the

excess benefit. The excise tax is punitively increased to 200% of the excess benefit if the IRS finds the violation before the transaction is reported to the IRS by the organization. Intermediate sanctions may also require a complicit manager of the organization to pay an excise tax of 10% of the excess benefit. In extreme cases, however, when multiple excess benefit transactions occur within an organization, the IRS may bypass the intermediate sanction rules altogether and simply revoke the tax-exempt status of the entire organization. [footnote omitted]

In order for an organization to avoid the risk of intermediate sanctions being imposed, the tax law includes a pseudo-safe harbor—a rebuttable presumption of reasonableness. This presumption means that a transaction (including a compensation arrangement) is presumed reasonable (and thus not subject to intermediate sanctions) if the organization meets the following three requirements:

1. The compensation arrangement is approved in advance by the board (or board committee) composed entirely of individuals who do not have a conflict of interest with respect to the compensation arrangement.
2. The authorized body obtained and relied on appropriate data as to comparability prior to making its determination.
3. The authorized body adequately documented the basis for its determination concurrently with making that determination.

If these requirements are present, the burden of proving the presence of an excess benefit transaction shifts to the IRS, which is less likely to pursue a case in which it has a higher evidentiary burden to prove misconduct.

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Bailey, Reducing Exposure; *see also* 26 CFR § 53.4958-6(a)(i)-(iii).

While the steps Leafs took to document the nature of the compensation LHC paid to CSCG are probative of whether, under federal law, LHC's Contract with and payments to CSCG resulted in an *excess* benefit to Lapato, that is not the issue in this state exemption case. The issue here is whether LHC was an institution of public charity and whether the LIC property was actually being used primarily for charitable purposes. 35 ILCS 200/15-65(a). If LHC's actual use of that property provided a private benefit or inurement to its members, or to one or more of its insiders, and that private benefit or inurement was more than incidental, then, as a matter of *Illinois* law, the property does

not “otherwise qualify[ ] for an exemption under [PTC § 15-65].” 35 ILCS 200/15-65(a), (f); DuPage Art League, 177 Ill. App. 3d at 901-02, 532 N.E.2d at 1120. To the extent that this recommendation refers to or cites federal law when discussing inurement, it is not done to suggest that some federal law was violated, or some federal remedy is in order.

When considering whether LHC’s payments to CSCG constituted private inurement, I also take into account the relatively poor financial condition Leaf’s was in, at least at the time its most recent Audited Financial Statements were prepared. Applicant Ex. R, pp. 14-15 (notes 10-11). The notes to those statements reflect that Leaf’s was not able to service its total indebtedness, or to satisfy its bond trustee account reserves, and that it was also delinquent in paying its property taxes for 2008 and 2009. *Id.* In contrast, the business owned by a Leaf’s officer and LHC Manager *was* being paid, regularly, and to the tune of over half a million dollars each year. Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9). Without even taking into account CSCG’s management fee, LHC’s payments to CSCG were, but for interest (or occupancy, on Leaf’s Form 990 for TYE 6/10), the largest itemized expense Leaf’s reported on its returns for TYE 6/08 through 6/10. Applicant Exs. L.1 (pp. 19-20), L.2 (p. 10), L.3 (p. 10). Put another way, during the year at issue, LHC’s insider’s business was being paid; but other creditors, like the local taxing authorities and bond-holders, were not. Applicant Ex. R, pp. 13-15. At a minimum, LHC was treating its insider’s for-profit business better than some of its other creditors. *See DuPage Art League*, 177 Ill. App. 3d at 901, 532 N.E.2d at 1120 (“only plaintiff’s active members are permitted to show their work in the gallery. Thus, its members gain a distinct advantage not afforded to nonmembers by the opportunity to sell,

promote, and familiarize the community with their work.”).

After considering the evidence, I conclude that LHC’s payments to CSCG provided an inurement of a significant portion of LHC’s revenues to Lapato, a private individual who was actually engaged in managing LHC. Applicant Exs. E, L.1 (pp. 19-20), L.2 (p. 10), L.3 (p. 10), DD (pp. 3-17); Provena, 236 Ill. 2d at 392, 925 N.E.2d at 1146 (“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.”); DuPage Art League, 177 Ill. App. 3d at 901-02, 532 N.E.2d at 1120. That inurement or benefit, moreover, was more than incidental. Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9). During each of Leafs’ TYE 6/08 through 6/10, LHC paid CSCG, respectively, 54%, 43% and 41% of what Leafs’ reported as its ice center revenues. Applicant Exs. L.1 (pp. 2, 19, 21), L.2 (pp. 9-10), L.3 (pp. 7-9). Because LHC’s actual operations provided a significant private inurement to one of its insiders, I conclude that LHC does not satisfy the fourth Methodist Old Peoples Home guideline. 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.

### **Sixth Guideline**

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

The evidence shows that LHC used the LIC property primarily to provide skating programs and other services to the public for a fee. Applicant Exs. L.1 (p. 21), L.2 (p. 9), L.3 (p. 9), DD (pp. 3-15). 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). LHC did not use the property primarily for charitable purposes.

Additionally, LHC's actual operations on the property provided a direct inurement of a significant amount of LHC's revenues to a corporation owned by one of LHC's managing insiders. Applicant Exs. E, L.1 (pp. 19-20), L.2 (p. 10), L.3 (p. 10), R (pp. 13-14), Y, DD (pp. 3-17); 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 LHC did not use the property primarily for charitable purposes does not ignore that LHC did, in fact, provide outright gifts of free access to the LIC — during valuable prime time periods — to a small number of groups. Applicant Exs. DD-EE; Tr. pp. 163-64 (Smith), 227-28 (O'Connor), 244-53 (DeCristofaro). It also granted free access to the LIC — during non prime time periods — to a neighboring public middle school. Applicant Exs. DD-EE; Tr. pp. 261-76 (Cavanaugh). But these gifts were only an incident to LHC's primary use of the property.

Specifically, the evidence shows that, for the period beginning in June 2008 through the period ending May 2012, LHC granted approximately 228 hours of free, prime time access to its rinks and other facilities to five separate groups of persons. Applicant Exs. DD (pp. 16-17), EE (pp. 5-6, 9-12); Tr. pp. 347, 378-79 (Lapato). It also granted approximately 447 hours of free access to one or more of its ice rinks to DMS during non prime time hours. Applicant Exs. DD (pp. 18-21), EE (p. 8); Tr. pp. 347, 378-

79 (Lapato). The period from June 2008 to May 2012 is about four full years, and Lapato testified that, in any given year, there were about 9,800 hours of prime time ice to rent to others. Tr. pp. 346-48, 378-79 (Lapato). Thus, LHC had about 39,200 prime time hours of ice rental time in that four-year period. Taking into account all of the hours for which free access to the LIC was granted — even mixing non prime with prime hours — LHC's gifts of access constitute less than 2% of the LIC's available prime time ice rentals. *Compare* Applicant Exs. DD-EE *with* Tr. pp. 346-48, 378-79 (Lapato) (228 + 447 = 675,  $675/39,200 \approx 0.017219$ ). The same is true of the comparatively small amount of discounts that LHC allowed for its own skating programs offered at the LIC. Applicant Ex. DD, pp. 6, 11, 15 (total discounts/total sales  $\approx 0.006704$ , or less than 7/10ths of 1% of LHC's total sales). Such gifts were undoubtedly good things, but they did not constitute LHC's primary use of the property.

**Conclusion:**

I conclude that LHC has not supported its claim for a charitable exemption. I recommend that the Director finalize the Department's prior denial as issued, and that the property shall remain on the tax rolls.

May 2, 2013

John E. White

Administrative Law Judge