

**PT 16-04**

**Tax Type: Property Tax**

**Tax Issue: Charitable Ownership/Use and Religious Ownership/Use**

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

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**LEADERTREKS, N.F.P.,  
APPLICANT  
v.**

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

**No. 15-PT-007  
Real Estate Tax Exemption  
For 2014 Tax Year  
P.I.N. 05-05-309-012  
DuPage County Parcel**

**Kelly K. Yi  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. David L. Bea, Bea & VandenBerk, appeared for LeaderTreks, N.F.P.; Ms. Paula Hunter, Special Assistant Attorney General, appeared for The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether DuPage County Parcel, identified by property index number 05-05-309-012 (“subject property”) qualifies for exemption from 2014 real estate taxes under Sections 15/40 and 15/65 of the Property Tax Code. 35 ILCS 200/15 *et seq.*

Section 15/65 of the Property Tax Code provides that all property of institutions of public charity is exempt from taxation when actually and exclusively used for charitable or beneficent purposes and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65. Section 15/40 of the Property Tax Code provides that property used exclusively for religious purposes qualifies for exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40.

On December 9, 2014, LeaderTreks, N.F.P. (“LeaderTreks” or “Applicant”) filed a Property Tax Exemption application with the DuPage County Board of Review seeking both charitable and religious exemptions from 2014 real estate taxes for the subject property. The Board reviewed the application and on January 9, 2015 recommended a denial of exemption for the subject property. In a determination dated January 29, 2015, the Department of Revenue of the State of Illinois (“Department”) adopted the Board’s recommendation, finding that the subject property was not in exempt ownership and use. Applicant filed a timely appeal of the Department’s exemption denial. In lieu of an evidentiary hearing, the parties submitted a Stipulation of Facts (“Stipulation”) along with exhibits. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

**FINDINGS OF FACTS:**

- 1) On December 19, 2014, LeaderTreks filed an application for property tax exemption for the subject property.
- 2) Following the Department’s denial of the property tax exemption on January 29, 2015, LeaderTreks timely filed a request for hearing. Stip. 5-6; Exs. 2-3.
- 3) LeaderTreks is an Illinois not-for-profit corporation, incorporated on June 4, 1988. Stip.
  1. According to its bylaws, the purposes of LeaderTreks are: to minister the Gospel of Jesus Christ; to provide Gospel missions training and hands-on ministry experience for Christians; and to establish, promote, and support Christian ministries. Stip. 1-2; Ex. I.
- 4) LeaderTreks’ Affidavit of Use states that it is a Christian organization that equips youth to become the next generation of church leaders; to fulfill the Great Commission of Jesus

to go and make disciples of all nations; and to inspire and prepare Christians to go and serve in missions. Ex. 1.

- 5) LeaderTreks' Affidavit of Use further states that the subject property is a one-story building, used as administrative offices and a summit room, where staff write and distribute curriculum and other religious instructional materials, plan mission trips, collaborate with outside ministry leaders, and host ministry training events. Stip. 4; Ex. 1.
- 6) LeaderTreks charges fees for its mission trips, training, and curriculum distribution. Stip. 4; Exs. 1, 4-7.
- 7) Doug Franklin is president of LeaderTreks. If called to testify, Mr. Franklin would testify as follows:
  - a) Each LeaderTreks mission trip involves performing charitable service projects, which can involve building or repair projects for impoverished communities or individuals or other projects such as food distribution, assistance to immigrants, or community recreational, educational, or religious events. Stip. 7a; Exs 4-7.
  - b) LeaderTreks works closely with churches in locations where it conducts mission trips to identify community needs and plan suitable charitable projects to address those needs. Stip. 7b.
  - c) LeaderTreks informs the public of its charitable projects through its website, blog postings, and newspaper articles. Stip. 7c; Exs 4-6, 15-18.
  - d) LeaderTreks provides materials to participating churches to help them plan their involvement in the domestic and international service projects. Stip. 7d; Exs. 9-10.

- e) Religious instruction is an essential component of LeaderTreks' mission trips. Stip. 7e.
- f) Religious instruction on mission trips is provided by LeaderTreks staff, church pastors, and volunteers who help youth with the mission trips. Stip. 7f.
- g) LeaderTreks emphasizes the religious instructional component of the mission trips in the materials it distributes to pastors, parents, and volunteers that describe each mission trip. Stip. 7g; Ex. 11.
- h) LeaderTreks provides resources to help pastors and volunteers teach religious principles during the mission trips. Stip. 7h; Ex. 8.
- i) In 2014 LeaderTreks' staff members solicited and raised funds to support the ministry of LeaderTreks and inform supporters of the activities of LeaderTreks. This is similar to how other evangelical mission organizations raise funds. Stip. 7i; Exs. 12-14.
- j) In 2014, approximately 16% of LeaderTreks' revenue was from donations. A recent Form 990 tax return details amount of donations received during its fiscal year ending September 30, 2014. Stip. 7j; Ex. 19.
- k) LeaderTreks regularly waives or reduces fees for its programs and resources. Stip. 7k.
- l) Churches who participate in LeaderTreks' programs often have their own benevolence funds they use to waive or reduce fees for their youth to participate. Stip. 7l.
- m) LeaderTreks grants a fee waiver whenever it is brought to its attention. Stip. 7m.
- n) LeaderTreks granted each fee waiver request it received in 2014. Stip. 7n.

- o) In 2014 LeaderTreks waived more than \$17,500 of fees to participate in mission trips and training events and approximately \$27,000 in fees for LeaderTreks' resources. Stip. 7o; Exs. 20-21.
- p) LeaderTreks charges no fees to those receiving the benefit of the charitable projects LeaderTreks performs. Each of these projects involves considerable expense to LeaderTreks. Stip. 7p.
- q) In 2014, LeaderTreks incurred over \$400,000, approximately 25%, in direct expenses to conduct charitable projects. Stip. 7q.
- 8) In 2014 LeaderTreks it received approximately \$1.6 million from program fees/curriculum distribution and \$252,000 in donations. Ex. 1
- 9) In 2014 LeaderTreks' top five expenditures were approximately \$734,000 for payroll; \$440,000 for "relief donations, materials, and logistics"; \$358,000 for "curriculum operations"; \$84,000 for marketing; and \$50,000 for "building." Ex. 1

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Applicant has not demonstrated by presentation of exhibits or argument evidence sufficient to warrant exemptions for the subject property from 2014 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-40 and 15-65 should be affirmed. In support thereof, I make the following conclusions:

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

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and

property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987) (“Gas Research Institute”). Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994).

#### **CHARITABLE EXEMPTION:**

The provisions of the Property Tax Code that govern charitable exemptions are found in Section 15-65. In relevant part, the provision states as follows:

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

- (a) Institutions of public charity.

- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

35 ILCS 200/15-65.

Property may be exempt under this section if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. Chicago patrolmen's Association, v. Department of Revenue, 213 Ill.2d 273, 285 (2004). An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). If the primary use of the property is charitable, then property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1<sup>st</sup> Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc., v. Department of Revenue, 158 Ill.App.3d 794, 796 3<sup>rd</sup> Dist. 1987).

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) ("Korzen"), the Illinois Supreme Court outlined several factors to be considered in determining whether an entity is an institution of public charity: (1) the organization has no capital, capital stock or shareholders; (2) funds are derived mainly from private and public charity and holds them in trust for the objects and purposes expressed in the charter; (3) charity is dispensed to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen at 157. These factors

are balanced with an overall focus on whether and how the organization serves the public interest and lessen the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2<sup>nd</sup> Dist. 1995). Thus, the issue before this tribunal is whether Applicant is "an institution of public charity" under the terms of Korzen.

In determining whether an organization is charitable in its purpose and therefore exempt from taxation, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1957). However, the mere wording of or statements made in an entity's organizational documents are not determinative for present purposes. Morton Temple Association v. Department of Revenue, 158 Ill.App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987). Rather, it is the facts relative to the underlying business realities of the entity's actual operations that are decisive herein. *Id.* Applicant originally incorporated in 1998 as an Illinois not-for-profit corporation under the name Adventures in Missions, Inc., until the name changed to its current name in 2002. Ex. 1. Applicant's purposes, according to the bylaws, are to minister the Gospel of Jesus Christ; to provide Gospel missions training and hands-on ministry experience for Christians; and to establish, promote, and support Christian ministries. Ex. 1. The record shows that any youth may participate in Applicant's programs but they require a fee. Its leadership training benefits only the participants who pay to attend them. With respect to the service projects, as it is the trip participants, not the Applicant, who pay<sup>1</sup> for and perform the work, any public benefit from the service projects cannot be attributed to Applicant's charity. *See* Ex. 5. In arguing to the contrary, Applicant analogizes the service projects to that of work done by a disaster relief volunteer who pays its own expenses. Responsive Brief, p. 8. Its point is that it is immaterial who pays or performs charity as long as charity is dispensed. This is a flawed

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<sup>1</sup> The trip fees include costs of supplies for the service projects. Ex. 5.

position as it is the Applicant, not the trip participants, which is seeking a charitable exemption from property tax. When its revenue comes from fees charged to those who actually perform the charity work, the charity cannot be attributed to the organization.

Illinois courts have addressed the issue of indirect public benefits in the context of property tax exemption. The court in Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542 (1986) (“Board”), opined that the public benefits of the activities of the members of the safety profession are the result of services rendered by those members, who would perform the same function with or without Board certification. Similarly, in Du Page County Board of Review et al., v. Joint Commission on Accreditation of Care Organizations et al., 274 Ill.App.3d 461 (2<sup>nd</sup> Dist. 1995) (“Joint Commission”), the court noted that Joint Commission’s standard setting, on-site evaluations, and accreditation decision-making only provided an indirect benefit to an indefinite number of persons, while the direct beneficiaries of its work were “the health care providers who, when accredited by the Joint Commission, are able to receive reimbursement from both private and public sources of funding (i.e., private insurance and [M]edicare or [M]edicaid).” Joint Commission at 464, 469. As in Board and Joint Commission, Applicant’s benefits are offered only to those who pay to participate or secondary to its primary purpose to organize and lead fee based youth leadership development programs with a religious component. Accordingly, I conclude that Applicant does not have a primary charitable purpose and operates more like a commercial enterprise than a charitable institution, thus, not an institution of public charity.

The first Korzen characteristic is not at issue. Dept.’s Brief p. 8. With respect to the second Korzen characteristic, the Department points out that Applicant’s total income for the year 2014 was over \$1.8 million, and of that amount, \$252,307.60 or 13.5% came from

donations.<sup>2</sup> The balance of the income came from fees for mission trips, training programs, and curriculum distributions, of the total income. Dept.'s Brief p. 8. Applicant responds that in addition to a substantial amount of donations from the public, all of its funds came from activities to further its mission. App.'s Brief p. 9. There is a problem with this argument. Unless the public knew the payment for Applicant's goods and services was voluntary for those unable to pay, the revenue from the program and curriculum fees cannot be considered donations. Applicant presented no evidence that it has an effective fee waiver policy. Charity is an act of kindness or benevolence. "There is nothing particularly kind or benevolent about selling somebody something." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 745 (4<sup>th</sup> Dist. 2008); aff'd, 236 Ill. 2d 368 (2010).

There is no case law establishing a threshold percentage of charitable funds received by an organization to satisfy the second Korzen characteristic. In American College of Surgeons v. Korzen, 36 Ill.2d 340, 348 (1967), the Illinois Supreme Court rejected an argument that the college was not a charitable organization because approximately half of its funds came from membership dues. The court in Riverside Medical Ctr. V. Dept. of Revenue, 324 Ill.App.3d 603 (3<sup>rd</sup> Dist. 2003) noted that 97% of Riverside's net revenue derived from patient billing was "not consistent with the provision of charity." *Id.* at 608. In the instant case, 86.5% of Applicant's 2014 revenue came from program and curriculum fees. The exchange of services or goods for payment at this level is certainly not a "use" of property that has been recognized by Illinois courts as "charitable." Accordingly, I find that Applicant has failed to meet by clear and

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<sup>2</sup> This figure, based on Applicant's profit & loss statement, is inconsistent with Applicant's Form 990 tax filing which shows an underreporting of income by roughly \$318,000 for fiscal year ending September 30, 2014. If relied upon the tax filing figures, the funds derived from donations amount to 16% of the 2014 total revenue. For a sake of consistency, unless noted otherwise, this Recommendation refers to the figures in the profit & loss statement. Exs. 1 & 19.

convincing evidence the second Korzen characteristic that its funds are derived mainly from private and public charity.

As to the third Korzen characteristic, Applicant charges a fee for all of its programs and curriculum distribution. Applicant, however, asserts that it dispenses charity to all who need and apply for it through service projects and fee waivers. App.'s Brief p. 10. It points to the profit and loss statement that shows that approximately \$440,000 was spent on "relief donations, materials, and logistics" in 2014.<sup>3</sup> Ex. 1. It is equivalent to 23.5% of the total revenue. Given that it is the trip participants, not the Applicant, who pay for the supplies and perform the service work, this figure is questionable. Exs. 1 & 5. As to the actual charity work, I explained earlier why the service projects cannot be attributed to Applicant's charity. While the parties stipulate that Applicant has granted each fee waiver requests in 2014, no documentary evidence was presented to the number of fee waiver requests received and the actual amount of fee waiver granted in each case. Applicant's report of a total of \$44,500 reported as "fee waivers" (\$17,500) and "resources" (\$27,000), roughly 2.4% of the total revenue, in 2014 is not substantiated by documentary evidence. Applicant did not present evidence of whether the "fee waivers" were a need based or otherwise, such as a volume discount. Stip. 7o; Exs. 20-21. Specifically, Applicant provided 13 invoices issued to 8 churches attesting to a discount of up to \$30 per person for a group of various number of people up to 95 and a "free adult staff" of unknown charge. Ex. 20. The known value of the "fee waivers" in 2014 total \$8,805. Ex. 1. Similarly, no documentary evidence supports a reported donation of \$27,000 in "resources" or the number of fee waiver requests for them. Ex. 1. Exhibit 21 merely shows that Applicant has agreed to a free distribution of materials to three churches but no value was stated. Exs. 1, 20-21. Based on the evidence presented, I am unable to conclude that Applicant has met by

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<sup>3</sup> The profit and loss statement has no category for fee waivers totaling \$44,500. Ex. 1; Stip. 7o.

presentation of clear and convincing evidence the third Korzen characteristic that charity is dispensed to all who need and apply for it.

The fourth Korzen characteristic is not at issue. Dept.'s Brief p. 8. The fifth and final Korzen characteristic of a charitable organization is whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. It is recognized that charging fees and rendering benefits to persons who are not poverty stricken does not destroy the charitable nature of an organization for tax exemption purposes, but this is only true to the extent that the organization also admits persons who need and seek benefits offered but are unable to pay. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2<sup>nd</sup> Dist. 1995). Applicant's bylaws contain a provision for a discretionary fee waiver, but no evidence was presented that the general public knew of the fee waiver provision. When charity is not advertised, it is impossible to conclude that charity is dispensed to all who need it. Those who need charity may not apply because it is not advertised and they do not know that it is available.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that "the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it." *Id.* at 281. Similarly, the court in Alivio Medical Ctr., *supra*, denied a charitable exemption to a medical care facility in noting, *inter alia*, that "[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care." Alivio Medical Ctr. at 652. In the instant case, Applicant presented no evidence that it displays a sign

at its location or elsewhere advertising to the general public the availability of fee waivers for its programs and curriculum.<sup>4</sup> The Affidavit of Use states that “[i]f a church informs LeaderTreks that an individual is unable to participate due to inability to pay, LeaderTreks waives the fee for that individual.” Ex. 1. This is a departure from informing the general public of the availability of a fee waiver policy prior to begin asked about fee waivers. This is an obstacle to receiving benefits and prevents a conclusion that charity is dispensed to all who need it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). Applicant’s lack of advertised waiver provision for those unable to pay precludes a finding that it places no obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. I conclude that Applicant has not met by clear and convincing evidence the fifth Korzen characteristic of a charitable organization that no person or organization is denied the benefit of Applicant's services despite an inability to pay.

In balancing Applicant’s characteristics of a charitable organization with an overall focus on whether and how the organization serves the public interest and lessens the State’s burden, as noted in Joint Commission, I conclude that Applicant confers no public benefit and reduces no government burden. Applicant provides fee based youth leadership development programs and curriculum with a religious component. No clear and convincing evidence was presented that the “fee waiver” is granted on a need basis or that the fee waiver policy is advertised to the general public for any of its programs. The service projects paid for and performed by the trip participants cannot be attributed to Applicant’s charity. Youth leadership development is a laudable endeavor but there is no government burden to provide it. The third and fifth Korzen

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<sup>4</sup> Applicant states that it advertises the availability of the service projects but it is irrelevant to the issue of the fee waiver as the work performed and paid for by the trip participants is freely given. Stip. 7a & 7c; Exs. 4-6.

characteristics that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way, are “more than guidelines.” They are “essential criteria” and “go to the heart of what it means to be a charitable institution.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4<sup>th</sup> Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). Applicant has some Korzen characteristics of a charitable organization, but without it meeting the “essential criteria” above, I conclude that Applicant is not an institution of public charity.

Tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt in order to insure that “sound principles” are preserved, unwarranted exemptions from taxation are avoided and that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. Taxpayer bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2<sup>nd</sup> Dist. 1991).

### **RELIGIOUS EXEMPTION:**

Pursuant to its constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, which allows exemptions for religious purposes or school and religious purposes, provides, in relevant part, as follows:

Sec. 15-40. Religious purposes, orphanages, or school and religious purposes.

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit.

35 ILCS 200/15-40.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill.2d 87, 98 (1983). In a property tax exemption case “a religious use means public worship, Sunday schools, and religious instruction.” Three Angels Broadcasting Network, Inc., v. Department of Revenue, 381 Ill.App.3d 678, 694 (2008). This is not inclusive of everything that might be regarded as a religious use, but it is illustrative of the nature of a religious use in the context of property tax exemptions. *Id.* at 695. A religious purpose can become intertwined with commercial purposes for a use of real estate that is either: 1) primarily religious with incidental commercial nuances (Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill.App. 3d 798 (2<sup>nd</sup> Dist. 1978); or (2) primarily commercial with religious overtones (Cook Communications Ministries v. Department of Revenue, 345 Ill.App. 3d 753 (2<sup>nd</sup> Dist. 2004). Based on the evidence presented, I conclude that Applicant is a primarily commercial enterprise with religious overtones and align more with Cook Communications Ministries than Inter-Varsity Christian Fellowship.

To give a historical context, this is Applicant’s second request for exemption of the subject property. In the earlier case, for tax year 2005, the appellate court ultimately upheld the Department’s denial of the exemption. LeaderTreks, Inc. v. Department of Revenue, 895 N.E.2d 683 (2<sup>nd</sup> Dist. 2008) (“LeaderTreks”). In the present case, Applicant asserts that exemption should be granted because it conducts religious teaching and missionary work through employees with religious training and experience. App.’s Brief, p. 2. Applicant’s primary

function is to organize and lead groups of youth on fee based mission trips to impoverished communities domestically and abroad. Each trip involves charitable service projects, such as building or repair projects, food distribution, educational events, and religious events. Stip. 7a; Exs. 1, 4-7. Applicant asserts that these service projects help youth to fulfill biblical commandment to serve others. App.'s Brief, p. 3. The Department responds that the facts from the earlier case remain the same, thus, the ruling of the appellate court should apply in the present case.

In the earlier case, the court rejected Applicant's reliance on Evangelical Teacher Training Ass'n v. Novak, 118 Ill.App.3d 21 (1983) ("ETTA") noting that ETTA constituents were religious organizations and its officers were ministers; ETTA did more than merely distribute religious materials to others; its officers were actively involved in religious teaching to promote Christian education; and that it was associated with religious educational institutions organized by Bible colleges. LeaderTreks at 689. Whether an organization maintains missionaries in the field is a factor of consideration. Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953). In its favor, Applicant has no shareholders and none of its assets are distributable to any private person. Ex. 1. However, Applicant, now, as was then, is not formally associated with any exclusively religious organizations. Applicant "works closely" with churches to plan service projects on mission trips, but Applicant itself does not maintain missionaries in the field. Stip. 7b. As was in 2005, Douglas Franklin, Applicant's president is not an ordained minister and Applicant continues to have no affiliation with any religious organization such as churches and bible colleges. While Mr. Franklin served as a youth pastor for 12 years, other than a vague description of qualifications of the remaining staff that "nearly all of them have degrees or studying for degrees from Christian colleges, universities, or

seminaries,” there is no clear and convincing evidence that any of them are an ordained minister, a seminary school graduate, or otherwise qualified to write curriculum for and teach religious education. Ex. 1; LeaderTreks at 690. Applicant states that the trip curriculum includes theological topics written by “pastors and other qualified religious leaders,” but again failed to present their names and qualifications.<sup>5</sup> App.’s Brief, p. 6. Accordingly, I conclude there is insufficient evidence to clearly and convincingly establish that Applicant’s staff are qualified to write religious curriculum or teach religious instruction.

The parties stipulate that religious instruction is an essential component of the trips. Stip. 7e. An essential component is not necessarily equivalent of primary purpose. The record is replete with evidence that leadership development is principal to Applicant’s operation. “From the moment you arrive until the minute you leave all aspects of the trip will be used to develop your students into leaders,” states Exhibit 4. Applicant lists the trip benefits as follows: leadership skills, leading with confidence, new view of personal potential, clear communication, and learn to live integrity. Ex. 5. Applicant offers three levels of mission trips, “Mission Ready,” “Intense Impact,” and “Adventure” where “students learn and serve,” “to think and live differently, and to become leaders who make a difference for the Kingdom of God.” Ex. 6. Notwithstanding a religious component to Applicant’s programs, all of them strongly emphasize progressively challenging leadership development trainings. *See* Exs.4-6. A summer schedule template shows that a week program includes five days of service projects, an hour of prayer walk, a cookout, a night of outreach, and 1½ hours of backyard bible school. Ex.7. Applicant’s Program Information states: Step One: Leadership Learned; Step Two: Leadership Experienced;

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<sup>5</sup> In its Response Brief, Applicant attached an affidavit by Mr. Franklin adding additional details of qualifications of its staff, expanding the scope of the stipulated facts. *See* App.’s Response Brief. As the Department neither agreed nor has had an opportunity to cross examine the affiant on the additional details, I cannot consider them or any arguments based on the same.

Step Three: Leadership Challenged; Step Four: Leadership Evaluated. Ex. 8. A staff guide to "Parent Meeting" describes leadership development, spiritual growth, and safety as the main focus. Under leadership development, a student "uses trip to help identify and develop their personal leadership skills," "partnered with youth leaders...who are passionate about helping develop the next generation of leaders in church and culture." Spiritual growth component consists of "45 minutes of [daily] devotions on their own" in which students learn to study the bible on their own. Exhibit 11. As was the case in the earlier case, youth leadership development remains central to Applicant's training and mission trips. "Leadership development is not *per se* a religiously imbued undertaking" "any more than it seeks the generic development of young people." LeaderTreks at 691. Applicant's bylaws, then and now, say nothing about religious instructional studies or teaching youth about religious education as a career. Ex. 1; LeaderTreks at 690. In adherence to Three Angels Broadcasting, and construing all debatable questions to be resolved in favor of taxation pursuant to Gas Research Institute, I conclude that based on the totality of the facts presented, Applicant aligns more with primarily a commercial enterprise with religious overtones than not, and therefore, is not a religious organization engaged exclusively in religious activity of "public worship, Sunday schools, and religious instruction." Three Angels Broadcasting at 695; Gas Research Institute at 430.

Assuming *arguendo* that Applicant were a religious organization, the next issue is whether the property is not used with a view to profit. The court in the earlier case noted that a net loss a 2.7% "does not permit an inference that Applicant did not use its property with a view to profit, especially given that it relied primarily on fees and not on contributions." LeaderTreks at 691. Applicant's activities in other locations is irrelevant in evaluating primary use of the subject property. *Id.* In the present case, Applicant incurred even a smaller loss of a 2.4% net

loss in 2014 and a vast majority of its 2014 revenue came from program fees. Ex. 1. Applicant presented no documentary evidence of the total number of fee waiver requests received in 2014 and the basis for the fee waivers granted. The profit and loss statement fails to report a total of \$44,500, equivalent to 2.4% of the total revenue, granted in fee waivers. Stip. 7o; Exs. 20-21. While Applicant attributes the service projects as its charity and deems it a religious activity, as the work was performed off premises during the trips and the work itself was performed by the trip participants, any associative administrative work performed at the subject property as well cannot be considered in evaluating whether the property is used without a view to profit. Accordingly, I conclude Applicant has failed to prove by clear and convincing evidence the second criteria for exemption that the property was not used with a view to profit in 2014, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for religious purposes.

**RECOMMENDATION:**

For the foregoing reasons, it is recommended that the Department's denial of property tax exemption for the tax year 2014 claimed under the charitable and religious exemptions of the Property Tax Code, 35 ILCS 200/15-40 and 15-65, be affirmed of DuPage County parcel, identified by property index number 05-05-309-012.

May 2, 2016

Kelly K. Yi  
Administrative Law Judge